

Guide on Gender-Sensitive Labour Migration Policies

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Guide on Gender-Sensitive Labour Migration Policies

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Foreword

We are pleased to present this first international Guide on Gender-Sensitive Labour Migration Policies, produced jointly by the Office of the Co-ordinator of OSCE Economic and Environmental Activities, Office of the Special Representative/ Co-ordinator for Combating Trafficking in Human Beings and the OSCE Secretariat Gender Section.

Labour migration has become one of the most visible and vital concerns in ensuring stability and economic progress, national welfare and social cohesion for OSCE participating States; it has therefore moved to the top of the policy agenda in many countries of origin, transit and destination. However, little attention has been given to the fact that more women, as active contributors to the economy in countries of destination, are leaving their countries of origin than ever before, and are experiencing this process differently from men.

The *Guide* aims at presenting good practices and providing tools on how to shape gender-sensitive labour migration processes. Through this *Guide*, the aim is to encourage states, particularly those in the OSCE area, to include gender-sensitive measures in their labour migration policies. It has been prepared in particular for use by policymakers and practitioners. In so doing, it is hoped that labour migration policies will be developed in a more gender-just way in accordance with OSCE

participating States' common commitments and values.

The *Guide* focuses on the fact that female migrant workers often experience different disadvantages in comparison to men at all stages of the migration process, due to their status, to the nature of the employment sector and type of educational requirements as well as stereotyped roles of men and women. The lack of policies addressing female migrant workers' specific needs, limited legal channels for female migrant workers, and/or their exclusion from labour legislation make them particularly vulnerable to discrimination and exploitation, and in the worst case, fall victims to human trafficking.


Thus, while migration provides new opportunities for women and benefits national economies, it also often gives rise to threats specifically against their security and human rights. To remedy the situation, attention has been drawn to the need for special measures to enforce current legislation and to develop and adopt policies and programmes for female migrant workers both in countries of origin and destination, some of which are presented as good practices in this *Guide*.

OSCE is promoting efficient and sustainable migration management policies, as well as the

importance of integrating a gender perspective in all fields of activities. We believe that gender-sensitive policies, in all their forms, can make a significant difference to the living and working conditions of female migrant workers, which will also contribute to the reduction of trafficking in human beings, another priority of the OSCE.

The OSCE Seminar on Gender-Sensitive Labour Migration Policies, held in Brdo, Slovenia, from 16

to 17 February 2009, facilitated dialogue among policymakers from several OSCE participating States, who showed the need for and interest in securing female labour migrants rights. We hope the *Guide* will inspire further dialogue among policymakers, raise awareness of national authorities, stimulate the exchange of information and good practices, as well as encourage effective policy implementation among States in the OSCE area and beyond.



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Executive Summary

International migration in the OSCE countries has increased significantly over the last few years, reaching 115 million migrants in 2005 according to a recent ILO report prepared for the OSCE.¹ About half of these migrants are women and an increasing number are now migrating to seek employment abroad. They are responding to a demand for foreign workers in countries of destination and a need to earn a better income for their families and themselves, or for better career opportunities. However, female migrant workers are frequently channelled into the “feminized sectors”, such as social and welfare professions, education and nursing. Many of them find themselves in low-paid jobs despite having obtained a relatively high level of education in their countries of origin, and often work in domestic and care services, in garment manufacturing, or the hospitality sector.

Female migrants are often confronted with gender-specific disadvantages in the migration process and in their employment due to different factors, such as stereotyped labour roles for men and women, lack of policies addressing female migrant workers’ specific needs and limited legal channels available to them. They are also often working in sectors not fully covered by labour legislation. This makes them particularly vulnerable to discrimination and exploitation and, in the worst cases, they could fall victim to human trafficking.

While migration provides new opportunities for women and clearly benefits national economies, little attention is given to equal opportunity and specific threats to female migrants’ overall security and protection. Although changes of attitudes towards gender relations is a long-term process, gender-sensitive policies, in all their forms, can make a significant difference to the living and working conditions of female migrant workers.

Therefore, the **Guide on Gender-Sensitive Labour Migration Policies** attempts to analyse some of the most pressing gender issues in contemporary labour migration. It seeks to highlight the rationale for including gender-sensitive measures and ways to implement them into the migration policies of countries of origin and destination, as well as in bi- and multilateral agreements. Through presenting good practices and providing tools on how to shape migration processes, the *Guide* aims to assist and encourage OSCE participating States and Partners for Co-operation to enforce current legislation as well as develop and adopt policies and programmes for female migrant workers that are more gender-sensitive. In this way, it should encourage migration policies to be formed in a more gender-just way.

The *Guide* is a result of OSCE’s efforts to facilitate the incorporation of gender into labour migration policies, and is a complement to the *Handbooks on Establishing Effective Labour Migration Policies* (OSCE, IOM, and ILO, 2006; 2007). Moreover, it is a response to requests for more information and advice by governmental and non-government actors at OSCE-organized meetings related to migration management.

Conceptually, the *Guide* follows a *rights-based approach* as outlined by the Beijing Platform of Action of the Fourth World Conference on Women (1995). This approach has been transferred into labour migration policy. There are three crucial rights dimensions that should be reflected in gender-sensitive labour migration policies: (a) women’s rights to legal migration opportunities; (b) women’s rights within the migration process, for example, to safe and secure recruitment, fair remuneration and decent working conditions; and

(c) women's rights realized through migration, such as increased autonomy and self-confidence to negotiate better terms of employment and to have control over their earnings.

The *Guide* defines *gender-sensitive labour migration policies* as those recognizing that both men and women migrate for economic reasons and better employment opportunities, and that female migrant workers also make significant economic and social contributions to national economies in both countries of origin and destination. Such policies acknowledge that female migrant workers may experience more disadvantages and discrimination at all stages of the migration process. In order to rectify the situation, they seek to:

- develop enabling environments that provide equality of employment opportunity and access to benefits to both migrant men and women;
- follow a “two-way” approach, encompassing general migrant protection provisions and those specifically targeting female migrant workers in order to empower them with choices, access resources and claim rights;
- introduce temporary special measures to compensate for past discrimination that may adversely affect female migrants' current situation.

Chapter 1 addresses the issue of *gender and migration*, and provides *practical tools for gender mainstreaming in migration policies* by giving some basic information on the feminization of migration and the specificities of employment of female migrant workers in different sectors of the labour market. It discusses the importance of sex-disaggregated data as a prerequisite for gender-sensitive policies and calls for the establishment of sex-disaggregated statistics and databases that can provide policymakers with adequate information on the impact of spe-

cific labour migration programmes and policies. It also explains how gender mainstreaming can be incorporated into migration policies through gender impact assessments, indicators and self- and external evaluations.

Chapter 2 delineates current *labour migration policies and practices in countries of destination*. Permanent and temporary forms of labour migration are reviewed from a gender perspective. It reviews current regulations in regard to permanent and temporary migration. Good practices are highlighted and recommendations given and divided according to the permanency of migration: permanent migration, temporary migration and irregular forms of migration. Furthermore, it examines the roles of non-state stakeholders – trade unions, non-governmental and diaspora organizations, as well as corporations – in building better support for and protection of female migrant workers.

Chapter 3 outlines the relevance of *gender in bi- and multilateral agreements*. It is divided into two main parts: first, it outlines different kinds of bilateral labour migration agreements, highlighting why gender is an issue and some ways in which it can be included into such agreements. Second, the concept of “ethical recruitment” and its application to the healthcare sector are explored. In commending the global perspective inherent in ethical recruitment, this chapter shows how this good practice can be improved and enriched by including a gender perspective. The possibility of extending ethical recruitment to other sectors is also assessed.

Chapter 4 deals with *policies and practices in countries of origin* that are key in contributing to legal, safe and orderly labour migration of their citizens, including female migrants. Achieving these goals not only requires adequate policies and protection mechanisms, but also supportive institutional structures. The chapter therefore starts by outlining steps that governments might

consider to make their institutional framework more gender-sensitive. It also looks at the measures that governments can take to regulate and improve the control of private recruitment agencies to minimize any recruiter malpractices. The importance of providing high quality pre-departure services and training is also highlighted, including

protective measures to ensure a safe and successful migration experience. Moreover, the chapter also deals with issues related to the situation of non-migrating family members in the country of origin, the transfer of remittances and the reintegration of female migrant workers.

Recommendations

Among the key recommendations are:

- In order to assess the need for foreign labour, evidence should include data on gender and more detailed information on specific labour market sectors to understand gender distribution. The needs assessment should not overlook domestic work and private care-related services so that admission policies would better reflect the actual need. Such measures would also help reduce the number of female migrants working in irregular employment situations.
- Permanent and temporary migration channels that offer equal access to women should be developed. For example, a measure to be considered in point-based systems is the recognition of women's role as primary caregivers and the relaxation of strict age and work experience thresholds.
- The validity of a work visa should not be limited to a specific employer and migrant workers should be allowed to change their place of employment to reduce dependency on a particular employer.
- Female migrant workers should be provided with special assistance with administrative processes, access to integration services, language and skills upgrading courses, and civil and legal services.
- Bilateral labour agreements should include two different types of provisions which can benefit female migrant workers: (a) general good practices that have a positive impact on women, such as protective provisions in sectors not covered by national labour law, e.g., domestic services; and (b) gender-specific provisions such as gender impact assessments; the inclusion of gender advisers with expertise on migration at all stages, from creation to implementation of such agreements, and gender sensitivity training for all staff involved in the process.
- Ethical recruitment codes should be considered, such as those developed in government-to-government agreements of healthcare professionals in order to stem large-scale and active recruitment of skilled workers by a country of destination to the detriment of the country of origin. Such codes could also be extended to other relevant sectors and professions to avoid severe "brain drain".
- A supportive institutional structure should be made more gender-sensitive through gender mainstreaming, since this is required in order to develop and implement gender-sensitive policies.
- Measures that regulate recruitment agencies and comply with minimum standards should be instituted, as outlined in ILO Convention No. 181.
- State agencies and non-state organizations in the countries of origin should provide pre-employment and pre-departure services to their prospective labour migrants. Pre-departure orientation and services could be delivered through embassies and consulates.
- In order to obtain the highest optimization of migrants' remittances, governments and relevant organizations

should aim to foster equal access to financial services for both men and women, and to establish low-cost services to remit money.

- Different reintegration programmes serving a diverse group of female migrants should be developed to smooth the process of return, such as assistance

with transfer of pensions and other social benefits obtained abroad; new employment opportunities should be offered; additional training or access to education should be made available; and assistance should be provide for social re-integration.

Endnotes

- 1 A "Review of the Implementation of OSCE Commitments Related to Migration by OSCE participating States", prepared by the International Labour Office for the Organization for Security and Co-operation in Europe (OSCE), for the 17th Economic and Environmental Forum, Athens, Greece, 17-20 May 2009.



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Introduction

Labour migration has moved to the top of the policy agenda in many countries of origin, transit and destination. Governments at both ends of the migration spectrum are increasing their regulatory capacities to manage labour mobility for the mutual benefit of migrants and societies. International organizations and informal fora, such as the Global Forum on Migration and Development, provide viable avenues for stakeholders to deliberate on efficient and also humane migration policies.

One important feature of today's migration is related to the role of women. Since more women than ever before are leaving their countries of origin, the "feminization of migration" can be observed. Many female migrant workers tend to be channelled into feminized sectors of production as well as into the service sector, a significant number of whom find themselves in low-paid jobs despite having obtained a high level of education in their countries of origin. Female migrants are also often confronted with gender-specific problems, such as sex-based discrimination or the challenge of organizing transnational family life.

This **Guide on Gender-Sensitive Labour Migration Policies** attempts to analyse some of the most pressing gender issues in contemporary labour migration and to showcase good gender-sensitive labour migration policy practices. The cases are mainly, but not exclusively, taken from the OSCE area. In a significant number of OSCE participating States and Partners for Cooperation, a broad range of innovative responses can be found, aiming to counter the problems faced by female migrant workers. Changes in gender relations do not happen overnight; however, gender-sensitive policies, in all their forms, can make a significant difference to the living and working conditions of female migrant workers.

Background and aims of the Guide

This *Guide* results from the OSCE's efforts to facilitate the incorporation of gender into labour migration policies. In 2006, the *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* was published, which was a collaborative project between the OSCE, the International Organization for Migration (IOM) and the International Labour Office (ILO). The *Handbook* stressed both the role of women in the process of migration as well as the feminization of migration, a phenomenon that can be observed in many regions of the world. During the development of the *Handbook*, it became clear that migration policies often appear gender-neutral, for example, by applying gender-neutral terminology such as "migrant worker", setting quotas or targets in neutral numbers, and/or using language devoid of any gender. However, while appearing neutral in letter and spirit, such policies can have a direct or indirect differential impact on women and men, and on gender relations, even when such an effect was neither intended nor envisaged.

As a result of these observations, the *Guide* highlights the rationale behind including gender-sensitive measures and how to implement them in countries of origin and destination, as well as in bi- and multilateral agreements. Through presenting good practices and providing tools on how to shape migration processes, it also aims at assisting and encouraging states, particularly those in the OSCE area, to include gender-sensitive measures in their labour migration policies. In this way, it is hoped that migration policies will be formed in a more gender-just manner.

Objectives of the Guide

To serve as a **practical policy tool for policy-makers and parliamentarians** in the OSCE participating States and the Partners for Co-operation.

To analyse **current labour migration policies for gender-sensitivity**.

To identify **gender gaps in policies and provide solutions**.

To provide examples of **good practices and innovative models** from countries of destination, origin and transit that can serve as inspiration and guidance to increase gender-sensitivity.

Although the *Guide* mainly focuses on the specific needs of female migrant workers in the migration process, this approach should not affect the rights and opportunities already enjoyed by male labour migrants.

In short, the aims of the *Guide* are fourfold:

(a) To serve as a **practical policy tool for policy-makers, parliamentarians and planners in national and international governmental bodies** in the OSCE area, including the Partners for Co-operation. It may also be of service to trade unions, the private sector, and non-governmental and migrants' organizations. The *Guide* can also provide the OSCE field presences with a concrete tool to assist governments in adapting their policies to meet the needs of female labour migrants.

(b) To analyse **current labour migration policies for gender-sensitivity**.

Permanent and temporary migration schemes as well as pre- and post-admission policies are presented through a gender lens. Point systems, for example, are explored as a policy type that places high value on human capital criteria; however, potential female migrants may find that they are unable to pass the point threshold for admission.

(c) To identify **gender gaps in labour migration policies and provide solutions to make them more gender-sensitive**. For example, quality pre-departure services in countries of origin and established regulation of recruitment agencies are two mechanisms that have proven helpful to female migrant workers. Regulations can create a safer recruitment environment for potential female migrants, since they clearly stipulate the rights and conditions of employment abroad. However, for such regulations to be effective and provide protection against malpractices, they need to be implemented and monitored on a regular basis, which is not always the case. The *Guide* attempts to identify such gaps and to propose solutions.

(d) To give examples of **good practices and innovative models** from countries of destination, origin and transit that can serve as inspiration and guidance to increase gender-sensitivity and promote gender-just outcomes in policy-making. It should be noted, however, that policies need to be context-specific, and that what works in one country may not work in another without modification.

In acknowledging differences among states, the *Guide* provides a set of principles and key ele-

ments through which tailor-made, gender-sensitive labour migration policies could be developed by interested countries.

Migration as a Priority Issue for OSCE participating States

Migration-related issues have a long tradition in the work of the **Organization for Security and Co-operation in Europe**: The OSCE Helsinki Final Act (1975) identified freedom of movement as one of its founding commitments together with ensuring the well-being of migrant workers. The OSCE, IOM and ILO collaborated on the *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (2006)¹ and its Mediterranean edition (2007)², which were direct follow-ups on the recommendation made at the OSCE 13th Economic Forum: Demographic Trends, Migration and Integrating persons belonging to National Minorities: Ensuring Security and Sustainable Development in the OSCE Area, held in Prague, Czech Republic, on 23–27 May 2005. Since the 13th Ministerial Council, held in Ljubljana, Slovenia in December 2005, and the adoption of the Decision on Migration and the Ministerial Statement on Migration at the 14th OSCE Ministerial Council, held in Brussels, Belgium, on 4–5 December 2006, migration has been placed on the OSCE agenda of political priorities. The Ministerial Statement also paid special attention to the needs of women and children in migration policies.

The Greek Chairmanship of the OSCE has brought renewed dialogue and political exchange on migration and security-related issues through the selection of “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region” as the theme of the 17th OSCE Economic and Environmental Forum. In addition to raising

awareness of gender issues in labour migration, the Organization, under the Greek Chairmanship, is also supporting the development of practical training materials on labour migration management, including gender aspects for capacity building.

The OSCE’s 2004 Action Plan for the Promotion of Gender Equality stresses that:

*Effective gender-mainstreaming with the goal of achieving gender equality, is important if full use is to be made of the human capital in the OSCE area. Gender equality contributes to comprehensive security, which is a goal of OSCE activities in all three dimensions. Gender-mainstreaming is a way of contributing to attaining this goal. The gender perspective should therefore be taken into account in the Organization’s activities, projects and programmes.*³

Furthermore, the 2004 Action Plan underlines OSCE support to participating States in implementing relevant commitments to promoting equality between women and men.⁴ The OSCE recognizes that both men and women will profit from gender equality. Promoting gender equality is a priority of the OSCE Greek Chairmanship.

Creating legal labour migration channels for women also contributes to the reduction of trafficking in human beings, which is another OSCE priority. The 2003 Action Plan to Combat Trafficking in Human Beings (THB) and subsequent Ministerial Decisions addressing the issue of child trafficking and trafficking for labour exploitation attest to the commitment of the OSCE participating States and Chairmanship to eradicating these problems in the OSCE area. Facilitating legal channels for migrant workers is one of recommended principles in the Action Plan under the section on prevention. By covering a number of areas related to the protection of migrant labour from exploitative working conditions, the *Guide* highlights important areas

What is “gender”?

Gender is not biologically given: Gender is a term used to describe socially constructed roles for women and men that are socially learned, that can change over time and that vary widely within and across cultures. By contrast, sex identifies the biological differences between men and women.

Gender does not only refer to “women”: Gender includes both women and men. Belonging to one gender or the other can create differences of experience. Visibility is a prerequisite for gender-sensitive policies and is taken into account in the concept of gender mainstreaming.

Gender is intersectional: Talking about gender does not imply that all women or men are alike, but categories such as race, ethnic minority status, age, marital and/or socio-economic status are also intervening factors. Gender affects, and in fact often reinforces, vulnerabilities and differences with relation to other structural differences, such as race/ethnicity, class and age. Hence, to be truly sensitive, gender sensitive policies should also reflect these inter-connections. See: OSCE (2006a).

of work in addressing THB in countries of destination with respect to identification, assistance and protection of victims. Trafficking for labour exploitation is a complex issue with many links to migration. Accordingly, since 2004, the Office of the Special Representative has held many high-level conferences under the auspices of Alliance Against Trafficking in Persons, and produced publications on this issue in order to assist the participating States in addressing it. Under the aegis of Alliance Against Trafficking in Persons with the support of the Greek OSCE Chairmanship, the Special Representative hosted the Technical Seminar on Trafficking For Labour Exploitation Focusing on the Agricultural Sector, on 27–28 April 2009, in Vienna, Austria.

A Three-Dimensional Rights-Based Approach

This *Guide* follows a *rights-based approach* as outlined by the Beijing Platform of Action of the Fourth World Conference on Women (1995) and translates it into the policy field of labour migration. Gender discrimination and gender inequalities at all stages of the migration process shall be identified in this regard. The *Guide* highlights the

specific vulnerabilities of female migrant workers and provides tools to empower them and to increase their choices.

In operationalizing a rights-based approach and developing qualitative indicators with regard to safe and just processes of female labour migration, three rights dimensions need to be considered:

- *Women’s rights to legal migration opportunities:* Ensure women’s access to and participation in safe and legal employment opportunities and their protection from exploitation and violence.
- *Rights within the migration process:* Ensure safe and secure recruitment, remuneration, control over earnings, decent working conditions, a right to family life, access to legal services, decision-making, health care and information, etc.
- *Rights realized through migration:* Facilitate and encourage the potentially positive outcomes of migration for women, e.g. through increased autonomy and power to negotiate the terms of work in the country of destination, having control over earnings

and more decision-making power at the household level in the country of origin and through an increased capacity to build social networks, etc.

A three-dimensional rights-based approach examines equality between men and women with regard to opportunities, treatment, outcomes and benefits, which can lead to substantive equality⁵. Thus, while formal (*de jure*) equality is important, it is only a first step towards material equality (*de facto*). Furthermore, this approach encourages the building of measures – at all stages of migration – that should simultaneously improve equality, both *de jure* and *de facto*. The Committee on the Elimination of Discrimination against Women (CEDAW), one of the most widely ratified Human Rights Treaties, favours the concept of substantive equality as the one that captures most dimensions of women’s rights. The three dimensions will reappear throughout this *Guide* and direct the cases chosen as good practices.

What are Gender-Sensitive Labour Migration Policies?

Gender-sensitive labour migration policies have been defined in the *Guide* as policies recognizing that both men and women migrate for economic reasons and better employment opportunities, and that the migration experience of men and women may differ significantly. They also recognize that female migrant workers may experience more disadvantages and discrimination at all stages of the migration process due to employment categories/sectors offered, educational requirements and stereotyping, which is often further magnified by the intersectional marginalization of age, class and ethnicity.

Furthermore, gender-sensitive labour migration policies acknowledge the significant economic

and social contributions made by female migrant workers to their countries of origin and destination. Therefore, such policies seek to:

- develop enabling policy and legislative environments that provide equality of employment opportunity and access to benefits to migrant men and women;
- follow a “two-way” approach, encompassing general provisions to protect migrants and provisions that specifically target female migrant workers, thus empowering them to exercise choices, access resources and claim rights.⁶
- introduce temporary special measures to compensate for past discrimination that may adversely affect women’s current situation.

The Current Legal Framework

A number of international legal instruments have recognized that women are increasingly migrating independently and that they are more vulnerable to all forms of discrimination and exploitation due to stereotyped gender roles. To remedy the situation, attention has focused on the need for special measures to enforce current legislation and develop and adopt “new legislation for women migrant workers in both sending and receiving countries”. Such actions are also considered helpful in the prevention of trafficking in human beings.

To facilitate work on gender-sensitive labour migration policies, the most relevant rights of migrant women enshrined in international human rights instruments are listed below. (For status of ratification by OSCE participating States and Partners for Co-operation, see Annex 1a and Annex 1b.)

- The **ILO Conventions on Migrant Workers (C. 97, C. 143)**, the **ILO Declaration on Fundamental Principles and Rights at Work** and the **ILO non-binding Multilateral Framework on Labour Migration** are important sources of protection for migrant women. These rights relate to, *inter alia*, remuneration, membership of trade unions, collective bargaining, social security, legal proceedings and equal opportunity for and treatment of migrant workers with that of national workers. However, these conventions were adopted when women mostly migrated in the context of family reunification, whereas today women are increasingly migrating independently. The Multilateral Framework on Labour Migration promotes the protection of female migrant workers by calling for gender-sensitive policies, sex-disaggregated data, the provision of opportunities for decent work for all women of working age, bilateral and multilateral agreements addressing gender-specific trends, and measures to address trafficking, and assist and protect victims, among others.
- **CEDAW** and the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** address all forms of discrimination based on race, colour, descent, or national or ethnic origin against all individuals, including women. Provisions of CEDAW that are particularly relevant to female migrants include: the elimination of stereotyped roles for men and women (Art. 5); the suppression of all forms of trafficking in women and the exploitation of the prostitution of women (Art. 6). In November 2008, CEDAW's General Recommendation No. 26 on Women Migrant Workers was adopted.⁷
- The 1995 **Beijing Platform of Action, Report of the Fourth World Conference on Women** acknowledges the vulnerability of migrant women. The report notes that women may not be aware of their rights or have the proper resources to access “information and recourse mechanisms” (Art. 225). The report calls for the implementation of “special measures to eliminate violence against women, particularly those in vulnerable situations” and to enforce current legislation as well as develop and adopt “new legislation for women migrant workers in both sending and receiving countries” (Art. 126d). It also calls for “appropriate measures to address the root factors” of trafficking (Art. 130b) and the allocation of “resources to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking” (Art. 130d).
- The **United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** does not distinguish between sex or marital status (Art. 1). It sets out the human rights of all migrant workers irrespective of their legal status, while Part IV prescribes the rights that are applicable only to those who have regular status. Part VI contains provisions that could be of relevance to migrant women, especially in relation to trafficking. States Parties are requested to regulate recruitment agencies for employment in another State (Art. 66) and provide information to migrant workers in all stages of the migration process (Art. 65).
- The **European Convention on Human Rights** (1950) has been ratified by all member states of the Council of Europe. In the migration context, its articles that are commonly relied on by applicants are: Article 3 (Prohibition of torture, inhuman or degrading treatment or punishment),

Article 4 (Prohibition of slavery and forced or compulsory labour), Article 8 (Right to private and family life), Article 9 (Right to freedom of religion) and Article 14 (Enjoyment of the rights and freedom of the Convention without discrimination). Migrant women do not have a privileged position over any other group.⁸

- The human rights and fundamental freedoms of all persons are set out in the **Universal Declaration of Human Rights**,

the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

These rights include the right not to be held in slavery or servitude; the right to marry and to found a family; and the right to work, to free choice of employment and to just and favourable conditions of work.

Over ten years ago, a report of the **European Committee on Migration (CDMG) of the Council of Europe** announced that migrant women, particularly immigrant women, were about to step on centre stage of the migration agenda. The Final Declaration of the 8th Council of Europe Conference of Ministers Responsible for Migration Affairs (Kyiv, Ukraine, 4–5 September 2008) took the opportunity to highlight some specific issues of relevance to migrant women. In particular, the Ministers identified isolated migrant women as one of the most vulnerable groups of migrants and agreed to implement specific measures to ensure their integration and to reinforce efforts to more effectively combat their exploitation in the workplace. Moreover, the Ministers in their Plan of Action recommended the Committee of Ministers of the Council of Europe to continue to develop preventive measures and support services to avoid them falling into situations of vulnerability and abuse. The Committee of Ministers has subsequently instructed its European Committee on Migration to take this Plan of Action into account in its proposals for future activities, several of which are now underway. Furthermore, the Committee of Ministers has recently invited all its committees and bodies to include a gender perspective in their terms of reference with a view to improving gender mainstreaming in their activities.⁹

Endnotes

- 1 OSCE/IOM/ILO (2006).
- 2 OSCE/IOM/ILO (2007).
- 3 OSCE (2004a).
- 4 OSCE (2004a).
- 5 For more details regarding definition substantive equality please see Naila Kabeer and R. Subrahmanian and Kali for Women (eds.) "Institutions, Relations and Outcomes: A Framework and Case Studies for Gender-aware Planning", New Delhi: Zubaa, 1999.
- 6 See UNIFEM (2008b).
- 7 For a detailed application of CEDAW on migration, see UNIFEM (2008b).
- 8 Tonelli, S. General Directorate for Social Cohesion. "Migrant Women and their Treatment by the Parliamentary Assembly and Standard-setting and Monitoring Bodies of the Council of Europe." Strasbourg: Council of Europe, 2009.
- 9 *ibid.*

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1 Gender and Migration: Background and Tools for Gender-Sensitive Labour Migration Policies

Female migration has gained in importance both quantitatively and qualitatively in recent years. This phenomenon led to coining the term “feminization of migration”, and yet, migration policies have not been adjusted to this development. Labour migration policies often appear gender-neutral in their rules of admission, control and integration. Nevertheless, actual implementation may disad-

vantage or advantage certain groups of migrants; female migrants often belong to the more disadvantaged group. The *Guide* aims to assist in overcoming these disadvantages or gender gaps in policies by providing policymakers with some methodological tools for gender mainstreaming in labour migration policies.



1.1 Gender and Migration

1.1.1 The Feminization of Migration

Today, around half of the world's 200 million migrants are women. The feminization of migration is a global trend, but has different regional speeds and intensities. More women are migrating, and the demand for workers in female-dominated sectors in countries of destination is ever-increasing, such as in domestic work.

Table 1 shows the percentage of migrant women out of the total number of international migrants in selected regions. From 1960 to 2000, a slight increase can be observed of 2.2 percent in the female share of migrants. However, regional data can only give a rough idea; the differences are more significant if particular countries are analysed.

According to Eurostat (2008), the feminization of labour migration is most impressive in **Asia**. However, there is also a trend towards the feminization of migration in the **European Union**

(**EU**). Although a significant overrepresentation of men can be observed in intra-European migration, trends in the gender ratio for non-EU immigrants leans towards women.¹ In southern Europe and some other countries, women immigrants outnumber men, especially in Cyprus, Portugal and Malta, but also in France, Poland, Belgium and Italy, while in eastern Europe, men clearly dominate. The highest male prevalence was observed in Slovenia, at more than 80 per cent of the total number of registered foreigners. Only the Netherlands had equal numbers of men and women in total and among working-age migrants.

Another indicator of feminization is when female migrants of certain nationalities exceed the number of men of the same nationality. The proportion of foreign women of Indian origin, for example, clearly exceeds that of men in the United Kingdom and in Austria.² The same development can be observed concerning women from the Philippines in the United Kingdom, Switzerland, Greece, Italy and Austria. Among migrants of Turkish origin, women predominate in Greece, the United Kingdom and

Table 1

Percentage of Women among the Total Number of International Migrants: Principal Regions, 1960–2000

	1960	1970	1980	1990	2000
Total	46.6	47.2	47.4	47.9	48.8
Most developed regions	47.9	48.2	49.4	50.8	50.9
Less developed regions	45.7	46.3	45.5	44.7	45.7
Europe	48.5	48.0	48.5	51.7	52.4
North America	49.8	51.1	52.6	51.0	51.0
Oceania	44.4	46.5	47.9	49.1	50.5
North Africa	49.5	47.7	45.8	44.9	42.8
Sub-Saharan Africa	40.6	42.1	43.8	46.0	47.2
South Asia	46.3	46.9	45.9	44.4	44.4
East and South-East Asia	46.1	47.6	47.0	48.5	50.1
Western Asia	45.2	46.6	47.2	47.9	48.3
Caribbean	45.3	46.1	46.5	47.7	48.9
Latin America	44.7	46.9	48.4	50.2	50.5

Source: Oso, Casas and Garson (2005: 6).

Table 2**Gender Composition of Labour Migration to the Russian Federation, 2004–2007 (based on total number of work permits issued)**

	2004	2005	2006	2007
Total number of migrant workers	460.4	702.5	1,014.0	1,717.1
Males ('000)	379.2	591.2	858.5	1,450.6
Males (%)	82.4	84.2	84.7	84.5
Females ('000)	81.2	111.3	155.5	266.5
Females (%)	17.6	15.8	15.3	15.5

Source: Ivakhnyuk (2008: 118-127).

Italy. In Spain, in 2003, the share of women originating from several Latin American countries and the European Economic Space outnumbered that of men in the foreign population.³

Surveys also signal a feminization of migration from **Central Asia** to the **Russian Federation**; however, the percentage of women is far lower than elsewhere and the feminization process is slower than in other regions. A 2008 ILO study shows that, in the Kyrgyz Republic, women constitute only 30 per cent of labour migrants.⁴ Recent data also confirm that more women migrate legally to the Russian Federation; thus, while the percentage of female migrants remains stable, the total numbers show a significant increase, from 81,200 issued work permits in 2004 to 266,500 in 2007 (Table 2).

The feminization of labour migration is likely to continue for a number of reasons, including:

- More women are engaging in autonomous migration, not as accompanying family members.
- More women have similar economic and career development motives to men.
- There is an increasing demand for foreign female labour of different skill levels and in a variety of labour market sectors, from domestic and healthcare work to doctors,

lawyers, scientists, etc., due to the ageing population in affluent countries.

1.1.2 Employment of Female Migrant Workers by Sector

Data from the EU is used to illustrate some more general observations regarding the employment of female migrant workers. Female migrant workers tend to be concentrated in certain sectors; the distribution of women and men in sectors differs significantly among countries, even neighbouring ones.

If the distribution of the female migrant labour force by sector is compared to the percentage of female nationals, it is clear that in the EU, domestic services, healthcare and social services, as well as hotel and restaurant work, and to a lesser extent, the education sector, have received a growing percentage of the female foreign labour force. This growth clearly exceeds the trend for national women (Table 3). In Spain, for example, in 1994, 27.1 per cent of non-national women were employed in the **domestic service sector** compared to 6.9 per cent of national women. A decade later, however, 36.0 per cent of migrant women were employed in domestic services compared to 4.6 per cent of national women.⁶ Thus, the gap between non-nationals and nationals increased considerably during this period, a tendency also confirmed in Greece, Italy and France. The increase of immigrant women in the

Categories of migrants and gender-specific characteristics

Female migrants may be classified according to: the purpose of their migration; the type of entry permit they hold; and/or whether they have migrated independently or as a dependent of the principal migrant. Migrant women may move from one category into another, for example, from being a family member to a temporary labour migrant to a permanent immigrant.

- **Permanent immigrants or settlers** are people who move to another country to live there permanently. Immigration regulations may indirectly favour one gender; some individuals' immigration status (often women) may be dependent on another person (often men); and integration and labour market policies show varying degrees of gender-sensitivity.
- **Internal regional migrants** move within a regional bloc, such as the EU, and enjoy freedom of movement and residence. However, in some cases, such as for citizens of some EU new member states, employment remains restricted. Differential opportunities can result if employment is open or restricted in sectors dominated by either men or women.
- **Family members** are non-principal migrants; in most cases, they are allowed to work. They move either with a principal migrant, follow family members, or marry a resident in the country of destination. In many countries, women form the majority of those migrating as family members; this can be detrimental since their immigration status is tied to the principal migrant, a situation that causes dependency and that could be exploited by violent partners/spouses.
- **Contract, temporary and posted workers** are different categories of labour migrants admitted for a limited period of time, often bound to a spe-

cific sector, region or employer (e.g. agriculture, construction, domestic work). If the visa is bound to a specific employer, this can create a situation of vulnerability.

- **Professionals** are highly qualified workers with in-demand skills. Restrictions on this category are usually low. More men than women tend to be employed as professionals. Qualified migrant women generally face larger gaps in employment and occupational attainment with respect to their native-born counterparts ("de-skilling").
- **Self-employed migrants** are individuals who operate a business or a profession as the sole proprietor, as a partner in a joint venture, or as an independent contractor in a country other than his or her own. In many countries, migrants, particularly female migrants, are more likely to be self-employed than natives. Businesses owned by migrants often start by serving the needs of co-ethnics and later branch out to serve broader markets. Self-employed migrants often need to fulfil certain criteria to be eligible for immigration, such as a stipulated amount of investment capital.
- **Irregular status workers** are individuals who have moved across a border using irregular means, have come without valid documents or have overstayed a valid visa. The percentage of women in the group of migrants with irregular status differs significantly from country to country. Due to their status, they are vulnerable, particularly in regard to gender-specific violence and exploitation.
- **Migrants trafficked for labour exploitation** have experienced severe forms of exploitation and deception. Trafficking for labour exploitation can occur in a variety of sectors, for instance, in the feminized sectors of domestic services, berry-picking, the sex industry and the textile industry.⁵

Source: Compilation by Helen Schwenken, with reference to ILO, International Labour Office/ACTRAV (2008: 42); IOM (2004).

Table 3**Employment of Women by Nationality in Some Economic Activities (in %)**

	1994		2004	
	Foreigners	Nationals	Foreigners	Nationals
Household services				
Spain	27.1	6.9	36.0	4.6
France	14.7	3.5	21.1	3.8
Greece	35.0	1.5	42.4	1.3
Italy	10.3	2.3	27.9	1.6
United Kingdom	3.7	1.1	3.1	0.6
Health and social services				
Belgium	14.5	19.3	15.9	22.4
Germany	11.9	11.7	15.7	19.6
Denmark	37.6	28.9	27.4	32.6
France	10.5	16.9	12.1	20.3
United Kingdom	21.0	18.8	25.0	20.6
Hotel and restaurant				
Germany	10.8	3.2	11.5	3.8
Spain	24.4	7.1	19.0	7.5
France	8.5	3.6	6.0	3.4
Greece	12.2	6.4	16.3	7.4
United Kingdom	8.5	5.7	7.6	5.2
Education				
Belgium	6.8	15.3	7.5	14.8
Germany	3.4	7.9	5.7	8.8
Spain	9.5	9.8	3.8	10.2
France	4.8	11.3	6.8	10.5
Italy	16.1	14.8	4.2	14.0
United Kingdom	12.5	11.4	11.4	14.4
Retail Trade				
Belgium	15.8	13.2	12.6	11.8
France	7.7	9.7	6.5	10.0
Italy	12.6	13.8	6.2	12.3
Luxembourg	11.1	15.4	10.1	8.6
United Kingdom	10.1	14.2	10.9	14.4
Information Technology				
United Kingdom	-	-	1.5	0.8

Source: Oso, Casas and Garson (2005: 12).

domestic service sector can be partially explained by four interrelated factors: (a) the growing need for household services (including child and elderly care); (b) the ageing European population; (c) the limited availability of affordable and flexible public child and elderly care services; and (d) the

increased participation of women in the labour market. Young women in countries of origin are aware of the demand for domestic services. A survey carried out between 2006 and 2008 in Georgia among potential female migrants who consulted Migration Resource Centres for infor-

mation showed that the preferred types of jobs given were “care givers” (47 per cent) or “any job” (18 per cent), although more than half of the total number of prospective female migrants interviewed had a university degree (a bachelor’s or master’s degree).⁷

The percentage of female migrants working in **health and social services** compared to all employed migrant women has clearly increased from 1994 to 2004 in various European countries (Table 3), but this increase has also occurred among female nationals. In 2004, in the United Kingdom, a quarter of all foreign women were employed in the healthcare and social services sector compared to one-fifth of all female nationals. Also, close to 30,000 new work permits were granted to female migrants to be employed in the healthcare sector (compared to 900 in 1995), while the figure rose to 12,000 for men.⁸

Migrant women employed in 2004 in the **science and technology sectors** represented only a very small percentage of the total employment of foreign women. However, women nationals are also not well represented in these sectors. In the **hotel and restaurant sector**, in which a significant percentage of women migrants are employed, figures differ according to country. There is a relatively large number of female migrant workers employed in the **retail sector**. For example, in Belgium, 12.6 per cent of all foreign women are employed in this sector and more than 10 per cent in the United Kingdom. Nevertheless, between 1994 and 2004, there was a relative decrease of foreign women employed in this sector, particularly in Italy.

Also, an increasing number of female migrants mainly from the Commonwealth of Independent States (CIS) region are working in the Russian Federation. They often take up low-skilled work as waitresses, shop assistants, cleaning personnel and child and elderly care workers.⁹

In the OSCE area, immigrants generally earn less than the native-born population. The labour market seems to strongly value qualifications and experience acquired in the country of destination, measured by years of residence, as shown by the *OECD International Migration Outlook*, 2008. In addition, migrants from non-OECD countries have significantly lower earnings. By contrast, migrants who have obtained citizenship earn more, even after controlling for duration of residence. The immigrant/native wage gap tends to be smaller than the gender wage gap, but it still exists.

1.1.3 Does Migration Challenge Current Gender Roles?

Do migration practices challenge or stabilize gender orders? Recent reviews and empirical studies of the gender effects of migration report mixed outcomes.¹⁰ A number of studies point to the stabilizing effects of migration practices on traditional gender orders. For instance, most migrants do not question dominant gender relations. In fact, they may explicitly reproduce respective images of femininity and masculinity if these images facilitate their migration. Migrant women working in female niches of the labour market, such as domestic work and care services, are telling examples, because these occupations are built on gendered assumptions of their innate affinities to work in socially oriented services. On the other hand, other empirical studies point to changes in gender roles brought on by migration: women who stay behind may take over the public (community duties, social/political representation) and private (head of household, family business, labour) responsibilities of men. Although this often leads to an increased workload, it can also lead to increased social recognition and the appropriation of public spheres by women. Furthermore, some women use migration as a strategy to escape restrictive gender roles or violent relationships. The heterogeneous empirical evidence shows, therefore, that even if established gender orders and more traditional forms of gender knowledge

are not openly challenged, small changes in gender relations and gender roles and evolving mentalities can be at work, which may result in more equitable gender orders.

1.2 How to “Engender” Migration Policies: Data and Tools for Gender Mainstreaming

Migration policies are not indifferent to gender; rather, they can be gender-biased, gender-blind, gender-neutral or gender-sensitive: ¹¹

- **Gender-biased** policies are those that discriminate, e.g. excluding women from recruitment programmes, wage-discrimination, or policies that allow for the systematic exploitation of women.
- **Gender-blind** policies result when policymakers fail to recognize gender as a key determinant. One example is that the household is often taken as one economic unit in migration studies, when in fact it is made up of men and women with very different tasks and decision-making power.
- **Gender-neutral** policies, de facto, do not have a differential impact on men and women; however, their outcomes may sometimes be detrimental to female migrant workers.
- **Gender-sensitive** policies, in contrast to the above three policy types, consider factors rooted in the gender division of labour and power relations between men and women; they use sex-disaggregated data and take into account who benefits from policies and who does not. They can contain specific measures targeting women

in order to bring about increased equity of opportunity, rights and obligations among men and women.

1.2.1 Gender-Related Data

Biases in the measurement of women’s migration cannot be neglected. In general, measuring migration flows as well as migrant stocks is challenging. For example, due to the nature of migration, it is particularly difficult to estimate irregular, informal and short-term movements. Another difficulty is that mostly only inflows and not outflows are recorded. Furthermore, differences in statistical definitions can also present a challenge when trying to compare data (e.g. “foreign born” or “foreign citizen”). As a result, users need to handle data with care, particularly if numbers of different sources vary significantly. In the follow-up to the Beijing Platform for Action, international agencies agreed on collecting disaggregated data by sex, age and other variables, and on developing gender-sensitive indicators. Some progress has also been made in collecting data on women’s economic migration (Table 4).

1.2.2 Methodological Tools for Gender Mainstreaming in Migration Policies

The term “gender mainstreaming” refers to a set of strategies and processes aimed at addressing gender issues, for example, in legislation, budgeting, state institutions and programmes. Gender mainstreaming is understood by the OSCE as a:

process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political,

Table 4

Sources Containing Gender-Related Statistical Data

Name (and year/s) of data source	What can be found in it?	Website or source to obtain data
United Nations Population Division: Trends in Total Migrant Stock, 2003, 2005	Estimated number of female migrants, 1960–2000, all world regions and countries; database easily accessible online.	http://esa.un.org/migration/
Eurostat: Population And Social Conditions	Gender breakdown of EU immigration and emigration, as well as gender and citizenship by working status and total population (availability of data in ranges of years).	http://epp.eurostat.ec.europa.eu/portal/page
ILO: International Labour Migration Statistics	Numbers of international labour migrants worldwide from 1986 to 2006 disaggregated by sex, country of origin/destination and employment.	http://laborsta.ilo.org/cgi-bin
World Bank: <i>Global Economic Prospects</i> , 2006	Wide range of statistics on labour migration and remittances, yet largely not disaggregated by sex.	http://econ.worldbank.org
OECD: <i>International Migration Outlook</i> , 2008	Statistics on migration to and within OECD countries, with a special focus on labour migration. Few gender specific data.	http://www.oecd.org/document
IOM: Counter Trafficking Module (CTM) database, 2007	Primary data (quantitative and qualitative) on victims of trafficking.	IOM: Not accessible to the general public, contact: CTS-db@iom.int

economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality (OSCE 2004a).

There are three critical entry points that should be addressed when mainstreaming a gender perspective into policies and programmes: top-level support, stakeholders' involvement and enabling mechanisms.

Gender mainstreaming therefore requires strategic planning from the onset. It is important to note that it also takes men into account. A review of counter-trafficking activities in Belarus, for example, resulted in shifting the focus to also include male victims of trafficking for labour exploitation.¹² Since other policies and practices might counteract gender mainstreaming efforts undertaken in one field, developments in all policy fields related to migration need to be considered, such as economic and labour market policies, trade negotiations, border management and security policies, and social policies.

Commitment from the *top level* is crucial. Support can be given by official statements that legitimize initiatives to mainstream gender. References to national and international commitments, such as the 1995 Beijing Platform for Action and CEDAW, would strengthen and support the statement.

The second entry point is *stakeholders* such as: (a) ministries that create an environment for change and have the authority to develop policies; (b) focal points and heads of governmental departments who analyse problems, develop plans and carry out the change; and (c) staff in public authorities, in field missions, in embas-

sies, etc. who apply the policies in their daily work. It is important that all actors are informed and understand the rationale behind the changes of policies.

The third important entry point is *enabling mechanisms*, such as the budget. Staff costs and resources needed to mainstream gender should be estimated in all programme and activity budgets.

Additionally, the constant monitoring and adjustment of policies and procedures, as well as securing the commitment of all stakeholders are crucial in the gender mainstreaming process. Since migration is a process in constant change, sector-specific developments, changing gender composition and other factors should also be taken into consideration when evaluating the progress made (see section 1.2.5).

1.2.3 Gender Impact Assessment

A Gender Impact Assessment (GIA) is the systematic evaluation of the roles, power relations, wealth and choices of men and women, as well as the workload of and divided between them. Applied to labour migration policies, it looks at how labour migration programmes and migration policies in general have different impacts on men and women, and on gender relations. Such an assessment is formalized and institutionalized in policy and administrative routines, and consists of two parts:

1. Pre-assessment: A pre-assessment evaluates whether or not gender is relevant to the planned policy. It is carried out most effectively at an early stage of decision-making in order to allow for changes to policies. Questions to ask are:¹³

- Does the proposal concern one or more target groups? Will it affect the daily life of part(s) of the (migrant) population?
- Are there differences between women and men in this field with regard to rights,

resources, participation, values and norms related to gender, etc?

If the answer to these questions is “no”, no further assessment needs to be made. If the answer is “yes” or “maybe”, it is very likely that gender is relevant to the policy issue and a main assessment should be made.

2. Main assessment: Sex-disaggregated data and expertise on the dynamics of gender relations are usually needed for the main assessment. The criteria for the main assessment are the same as for the pre-assessment, but in the main assessment they will be more thorough and supported by sound empirical evidence. The main assessment entails three steps:

STEP 1: Assessment of the differences between male and female migrant workers (including demographic characteristics of groups of women under- or over-represented) in labour migration policies and their short- and long-term implications, such as:

- *participation:* e.g. sex composition of the target/population group(s), representation of male and female migrants in labour market sectors, number and percentage of recruited female migrant workers;
- *distribution of resources:* e.g. time, space, information, finances, political and economic power, education and training, job and professional career, new technologies, healthcare services, housing, means of transport, leisure time;
- *rights:* direct/indirect sex discrimination (e.g. on the labour market or through temporary labour migration agreements), human rights violations (including freedom from sexual violence and degradation) and access to justice and legal procedures;

- *norms and values*: those that influence the division of labour by gender, the inequalities attached to gender characteristics.

STEP 2: Assessment of the reasons underlying the findings of the above differences.

STEP 3: Assessment of solutions: How can policies contribute to the elimination of inequalities, prevent further inequalities, and promote and sustain equality between men and women? Although measures may not be apt to fully address the gender inequalities, compensatory instruments may be able to soften the negative effects on female migrant workers. The proposed solutions should also take into consideration the different sectoral specifics and conditions in which female migrants work.

1.2.4 Labour Migration: Gender-Sensitive Indicators

In setting goals for labour migration programmes and the goal for establishing more gender-inclusive regimes, indicators need to be developed. They are the criteria or measures against which changes can be addressed in improving policies. In migration processes, both quantitative and qualitative indicators need to be taken into consideration since gender relations can only be partially measured by quantitative indicators. Such indicators include, among others: income distribution, sector-specific labour-market participation of female migrants, and incidents of violence against migrant women. Examples of helpful indicators and questions to ask with regard to female labour migration are outlined below.¹⁴

Questions to ask:

At the level of countries of origin:

- Are mechanisms in place to help potential female migrant workers **make informed decisions** about migrating (working conditions, remuneration, etc.)?
- Are **bi- or multilateral agreements** in place? Do these agreements address minimum wage requirements, medical benefits, leave requirements and mandated hours of work? Are potential female migrant workers aware of such agreements?
- Do **training/orientation programmes** include active participation of female migrant workers who have since returned?
- What types of regulations are in place to oversee the operations of **recruitment agencies** and their representatives? Is there evidence of prospective female migrants being asked to provide exorbitant fees for travel and other arrangements in preparation for work abroad?
- How are the state agents involved in **processing papers** for female migrant workers monitored? Are there **channels for complaints** in the event of rights violations by both state and non-state actors?
- To what extent are **embassies** and **consulates** able and trained to help female migrant workers confronted with exploitation, abuse or violence (information, legal support, shelter, crisis hot-line)? Do embassies and consulates provide legal counselling?

- Are there any **age limitations** for female migrant workers, in general or for certain sectors, such as domestic work or entertaining? Are mothers of small children allowed to migrate?
- What facilities are available to female migrant workers to **remit salaries**? Are there available incentives, for example, making loans available for promoting entrepreneurship and other income-generating activities of non-migrating relatives?
- **Large-scale out-migration:** Are there programmes that support female-headed households resulting from the emigration of male members or their desertion abroad? Are there programmes for children of migrating parents?
- Are there programmes for the **economic reintegration of female migrant workers** (which sectors, conditions, number of participating women)?
- Is there a need to address **social issues related to return migration** of female migrant workers (gender relations, marital crises, etc.)?

At the level of countries of destination:

- Is there a policy in place to provide for the identification of and protection of women in **employment markets that increase their vulnerability**?
- What types of programmes are in place to **facilitate arrival and orientation**? How are the departments of immigration, health and labour involved in these procedures?
- Are there current **bi- or multilateral agreements** with regard to the terms of work? Do they address minimum wage requirements, medical benefits, leave requirements and mandated hours of work?
- How do temporary labour visas work? Are **they tied to a specific employer**? What happens if an employee leaves his/her employer?
- How are **employers assessed** in terms of legal compliance and providing decent working conditions and who conducts the assessments? What are the sanctions for non-compliance and violations of workers' rights? How do legal procedures work in case a migrant worker is abused or not paid? Are migrant female workers allowed to continue to work while waiting to give evidence in cases where investigations are underway?
- Is there a graded **salary scale** for workers from different countries? If so, what is the basis of the calculation? Is there a similar salary gradation for male migrant workers?
- Does **domestic work** fall under national labour law or is it excluded?
- How does the regulation of **access to trades and professions** work (recognition of diplomas, etc.)?

- Does the Department of Labour provide **information** to workers of their labour rights?
- Are there adequate **counselling services** available for female migrant workers?
- What types of facilities/services are available to assist in sending **remittances**?
- Are **spouses** allowed to work after a certain amount of time in the country? Are there any work hour limits?
- Are **visas for family reunification tied to a spouse**? What happens in case of a divorce or domestic violence?
- In case of **regularization**, it has been found that female migrant workers, particularly those working in private households, often face more difficulty in providing the necessary documents. What policies/laws govern regularization and who qualifies for the regularization programmes?
- Does the country include the situation of female migrant workers in its **CEDAW** reporting?

1.2.5 Evaluating Gender Mainstreaming in Labour Migration Policies

Both self- and external evaluations can be used to assess the extent and quality of gender-sensitivity in labour migration policies. **Self-evaluations** build on the capacity of administrations, thereby promoting organizational learning and the identification of good practices from within. **External evaluations** provide an outside view and can produce a more independent assessment of the implementation and impact of measures and policies. Evaluation methods can be quantitative and qualitative depending on appropriateness and timing.

Four general indicators for the evaluation of gender mainstreaming in labour migration policies are:

- the use of sex-disaggregated statistics and gender analysis;
- the extent to which women and men contribute to policy-making;
- the extent to which gender issues are reflected in labour migration programmes/

policies, including appropriate indicators of achievement in the field of gender equality;

- evidence of organizational capacity for development and change.

The indicators developed above (Chapter 1.2.4) for gender-sensitive labour migration policies in countries of origin and destination may provide inspiration for more detailed evaluation criteria.

Due to the specificities of labour migration, evaluators and those being evaluated may face challenges. Some examples of challenges and how to meet them are:

- The target population tends to fluctuate in temporary and seasonal labour migration programmes. Evaluators should, if appropriate, opt for continuous monitoring instead of “before and after” tests.
- The evaluation needs to take the complexities of the migration process into account. If a comprehensive programme or several programmes are evaluated, the following needs to be assessed: Which step or steps of the migration process are the

focus of the policy: pre-departure, journey, arrival, stay, integration, return, resource flows? An assessment may be achieved by grouping the activities according to the type of intervention. If the outcome shows a concentration in one step of the migration process and gaps in the others, the evaluator should ask if this is intended and what the effects are on other steps?

- Policy recommendations provided by evaluators may be highly political given the public debate on immigration and gender

issues. Recommendations should therefore be carefully justified and substantiated by statistics or qualitative data.

- Measures against gender-specific violence, exploitation and programmes to improve conditions of or regulate informal labour market sectors are difficult to evaluate due to problems in obtaining data and correct information. Evaluators should be cautious in asking for or processing exact numbers, but rather, rely more on qualitative information by knowledgeable informants.

1.3 Conclusions

Labour migration is not gender-neutral. As this chapter has noted, gender issues impact on the reasons for migration, how one migrates, where one migrates to, the type of job one is expected or able to obtain, and the vulnerabilities to which one is exposed throughout the whole process. In highlighting the gendered nature of labour migration, this chapter has made it clear that due to the feminization of labour migration, increasing demand for female migrant workers and the often experienced discrimination and unequal treatment of female migrants, there is a need for more gender-sensitive labour migration policies.

In order to facilitate the challenging task of gender mainstreaming migration policies, this chapter has suggested some practical tools that can be used in the process, such as Gender Impact Assessments (GIAs), indicators and self- and external evaluations. Moreover, this chapter calls for the establishment of sex-disaggregated statistics and databases that provide important inputs to determining and evaluating whether specific labour migration programmes and migration policies have different impacts on male and female labour migrants. As labour migration and gender roles are both dynamic, changing over time and varying depending on contexts, this should be taken into account when developing gender-sensitive labour migration policies.

Endnotes

- 1 The figures for the EU are based on Eurostat (2008).
- 2 Moreno-Fontes Chammartin (2008: 4).
- 3 Data from the Permanent Observatory of Immigration, Directorate General of Immigration, Ministry of Labour and Immigration, Spain (April 2009).
- 4 ILO (in print).
- 5 Within the OSCE, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings raises awareness of all forms of human trafficking and helps build the political will to combat the problem. It assists participating States in fulfilling OSCE commitments and recommendations (see OSCE, 2007b). Furthermore, the Office co-ordinates anti-trafficking efforts within the OSCE and co-operates with international organizations as well as with relevant actors from civil society. For specifically targeted measures for providing protection and rights to trafficked persons, see OSCE/ODIHR (2004); OSCE (2006b); OSCE (2007a); OSCE (2008).
- 6 The source for the following sections is Oso Casas and Garson (2005).
- 7 IOM (2008e 3, 5, 10).
- 8 Kofman, Raghuram and Merefield (2005).
- 9 Laruelle (2007).
- 10 Morokvasic (2007); Donato et al. (2006); Mahler and Pessar (2006); Schwenken (2008); Keough (2006); Chang and Ling (2000); Wang (2007).
- 11 ILO (2003).
- 12 IOM Minsk (2008).
- 13 EC (n.a.).
- 14 Compilation and modifications by Helen Schwenken, based upon UNESCAP (2004).



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2 Policies and Practices in Countries of Destination

The migration destinations are broadening: while countries such as Canada and the United States of America have traditionally been countries of destination, the Russian Federation, Kazakhstan and many EU countries are increasingly becoming new migration hubs. As a result, an increasing number of destination countries in the OSCE area have had to create new immigration systems and policies. Countries of destination need to decide on the extent to which they will open their labour markets and on whether or not to opt for temporary and/or permanent labour migration.

When looking at admission and post-admission policies in the countries of destination from a gender perspective, many questions arise: How do permanent labour admission policies take the gender dimension into account? Are there gaps in current policies, and if so, how can they be addressed? Do quota systems and other admission instruments give women equal access? What are the challenges or barriers to attract more women into highly skilled sectors? What actions need to be taken in countries of destination to more effectively use the pool of highly skilled migrant workers?

Most female migrants are involved in temporary labour migration, either through managed schemes or informal channels. They often work in female-dominated occupations such as domestic work, hospitality and care-related services. These jobs may not necessarily be exploitative, but either due

to their informal nature or weak coverage under current labour legislations, they may lead to a high degree of vulnerability to abuse and exploitation.¹ How, then, can this vulnerability be reduced? How can policies be developed to allow for a greater number of legal temporary work opportunities in female-dominated (lower-skilled) occupations? How can workplace-related violence against female migrants be countered?

Benchmarks for gender-sensitive admission and post-admission policies in countries of destination are given in accordance with a three-dimensional rights-based approach outlined in the Introduction to this *Guide*: ensuring women's rights to migration opportunities through equal access to immigration schemes and the labour market, which reflect their original qualifications; granting rights within migration by ensuring decent and non-discriminatory working conditions, the right to family life and skills development; and promoting rights obtained through migration, such as fair remuneration and other benefits from the employment.

The labour migration policies of countries of destination may appear gender-neutral at first, but are often highly gendered. In this light, the chapter is divided into two different themes. First, it reviews current policies found in destination countries in terms of their gender impacts. Good practices are highlighted and recommendations given and sorted according to the permanency of migra-

tion regulations. Secondly, it looks at the role that other stakeholders – trade unions, non-governmental and diaspora organizations, as well as corporations – play in building better support for and protection of female migrant workers. Closer co-operation between governments and the other actors could, for instance, give increased access to resources and networks, which may help make migration policies become more inclusive.

2.1 Assessing the Demand for Labour Migration

Different means are available for governments and policy-makers – often in consultation with interested stakeholders such as employers' associations, trade unions and regional authorities – to assess the need for foreign labour in a particular country, employment sector or region. Once the demand has been determined, the means for managing labour migration include setting quotas or ceilings, which set fixed numerical admission limits for either permanent or temporary migration. In setting quotas and ceilings from a gender perspective, the following aspects need to be taken into account:

1. That decisions are **evidence-based** and include sources such as economic forecasts, employer reports, labour market statistics and regional unemployment rates. However, to adequately consider gender issues all sources should include sex-disaggregated data in order to allow for assessments in gender-segmented labour markets.
2. That all relevant **stakeholders** are consulted regarding quotas and ceilings since they can contribute to the assessment of gender equalities and inequalities and their expected impacts.

3. That **choice of sectors and professions** for which quotas and ceilings are negotiated reflect real market demand. Some jobs performed predominantly by women are often not considered for quotas and ceilings, such as caregivers, private nurses, nannies and domestic workers. When assessing needs for migrant workers, these employment categories should also be taken into account since a demand exists. It is crucial to acknowledge these employment categories of the labour market to prevent them from being filled by undocumented workers.

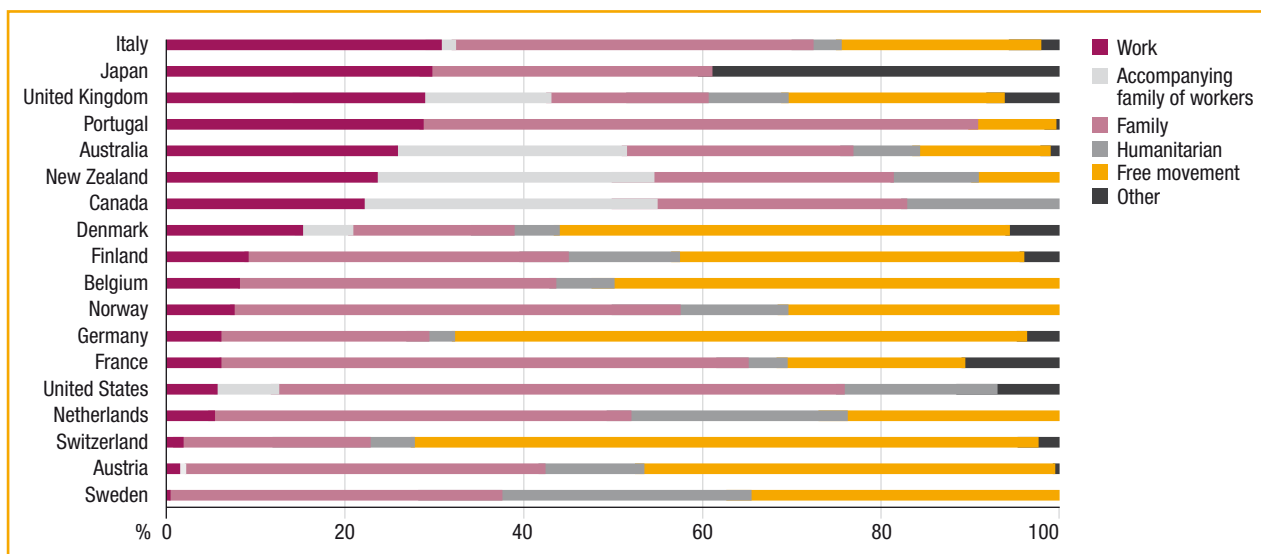
4. That the **notification of official quotas** are given in a timely manner to allow for fair and equitable recruitment practices. Furthermore, **that the regulations and minimum recruitment standards** are in place to avoid malpractices by unregulated recruitment agencies.

2.2 Employment-Based Regulations for Permanent Immigration

Permanent immigration regulations refer to immigration schemes that allow the migrant to stay indefinitely in the country of destination. In most cases, permanent immigration regulations are connected to or allow for labour migration. Permanent immigration is attractive for female migrants due to its comparative security, the allowance granted to bring spouses and dependent family members, and the subsequent eligibility given for integration measures and social security provisions. This section analyses whether female migrants have the same access to permanent immigration as their male counterparts by looking at some selected countries.

Figure 1

**Permanent-Type Immigration by Category of Inflow in Selected Countries, 2006
(in percent of total inflows)**



Source: OECD (2008)

2.2.1 The Gendered Composition of Permanent Immigration

Within the OSCE area, there are significant differences among countries regarding employment-based immigration. In Italy, Japan, the United Kingdom and Portugal, for instance, the proportion of those entering under a work scheme is significantly higher than in Sweden, Austria, Switzerland, the Netherlands, the United States, France or Germany. The portion of immigrants joining family members is significant in almost all countries, and the proportion of women among those entering as spouses and dependents is higher than that of men.(Figure 1).

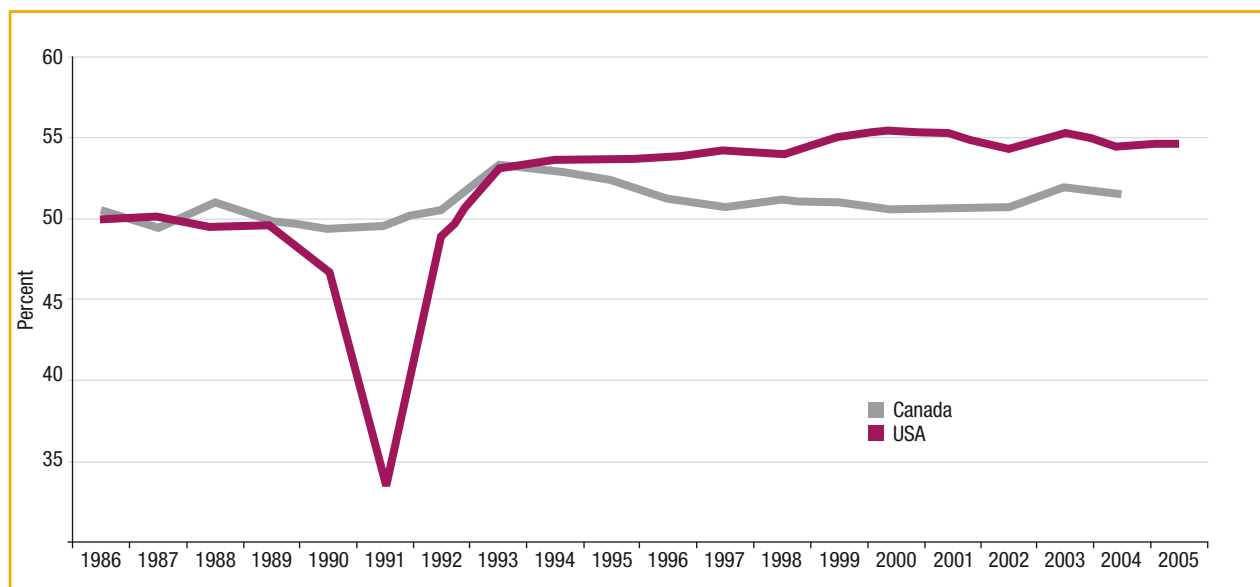
The path to permanent residency and citizenship also differs from country to country. In some countries, certain visa and residence categories do not allow for extensions over a certain period of time. In other countries, such as Sweden, almost every type of residence permit may lead to permanent residence status.²

Figure 2 shows that the overall gender composition of all permanent immigrants in two major immigration countries, the United States and Canada, is relatively balanced. Since the late 1980s, women have made up about 50–55 per cent of all immigrants, with the exception of a sharp downturn in the United States between 1989 and 1992.³ Both countries consider themselves settler societies and admit significant numbers of migrants on a permanent basis. In principle, women and men can enter in the same way, as economic migrants valued for their skills or assets, as family members joining previously settled relatives, or as refugees granted legal entry out of humanitarian concern.

The moderately stable influx of women as permanent immigrants appears to require no further action. Due to social and cultural norms and practices, however, female migrants are more likely than male migrants to be admitted in administrative and visa categories as dependent spouses and family members, rather than as principal applicants (e.g. immigrant employees

Figure 2

Canada and the United States: Percentage of Women of All Ages in Annual Admissions of Permanent Residents, 1986–2005



Sources: Citizenship and Immigration Canada, Canada (2006): *Facts and Figures 2006: Immigration Overview – Permanent and Temporary Residents*. <http://www.cic.gc.ca/english/resources/statistics/facts2006>; United States Office of Immigration Statistics (INA and Department Of Homeland Security) *Yearbook of Immigration Statistics, Annual Reports, 1986-2005*; replicated from Boyd (2006: 14).

and workers). Accordingly, they may not be given the right to work or be eligible for all integration services. In the United States, from 2001 to 2004, women made up 60 percent of permanent immigrants entering under the family class category as spouses or family members, two-thirds of those entered as parents of American citizens, and 61 percent of those admitted were spouses of American citizens.²⁹ In Canada, almost the same ratios can be observed: 61 percent of family class immigrants were women. If only the principal applicants are taken into account, women would represent only 29 percent of all principal applicants in the economic class and 37 percent in the humanitarian class (admitted as United Nations Convention refugees).⁵

From these figures, it can clearly be seen that the mode of legal entry is closely associated with gender, and that there is a gender gap both between family and economic migration, and

within economic migration (as seen by the principal/dependent differentiation). This finding shows that, although policies are formulated in a gender-neutral way, when combined with larger societal factors, they can lead to gender-selective outcomes.

Thus, in terms of employment-based permanent immigration in particular of highly-skilled women, permanent admission policies need some further reflection.

2.2.2 Gender Issues in Point Systems

One way of acquiring permanent status in some countries of destination is through the *points-based system*, which is in place in Canada, the United Kingdom, Australia, New Zealand, among others; the Czech Republic has a points-like system (Textbox 2.1).⁶ Point systems are often considered the fairest and most gender-neutral

instruments for governing permanent immigration. Nevertheless, based on the above findings, that most of the principle applicants are men, this section will examine if the points systems affect women and men differently, and if they provide them with similar chances for immigration and employment.

Some of the gendered areas of concern related to points systems are:

- a) In most point systems, **extra points are awarded if the applicant is within a certain age range**. In the United Kingdom, for example, extra points are granted for applicants under the age of 28 for initial applications. This age limit can be discriminatory against women with young children who are not able to take up full-time employment abroad at this stage in their lives, and are yet not given extra points when they are able to take up full employment abroad.
- b) **Women are usually less likely to enter as principal migrants and more likely as dependents**. In most point systems, immediate family

members (spouses and children) will be granted dependent status – i.e. they also move as “economic migrants”, but under the umbrella of the principal applicant. Given that men are more likely to acquire the skills that gain human capital points, more men than women are processed as the primary migrant. For instance, in 2003 in Canada, only 28.5 per cent of primary applicants were women (15 per cent of whom entered as live-in caregivers)⁷. In 2006, 58 per cent of those who moved to Canada as dependents/spouses under the economic migrant category were female, and women made up 60 per cent of all those coming to Canada under the family class (Table 5). In Australia and New Zealand, similar patterns can be observed.

- c) **Adjustments of admission regulations may hit women more severely in times of economic downturn**. Flexible admission systems, such as the point-based system in the United Kingdom, allow for short-term adjustments to admission regulations. Due to the global economic downturn in 2008/09, the United Kingdom has tightened

TEXTBOX 2.1

What are Immigration Points Systems?

Points systems are often considered an objective form of migration policy that does not allow for discrimination based on ethnicity, race and/or country of origin.

Points systems use human capital criteria such as education level, occupation, language abilities, age and work experience. Points are therefore awarded based on an individual’s skills (greater education equals more points) and personal characteristics (working age applicants are often awarded more points). The applicant must obtain the minimum stated threshold of points in order to be considered a potential economic migrant. Those who cannot acquire enough points to enter as an economic migrant under the points system are subsequently relegated to migrate under categories such as temporary work permits and/or under the Family Class.

Source: McLaren and Black (2005).

its admission regulations. The Government suspended Tier 3 of the Points-Based System (PBS) to ensure that, for now, no foreign nationals from outside the European Economic Area (EEA) can come to the United Kingdom to work in a low-skilled job. Since 1 April 2009, the labour market test for Tier 2 skilled jobs has been made stricter and highly skilled migrants for Tier 1 (General) of the PBS are required to have a Master's degree and a minimum annual salary of £20,000.⁸ These changes may not only reduce the number of immigrants in total (as intended), but specifically affect women, since some typically female

professions only require a bachelor's degree, and salaries tend to be lower in female-dominated sectors. Furthermore, there tends to be more male migrants holding a Master's degree than female migrants.

d) **Point systems for the self-employed are often not beneficial to female migrants**, since many of them cannot meet requirements regarding available capital and/or formal educational qualifications and skills.

Table 5

Canada: Family Class and Economic Class by Sex, 2006

Census Year: 2006	Male	Female	All	Female per cent (%)
Family Class	Total number: 28,516	Total number: 41,988	Total number: 70,506	of total = 60
				Per category:
Spouses and partners	17,088	28,189	45,278	62
Fiancé(e)s	9	6	15	40
Sons and daughters	1,733	1,458	3,191	46
Parents and grandparents	8,931	11,075	20,006	55
Other	755	1,260	2,016	63
Economic Immigrants	Total number: 71,896	Total number: 66,361	Total number: 138,257	of total = 48
				Per category:
Skilled workers – principal applicants	31,053	13,110	44,163	30
Skilled workers – spouses and dependants	25,198	36,588	61,786	43
Entrepreneurs – principal applicants	709	112	821	14
Entrepreneurs – spouses and dependants	947	1,330	2,277	58
Self-employed – principal applicants	228	92	320	29
Self-employed – spouses and dependants	271	361	632	57
Investors – principal applicants	1,866	335	2,201	15
Investors – spouses and dependants	2,252	3,574	5,826	61
Provincial/territories nominees – principal applicants	3,568	1,104	4,672	24
Provincial/territories nominees – spouses and dependants	3,427	5,237	8,664	60
Live-in caregivers – principal applicants	164	3,383	3,547	95
Live-in caregivers – spouses and dependants	2,213	1,135	3,348	34

Source: Table based on figures from Citizenship and Immigration Canada (2006).

Can Point Systems Take Gender into Account?

Point systems are formulated in a gender-neutral way, but for a variety of reasons, have gender-selective outcomes. For example, the education systems of countries of origin are beyond the responsibility and competence of governments of countries of destination. Nevertheless, immigration countries can take action to make the point systems more gender-sensitive. For example, careful consideration should be given to age preferences or limitations taking into consideration child-bearing time in order not to unnecessarily discriminate between female and male migrant applicants when comparing age to career achievements (see the United Kingdom example in Textbox 2.2).

Gender needs should be factored in the annual planning procedure, monitoring and ad hoc adjustments of point-based immigration systems by responsible bodies, such as Migration Advisory Committees. The reason for this is to minimize gender disparities in terms of number of applications and of admissions due to differences in employment sectors, educational requirements and salary payments.

2.2.3 De-Skilling and Downgrading of Skilled and Highly-Skilled Migrant Women

While significantly less migrant women enter a labour market in the upper levels under permanent (as well as temporary) migration schemes, this is not necessarily linked to their lower qualifications. Female migrants are disproportionately affected by the phenomena of de-skilling and downgrading. The *European Labour Force Survey 2005* provides evidence for the EU. Highly educated migrant women are twice as likely as highly educated native-born women to be employed in low-skilled jobs, with highly educated third-country migrant women having the highest incidence of de-skilling (Table 6 and Figure 3).⁹

There are two possible reasons for the tendency to de-skill (e.g. professional women working in sectors other than their original training) and downgrade (e.g. nurses work as nursing aids) female migrants, both of which point to barriers that female migrants face that are independent of their individual education, the number of children

TEXTBOX 2.2

United Kingdom: Maternity Leave Taken into Account in the Point-Based System

[...] Tier 1 (General): earnings: Women who have taken time out of the labour market to have children will not have been able to progress their earning potential to the same extent as a male who has not taken time out to raise children. This means that women are indirectly discriminated against by Tier 1's general points table, which awards more points for higher earnings.

Special arrangements have been put in place to calculate the points granted for the earnings of women who have taken maternity leave from employment during their initial grant of Tier 1 leave. In general, points for previous earnings can only be claimed in respect of any single, consecutive 12-month period from the 15 months immediately prior to the date of application. An applicant may claim points for a 12-month period of earnings from outside this period in cases where the applicant can establish that they have been absent from the workplace at some point during the last 12 months due to a period of maternity or adoption related leave [...].

Source: United Kingdom (2008:10).

they have, or their willingness to work. The first explanation is that immigration policies of industrialized destination countries tend to favour medical, upper-level management, engineering, information technology and research skills. Men tend to dominate in these fields as a matter of choice, while women choose other career areas, and thus men are the largest proportion of highly-skilled migrants in these fields. The second explanation is that female migrants of equal education and skills are more likely than native-born women to work in jobs incommensurate to their education. The main reasons are that: their applications are rejected; they do not apply for adequate positions; their professional degrees are not recognized; and their professional experience acquired in the origin country is not considered equal to that acquired

in the country of destination. Another main reason is that highly-skilled women are working in part-time jobs of lower status and responsibility.¹⁰ The lack of adequate employment for skilled and highly-skilled female migrant workers is not only problematic for the affected individuals, but also results in a significant societal “brain waste”.

While the first factor of individual professional choices is difficult to change in the short term, governments can mitigate the problem of de-skilling, “brain waste” and downgrading by introducing measures such as:

- facilitating the recognition of diplomas and degrees awarded abroad;

Table 6

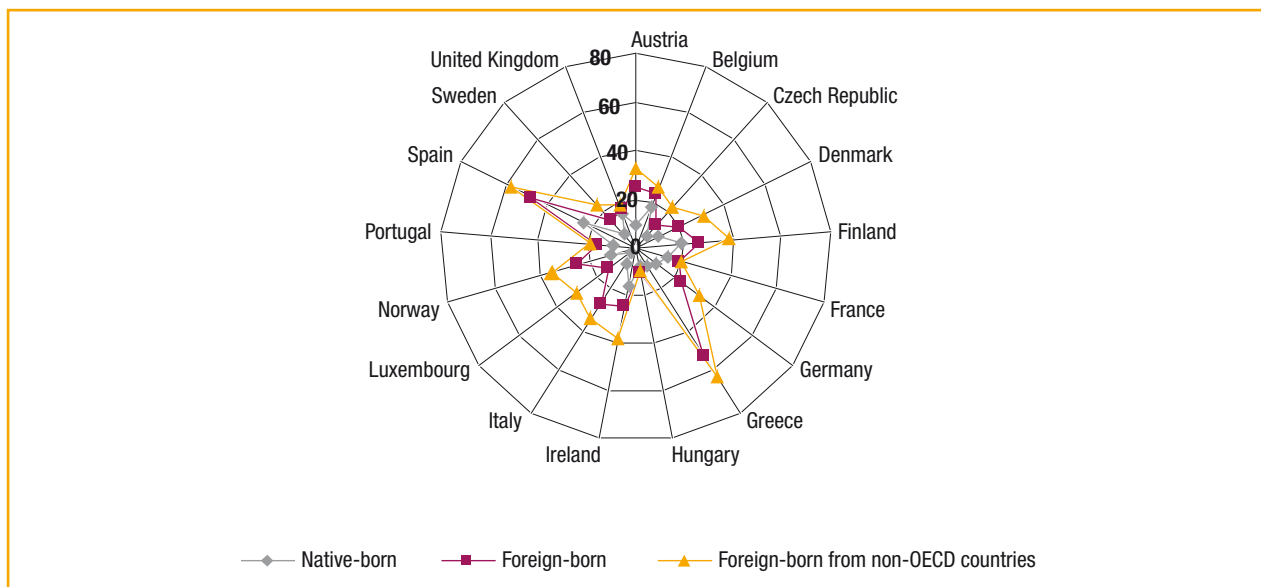
Percentage of Women (aged 15–64) in Jobs for which they are Overqualified, by Region of Birth, for selected European Countries, 2003–2004

Country	Native-born	Foreign-born	Foreign-born from non-OECD countries
Austria	9.3	24.8	32.8
Belgium	17.7	24.6	27.2
Czech Republic	6.6	12.8	22
Denmark	10.5	19.7	31
Finland	18.8	26.2	38
France	14.2	18.8	19.8
Germany	9.9	23.6	32.3
Greece	9	53.4	62
Hungary	7.3	10.5	8.9
Ireland	15.6	23.9	38.2
Italy	7.1	27.4	34
Luxembourg	3.2	14.1	31
Norway	10.6	25.1	35.9
Portugal	8.9	16.2	18.7
Spain	24.4	47.6	56.7
Sweden	7.2	15.3	23.2
United Kingdom	14.9	17	18.7

Source: Rubin et al. (2008a: 83).

Figure 3

Women (aged 15–64) in Jobs for which they are Overqualified, by Region of Birth, for selected European Countries, 2003–2004



Source: Rubin et al. (2008a: 83); Figure: Helen Schwenken.

- providing opportunities that complement education obtained abroad and do not require re-entering the education system from the beginning (as is often the case with university degrees);
- establishing certified refresher courses for female migrants who have been away from their trained profession for a certain period of time;
- offering on-site and distance/on-line courses that introduce female migrant professionals to the technical language and national specificities of a profession;
- increasing access to the public sector for the employment of non-nationals, because skilled female migrants are more likely to work in professions covered by the public sector;

- raising awareness among employers to consider highly-skilled female migrants for job openings.

2.3 Employment-Based Temporary Migration

Countries differ in their admission policies for temporary labour migrants. The most common approaches are:

1. The “human capital” model: This model assesses prospective immigrants based on criteria that governments consider as good predictors of long-term economic success, seeking applicants who are graduates and entrepreneurs; hence, this principle is mostly used for permanent immigration (Chapter 2.2), but also for temporary admission with the prospect of continuation.

2. The “employer-led” model: This looks at actual, rather than prospective, employment and matches employers’ needs with specific immigrant candidates.

3. The “sector-driven” or “shortage model”:
This identifies certain areas or occupations with shortages that employers are allowed to fill through recruitment from the global labour pool; accordingly, lists of labour shortage occupations are usually established.

4. The “employment-based” model: Here work permits are offered and migrants already present in a country have the chance to regularize or upgrade their status.¹¹

However, many countries’ immigration systems do not fit exactly into one of these models. For instance, Spain’s immigration regulations are a mixture of 2, 3 and 4, in which shortages are identified in consultation with trade unions, employers’ associations and regional authorities. The list of vacancies is then sent to countries with which Spain has signed bilateral labour migration agreements. Spain has also offered a regularization option to migrants in their country. Canada is another example of a hybrid migrant selection system, as only one-quarter of the annual number of new immigrants is selected according to the point system and the rest through other schemes. Canadian employers are also able to bring foreign workers whom they would like to employ although the latter may not meet all the criteria stipulated by the point system. Such hybrid systems are likely to dominate immigrant selection in the future since they facilitate selecting immigrants consistent with a country’s traditions and with the way in which its economy and labour market operate.

Temporary labour migration is common in a broad range of occupations, including agriculture, construction, tourism, entertainment, domestic and care services, among others. It is often managed through bilateral labour migration agreements where countries co-operate to fulfil their own

objectives (see also Chapter 3.1 on bi- and multi-lateral agreements). However, there are still many sectors that are not covered by bilateral agreements. Consideration should therefore be given to the available legal migration options for:

- migrants from countries with no bilateral agreements, or no agreement for the potential country of destination;
- migrants with professions, or labour market sectors that do not fall under bi- and multilateral agreements.

Furthermore, the issue of the possibility of conversion of temporary to permanent permits may be particularly relevant for female migrant workers, because they tend to be over-represented in jobs that fall under temporary or circular migration schemes.

In this section, some gender aspects of temporary labour migration will be discussed. In particular, it will review issues such as the scheme and skills level under which female migrants enter and whether they come as principal migrants or dependents. The domestic and care services sectors, as well as compliance with international and national labour regulations are examined more thoroughly, since a significant number of female temporary labour migrants work in these sectors.

2.3.1 Reforming Temporary Labour Migration Regimes and Mainstreaming Gender

A range of countries in the OSCE area have reformed or are about to reform their temporary labour admission regulations. Setting up a new system is a good opportunity to make the regulations more gender-sensitive. For example, the more flexible system for temporary labour immigration in Sweden, which was introduced in December 2008, took gender concerns into account when designing the new policy (Textbox 2.3).

TEXTBOX 2.3

Sweden: New Rules for Labour Immigration

On 15 December, 2008, Sweden introduced its new temporary labour immigration rules in order to more effectively respond to current and expected future labour market needs. Their main features are:

- The new system is demand-driven and employer-led with no ceilings or quotas. Labour market testing by government agencies is no longer done (but the principle of Community preference is respected), because employers' assessments of the need to recruit foreign workers is considered central.
- Work permits are granted to third country nationals who have job offers that could not be filled through recruitment within Sweden or the European Union. The terms of employment and salary conditions have to be in accordance with Swedish standards and collective agreements.
- No occupation or skill level is excluded. The jobs range from engineering and communication technology to seasonal berry-picking.
- The first time that a work permit is granted, it is tied to a certain employer and a certain type of work. After two years, the work permit will only be tied to a certain type of work.
- All migrant workers are given full access to the welfare system and are allowed to bring their families with them from the beginning.
- The temporary work permit can be granted for the duration of the employment or for the maximum of two years. If the person is still working, the permit can be extended once or several times up to a total of four years. After four years, the permit may be converted into a permanent residence permit.
- Migrant workers who have lost their job have a three-month period to find a new one; otherwise, the residence permit is revoked and the principal migrant worker and accompanied family members have to leave Sweden.

Sources: Ministry of Justice, Sweden (2008, 2009); The Swedish Migration Board: www.migrationsverket.se.

According to Swedish law, all new policies undergo a gender analysis, and gender mainstreaming must be practised. Reviews of past labour migration regimes in the country showed that they tended to exclude occupations where women are traditionally employed and consequently more men than women were granted admission. This experience was considered when designing the

new temporary labour immigration system with the aim of making it more gender-inclusive. However, the legacies of the past system are still apparent; 7 out of 10 applications were from male migrants, since it takes time for a new system to change old patterns. The Swedish labour market, as most labour markets, is gender-segregated: basically all occupations (except for doctors and upper and

secondary teachers) have a strong tendency to be dominated by either men or women. Given this context, the Swedish Government took the following measures to make the new system as gender-responsive as possible.¹²

a) **Reducing dependency on the employer prior and after employment:** Strong dependency on a specific employer is one source of vulnerability for migrants, specifically for female migrants, as their dependent status can be used by the employer or by co-workers, not only for general mistreatment, but also for sexual harassment. The new Swedish rules reduce the likelihood of the employer passing false information about the job and the working conditions to a prospective employee, since they allow the applicant to come for a job interview through a job applicant visa. However, employers are likely to only bear personal interview costs for upper-end professions, leaving persons working in the lower tiers of the labour market more susceptible to possible misunderstandings about the nature of the job. Despite the limited scope, the provision reduces the information monopoly of the employer and enables job applicants to get a more realistic image of the job. Another provision has been introduced to reduce the dependency on the employer when the employment relationship ends – regardless of the reason. Experiences from employer-tied labour migration regimes have shown that migrants hesitate leaving a workplace where they are not satisfied with the conditions. In this case, the Swedish rules grant a three-month transition period in which the migrant can look for a new job. The Swedish regulations are therefore either in line with or go beyond ILO Convention No. 143, Article 8, stating that a migrant worker lawfully residing in the country shall enjoy equality of treatment with nationals

in case of involuntarily loss of job due to illness, or because the employer terminates the contract or has to due to bankruptcy.¹³

b) **Family-inclusive regulations:** Family members can join the principal migrant without a waiting period, and spouses have the same access to the Swedish labour market. As explained by the Swedish Ministry of Justice, Department for Migration and Asylum, this has been considered an “important competitive factor in the competition for the skills and workforce in demand”.¹⁴ Having access to the labour market is likely to be an empowering factor, particularly for women who make up the majority of accompanying spouses. Giving admission to the entire nuclear family at the same time helps to counteract some of the possible negative effects that can arise from splitting up families. The migrant and the family members are included in the welfare system and have full access to social rights and childcare if the work and residence permit is granted for longer than one year. The temporary labour migrants also have the right to part-time work as long as children in the household are under eight years of age, as this legal provision also applies to them.

These regulations are an example of gender-sensitive labour migration policy by reducing prior dependencies and providing good opportunities for the migrants and their spouses to participate in the labour market and to profit from Swedish rights and social security provisions.

2.3.2 Regulating Domestic Work and Care-Related Services

In many countries of the OSCE area, there is a significant demand for domestic and care work; yet only some countries provide legal entry channels into these fields.

The ILO Standard Classification of Occupations clearly distinguishes between occupations in cleaning and housekeeping, and occupations in home-based care.¹⁵ However, the distinction between domestic and care work is often blurred in practice. Furthermore, au pairs, who are perceived to be participating in intercultural exchanges and learning experiences, often in reality carry out domestic work, exceeding the 30 hour-a-week limit for au pairs. Since a high and even increasing number of female migrants are temporarily entering another country to work in private households as domestic and/or care workers,¹⁶ this section deals with these arrangements rather than with the employment of care workers and nurses in formal institutions such as senior homes and hospitals (Chapter 3.2).

Good practices and recommendations in care-related and domestic services

To make labour migration schemes for domestic and care workers more sensitive to the special vulnerabilities of these professions, all schemes should consider the following recommendations:

- a) **Developing visa schemes for domestic workers and care workers.** Some countries from the OSCE area regulate the entry of migrant domestic and/or care workers, such as Canada, Italy, Germany and the United Kingdom. The Canadian “Live-in Caregiver Program” is often held up as a good practice.¹⁷ It allows legal entry to mainly female migrants to work as care workers in private households; provides a standardized working contract set up through the programme; allows for a change of employer; and after two years of continuous employment, allows the possibility to become a permanent resident of the country.
- b) **Making routes to legal employment more user-friendly.** Regulations should take into account the full reality of the sector in their design and

implementation; unnecessarily complicated bureaucratic procedures for employment of domestic workers should be avoided, since their usefulness is questionable and may instead contribute to irregular employment.

- c) **Extending national labour regulations to domestic work** to protect migrant workers. In many countries, domestic work does not fall under national labour laws. An ILO study of the legislation in more than 60 countries found that only 19 countries have enacted specific laws or regulations dealing with domestic work;¹⁸ another 19 countries have devoted specific chapters, titles or sections in labour codes, employment acts or acts respecting contracts of employment.¹⁹ Improvements can also be made where domestic work does not fall under national labour law provisions. For example, in 2003, the Ministry of Labour of Jordan endorsed a special working contract for non-Jordanian domestic workers to increase protection for predominantly female migrant workers, even though the national law does not cover domestic work. The contract stipulates that the employer cannot take the employee’s passport and must cover the costs of work and residence permits, ensure decent food and lodging, cover medical costs, and commit to treating the employee humanely.²⁰
- d) **Providing migrant domestic workers with labour rights and protections.** National legislation in a number of countries prevents domestic workers from joining a trade union. This may be due to non-recognition of domestic workers as workers, or in some cases, to a specific prohibition written into the law. However, to avoid exploitation of domestic workers, some minimum legal protection measures should be considered such as: clearly defined work tasks, daily hours of work and rest periods, wages (at least

ILO: Standard Setting on Decent Work for Domestic Workers

At its 301st Session in March 2008, the ILO Governing Body decided to place the issue of decent work for domestic workers on the agenda of the 2010 International Labour Conference. It aims to set standards through a new Convention and an accompanying Recommendation.

Source: ILO (2008b: 14-19).

minimum) and method/time of payment; clear-cut standards on night work and overtime, including adequate compensation and subsequent and appropriate rest time; clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave); standards on termination of employment; and social security protection.

e) **Advertising the use of model contracts** to be used by private employers. Model contracts clarify the rights of the employee and the obligations of the employer and help bring about better dialogue between employees and employers. The European Trade Union Confederation has a model contract for domestic services available on its website (Annex 2). Several national unions are also providing model contracts, such as the Transport and General Workers Union

(TGWU) in the United Kingdom and the ATH-ELE, Household Workers' Association from Spain.

- f) **Ensure that visas are not tied to particular employers:** Many working visas for domestic and care workers are tied to particular employers. The Global Commission on International Migration recommended that temporary migrants be given the opportunity to change employers within the period of their contract in order to react to changing labour demand and to avoid dependency on unscrupulous employers.²¹
- g) **Removing and/or excluding the stipulation that employees must live in “the employer’s home”.** Some domestic/care worker visas stipulate that the worker has to live within the homes

Russian Federation: From an Employer- to an Employee-Driven System

In 2006, a radical shift took place in Russian migration legislation. The new laws targeting the citizens of the CIS states, aim to facilitate the registration and temporary legal employment of migrants and reduce the number of irregular migrants. The new features are: (a) the duration of stay has been increased to 180 days; (b) the quota of permits for temporary residence to visa-free foreigners has been cancelled; (c) the registration procedure has been simplified; (d) work permits are now issued to the migrant worker instead of to the employer (employers can hire foreign citizens holding a work permit); and (e) work permits are now issued within ten days. The cancellation of the employer-driven work permit system and the simplification of registration processes benefit all migrant workers, but particularly women, who tend to be more vulnerable when permits are tied to one specific employer.

Source: Ivakhnyuk (2008: 118-127).

Germany: *Note Verbale* for Domestic Workers Employed by Diplomats

Some countries have taken action to prevent the exploitation and abuse of domestic staff working in diplomatic households. In Germany, this group of employees receives a special identification (ID) card (*Protokollausweis*), which is issued by the Federal Foreign Office. The application for this document must be accompanied by a *note verbale* from the employer stating fair treatment.

Note Verbale: The Embassy/Consulate General of presents its compliments to the Federal Foreign Office and has the honour, pledging reciprocity, to inform it that ... (surname, first name(s) function), who is a home-based member of the Embassy/Consulate-General/Consulate, intends to employ as a private domestic worker/workers the ...national(s) ... (surname, first name[s]).

It is hereby confirmed that:

- the employer has entered into a written employment contract with the employee;
- the employee will receive adequate wages;
- the wage will be transferred to the employee's bank account;
- health insurance will be taken out for the employee and maintained through the payment of regular contributions by the employer;
- the regulations governing minimum labour and social standards [...] will be complied with;
- the employee will be accommodated in the employer's household of the employer (if possible, in a separate room);
- the employer will assume the cost of the employee's return trip back to his/her country of origin;
- the employee has the right of disposal over his/her passport and Protocol ID.

Source: German Federal Foreign Office (07 April 2003), reproduced in Ban Ying (2003).

of their employer. This stipulation has been criticized, since live-in employees are more likely to work overtime and are more vulnerable to abuse.²²

- h) **Providing protection for employees moving with employers.** This type of arrangement has been linked to cases of abuse and exploitation. Consequently, the United Kingdom, for example, has introduced protection measures for these types of foreign domestic workers, including information on counselling organizations.²³

2.4 Women in Irregular Employment Situations

Labour performed by migrants with an irregular legal status, whether temporary or more permanent, is an important facet of today's labour migration. Irregularity may also only be related to the working conditions, while the status of the migrant may be legal. The extent of irregular migration differs significantly in the OSCE area: regularizations in Spain and Italy, for example, showed that a high percentage of women were working irregularly (Textbox 2.5), while in the Nordic countries the percentage was lower reflecting different labour market demands and conditions.

There is a clear link between the legal status of a migrant and his or her vulnerability to exploitation and abuse. Migrant workers without legal status are more likely to suffer abuses such as: withholding of their passport, non-remunerated work, termination of employment without due notice or reason, as well as sexual and physical threats and violence. They are more vulnerable to such abuses because employers know that they have fewer rights and insufficient legal means to seek redress. Within this group of irregular migrants, female migrant workers face the additional risk of being sexually harassed and discriminated due to their sex.²⁴

Governments can undertake steps to grant basic human rights for migrant workers with irregular status:

- **Ensuring minimal labour**

standards. Female migrants often work in sectors with poor labour standards, such as domestic work; it is important that these

sectors are monitored for labour rights abuses and that all migrants working in these sectors know their basic rights. This can be achieved through co-operation between migrants' organizations, trade unions and religious institutions.

- **Devising mechanisms that help ensure the payment of wages.**

This is particularly relevant for migrant workers in the domestic and private care services sector who may be more prone to experiencing the withholding of their wages or short-notice termination (Textbox 2.4).

- **Permitting access to (private) health insurance and to health care.**

Health services should be accessible regardless of one's legal status through private insurance. This is particularly important in case of acute illness and for pregnant female migrant workers and for children of undocumented parents.

TEXTBOX 2.4

Mechanisms for Ensuring the Payment of Outstanding Wages

Portugal: Portuguese law holds both the direct employer and the general contractor responsible for the payment of wages to migrant workers. If the employer fails to pay wages due, the general contractor must pay. Ensuring accountability for the maltreatment of migrant workers may require co-operation with origin and transit countries.

Germany: The legal process to claim outstanding wages can officially be followed by the migrant and/or a lawyer. Labour courts are interested in the contractual relationship – regardless of whether it is a written or verbal agreement – not the legal status of a person. If a work contract exists, then wages can be claimed. Labour courts ask for the name of the person and an address, which does not have to be the private address of the worker; it can be the address of a trade union or lawyer. However, state officials not bound by professional confidentiality rules must forward the case to the prosecuting authorities, i.e. the immigration authorities; legal advice is therefore crucial. The Polish Social Council, based in Berlin, Germany, developed a supportive approach, helping workers not only to obtain the right to reclaim outstanding wages, but to actually go to court.

Sources: Portugal: ILO (2008a:13); Hamburg, Germany, (2008) Cyrus (2004); Mónica Orjeda, vericom e.V. Germany, pers. comm., January 2009.

- **Allowing for portability of insurances, pensions and co-operative saving schemes**, since they can be an alternative source of security for undocumented migrant workers. This is of particular importance for female migrant workers given that a relatively high percentage of them are illegally employed. Efforts should be made to refrain from making such co-operative schemes inaccessible by excluding irregular migrant workers from bank accounts.

- **Informing employers about services available for all migrants regardless of their status.** Employers may not be aware that migrants with an irregular status may be eligible for

certain services. For example, in Germany, accident insurance can be granted regardless of the legal status of the worker. Accident insurance is particularly important for household workers and caregivers working in private households, since most accidents happen while performing housekeeping tasks.

- **Considering and assisting female migrants in regularization processes.** Experiences have shown that in regularization procedures, female migrant workers, particularly migrant domestic workers, face more difficulty in providing the necessary documents, because they often do not have formal work contracts, or their names are not written on rental contracts or

TEXTBOX 2.5

Female-friendly Regularization Programmes

Spain: The 2005 *Normalization* Programme issued 191,570 work permits for migrant domestic workers, (of which 89 per cent were women), representing 33.4 per cent of the total number of regularized migrants. The “normalization” process started in February 2005. Applications were handed in during a three-month period up until 7 May 2005. There were two different categories, each with a different application procedure. In the first category, in order to gain a general authorization of residence and work, the employer of a foreign worker, not the worker, had to present the application to the authorities. The second category concerned “discontinuous” workers in the domestic service sector, referring to those who work intermittently or part-time for different employers. Because discontinuous workers do not have a fixed employer, they were allowed to hand in the application themselves. They had to be able to prove that they worked at least 30 hours per week and in different households.

Italy: As a result of the 2002 Regularization Scheme, about 450,000 workers (35.2 per cent of the total regularizations) were registered as care workers, 84 per cent of whom were women. In 2006, the Italian Labour Ministry set the annual quotas for foreign workers and assigned 45,000 (out of a total number of 170,000 applications) working permits for up to a year for care workers. In 2007, the social partners negotiated a national collective framework agreement for the employment of household service workers. The agreement includes minimum salaries for migrant workers employed in different types of households (for example, households with a person in need of intensive care or those where overnight attendance is necessary) and runs until 2011.

Sources: Spain: Arango and Jachimowicz (2005); PICUM (2005); IKUSPEGI (2009); Cruz Roja (2009); Moreno-Fontes Chammartin (2008:12); www.migrationinformation.org; CTC et al. (2005); Italy: Federazione Italiana Datori Di Lavoro Domestico et al. (2007).

utility bills, which prove the length of their stay in the country.²⁵ Therefore, conditions for regularization should be evaluated in terms of providing equally good opportunities for female as well as male migrant workers (gender impact assessment).

include reunification provisions. A new example is now provided by the Swedish Government, which allows for family reunification for temporary migrant workers (Chapter 2.3.2). Sweden considers such regulations as a means of gaining competitive advantage in attracting workers with the required skills to the country, since they can also be accompanied by their spouses who are allowed to work.

The following actions and good practices for family reunification may be considered:

2.5 Labour Immigration and Gender-Sensitive Family Migration and Integration Policies

Family migration is gendered since women are often the ones moving as dependent family members. They may not be given the right to work or be eligible for all integration services. If their legal status to stay in the country is linked to their spouse, it may be difficult for them to leave a violent relationship.

2.5.1 Family Migration Policies

Family migration is complex and consists of several types: (i) family reunification; (ii) family formation or marriage migration; (iii) migration of the entire family (mostly allowed only under the highly-skilled category); and (iv) in settler societies, sponsored family members who do not necessarily belong to the immediate family.²⁶ Family migration is regulated by national law, but it can also be regulated by regional agreements, such as in the European Union (Directive on Family Reunification) or by bilateral agreements and memorandums of understanding (MoUs).²⁷ While the right to a family life, in particular Article 8 of the European Convention of Human Rights,²⁸ is recognized, this does not automatically imply a right to family reunification for labour migrants. Thus, reunification policies often differ depending on the type of migration. Permanent migration or longer-term temporary migration often allows for some form of reunification, whereas temporary migration is less likely to

- **Making national regulations consistent with endorsed international conventions or bi- and multilateral agreements.** A good practice example is Azerbaijan, which has prohibited restrictions on the reunion of migrant workers with their families (Art. 10, Migrant Labour Act, 28 October 1999) since signing the United Nations Convention on the Protection of All Migrant Workers and Members of their Families in 1998.²⁹
- **Assisting labour migrants in the bureaucratic procedures for family reunification.** In Portugal, the Information and Resource Centre for Migrants, inter alia, provides information to migrant workers on their rights and assists them with processing requests for family reunification.³⁰
- **Considering family reunification for temporary labour migrants commensurable to the length of stay and a simplified return option** (i.e. an easy entry-exit visa included within the work permit) in case they need to return to their countries of origin before their visa expires in order to care for their children or close family members.³¹
- **Providing services for female migrants moving under the family category.** Large numbers of female

migrants are admitted to countries as dependents, many of whom are marrying either a national citizen or a migrant with a residence permit and are in need of information and assistance for better integration.

2.5.2 Integration Policies

Gender-sensitive labour migration policies also give due consideration to sound integration policies.³² Integration should be understood as a two-way-process of mutual rights and recognition as well as corresponding obligations of the immigrants and the host societies.

Developing successful integration concepts is a challenge for old and new countries of immigration. Given the heterogeneity of migrants, integration concepts should not only take gender difference into account, but also reflect differences between subgroups of female migrants and the social structure of the migrants, such as age, education, immigration type, religion and ethnicity.

Some recommendations for engendering integration policies include:

- **Provide government-sponsored or -subsidized language and integration courses** accessible to all (new) immigrants.
- **Provide information on integration services upon arrival**, for example, at major ports of entry, through the respective authorities, NGOs and migrants' organizations. Women may particularly benefit if they do not work in the formal sphere but spend more of their time at home.
- **Set up information and resource centres for migrants** in the countries of destination that provide one-stop services for migrants. The centres should be easily

accessible and widely advertised (already in the countries of origin as well as post-arrival); the most important information should be offered in the most widely used languages; the opening times should allow working migrants to access the services; and special offers should be made for migrant women.

- **Offer refresher courses for migrant women** to enable them to work in more qualified jobs. Qualification courses could be made available to female migrants of all age groups and for principal migrants, as well as for spouses and dependent migrants.
- **Take skilled female migrants into account** when designing integration programmes to better provide them with an opportunity of being employed and paid according to their qualifications. The German Government, for example, introduced a web portal on career development for immigrant women.³³

2.6 Workplace-Related Violence against Female Migrant Workers

Female migrant workers are vulnerable to violence during all phases of the migration process.³⁴ Violence can take place during the recruitment process, at the workplace and in other spheres of social and private life. This vulnerability is heightened for specific groups of women. In general, the more precarious their legal status and the greater the dependency on an employer, the more vulnerable female migrant workers are. Some employers foster dependency of a worker by isolating her, confiscating her passport, work or residency papers, limiting her contact to the outside world or evoking fear in her that any complaint will result in job loss and/or deportation.

Actions for ending gender-based violence against female migrant workers should be based on international human rights treaties, such as the widely ratified ICERD and CEDAW, and the guidance provided by treaty monitoring committees (Annexes 1a and 1b for ratifications in the OSCE area). A key principle should be to regard the harassed or abused migrant worker as an individual who has been subjected to violence – and not as a foreigner with potentially less rights – and whose human rights to physical and psychological safety need to be re-established.

Government enforcement agencies can play an important role in protecting female migrant workers from violence at the workplace by seeking to remedy it.³⁵ Therefore, approaching an employer through the government often has a greater impact than if done by the worker and her legal representative.

Court rulings in the United States have confirmed the right to physical safety for female migrant workers in the workplace (Textbox 2.6). In case of violence against a migrant worker, the Federal Equal Employment Opportunity Commission (EEOC) in the United States can bring a case against the employer to the Federal Court; this procedure thus provides a level of protection for migrant workers. To limit the fear faced by female migrant workers when they report on violence,

a “firewall” between immigration enforcement and labour law enforcement has been created so that the legal status of the victim is not part of the inquiry. The Department of Labor and the EEOC have agreed to a Policy Memorandum, which states that they will not inquire into the complainant’s immigration status when a complaint has been brought forth.³⁶ However, recent developments in the United States have shown that these means of protection are not uncontested. The U.S. Supreme Court decision of *Hoffmann Plastic Compounds Inc. v. National Labour Relations Board* “pocked holes in these firewalls”,³⁷ at least for undocumented migrant workers.

2.7 Involvement of Non-State Stakeholders

Multi-stakeholder co-operation between governments, international organizations, social partners and NGOs has become common in almost all policy fields. Such co-operation in the field of gender-sensitive labour migration policies can contribute to:

- the achievement of policy goals that governments would otherwise not manage alone;

TEXTBOX 2.6

The United States: the Violence Against Women Act

The Violence Against Women Act (VAWA) is not directly related to female labour migrants; nevertheless, it can be used as a tool by female workers suffering from domestic violence. The Act of 2000 (VAWA 2000) improved the situation of battered immigrant women by improving access to “cancellation of removal” and funding schemes. It allowed immigrant women to obtain Lawful Permanent Resident (LPR) status without leaving the country and created a new type of visa, the U visa for victims of serious crimes. A re-authorized VAWA (2005) entered into force in 2006. However, since women without a legal residence permit may not profit from all protection measures, they need special legal counselling.

Sources: Department of Justice, United States (2008); Women’s Law, United States (2009).

- bridging governance gaps, participation gaps, implementation and financing gaps;
- valuing and making use of the experience of NGOs in accessing and working with female migrant workers and collaborating with migrant and diaspora organizations.

The co-operation can range from ad hoc, concrete, time-limited collaboration to long-term networks and setting up of permanent institutions.

Tripartite, multi-stakeholder co-operation between states, employers' organizations and labour unions plays a crucial role in labour migration. ILO is the most prominent institution for tripartite initiatives concerning labour migration. The 2004 International Labour Conference and the Multilateral Framework on Labour Migration, which summarizes the ILO core principles for the fair treatment of migrant workers, including gender-sensitive measures, are milestones.³⁸ ILO is now preparing for a Convention on Domestic Work at the International Labour Conference in 2010.³⁹

2.7.1 Trade Unions

Over recent years, trade unions have intensified discussions and engagement with labour migrants; their outreach to them is an important step, since relations with them has often been difficult. This is particularly true with respect to female-dominated sectors, such as domestic work, since many trade unions have not sufficiently taken them into account. Nonetheless, recent efforts have shown that innovative means of reaching female migrant workers are being used.

The following new forms of trade union engagement ensure that female migrants have a union representation; they follow the agenda of decent work and the ILO core principles:⁴⁰

- **Unions support networks:** The Glasgow-based Overseas Nurses' Network was founded in 2002 and has over 600

members. It was developed by trade unionists who noticed the problems of overseas nurses and how difficult it was to unionize them, many of whom work in the private sector. The network was funded by Public Services International (PSI) for its first year and is now funded by UNISON, a large Scottish public sector union.⁴¹

- **Unions collaborate with community and women's organizations:** In some German towns, trade unionists collaborate with other organizations in special working groups on undocumented labour. In May 2008, MigrAr, the first union-run specialized legal counselling centre for migrants who do not have a secure right to stay, was opened in Hamburg.⁴²
- **Unions invite migrant and undocumented workers to become members:** In 2006, ABVAKABO FNV, the largest Dutch trade union in the public sector and in health and care services, announced that undocumented domestic workers were welcome as members.
- **Unions publish information for migrant workers:** For example, in 2008, ABVAKABO FNV published a brochure for migrant domestic workers and caregivers with and without legal status; in 2002, the Confederation of German Trade Unions (DGB) issued a brochure for workers with irregular status.⁴³
- **Bilateral agreements are established between trade unions in sending and receiving countries.** In Italy, the Italian Confederation of Workers' Unions (*Confederazione Italiana Sindacati dei Lavoratori*, CISL) signed collaboration agreements with unions in Cape Verde, Morocco, Peru, Senegal and Tunisia. CISL has also produced television programmes

for migrants in different languages and is coordinating a committee for female migrants, chaired by migrant workers.⁴⁴

• **Unions reach out to invisible household workers.** Innovative outreach and organizing strategies are producing good results in a number of countries:

- **On-arrival information.** In the United Kingdom, TGWU provides arriving migrant domestic workers with information on the trade union and Kalayaan, a support NGO.

- **Information campaigns** via the media informing domestic migrant workers about union coverage and contact details.

- **Contacts and outreach** in classrooms (language courses), leisure facilities, playgrounds, supermarkets, public transport and religious or expatriate communities.⁴⁵

While the above practices mainly highlighted what unions are and can do to assist female labour migrants, governments of countries of destination can also play a role. They can support good union practices by establishing new laws and ensure the right to associate and organize. They can engage trade unionists in discussions on labour migration.

In Italy, for example, the Constitution and the Immigration Act provide for the rights of all workers, national and non-national, to join unions and strike, and to form and join associations promoting social and cultural integration.⁴⁶

2.7.2 Migrants' Organizations, Non-Government Organizations and Diaspora Organizations

NGOs in the field of gender issues and migration can be divided into two categories: organizations and networks run by female migrants and former migrants themselves and organizations run by

concerned citizens and professionals. The latter comprise faith-based organizations, women's organizations, human rights organizations and NGOs dealing with labour issues.⁴⁷ Many female migrants turn to grassroots organizations and advocacy organizations rather than state agencies or trade unions due to issues of access and trust. The most important activities of NGOs and migrants' organizations are:

• **Social and legal services.** Sufficient funding and trained staff are needed for the sustainable delivery of correct and updated information.

• **Education and training courses.** These courses improve the professional capacities of female migrants and help them gain self-respect.

• **Interventions in political debates** on migration and gender issues. On the local, national and international levels, this intervention may include contributing to shadow reports on CEDAW, participating in international conferences and creating international networks.

• **Collaboration** between different female migrant workers, advocacy organizations, migrant organizations, academic researchers and trade unionists enables all of them to make use of the different locations of network members.⁴⁸

• **Tools addressing migrant women in precarious working conditions.** Experiences from the RESPECT network, for example, show how difficult it is for migrant domestic workers to find time to meet and organize themselves. The theatre workshop method developed by the Brazilian Auguste Boal ("Forum Theatre") has proven successful. Experiences with these theatre workshops and transcripts for replication in other contexts have been published.⁴⁹

As with trade unions, destination governments can benefit from working with and supporting the activities of NGOs. In addition to listening to NGOs' concerns and trying to incorporate them into policy, governments can help create a conducive environment for their work.

Viewing It from Both Sides: Diaspora Organizations

Co-development, the contribution of diaspora associations to development in the countries of origin, has recently been highlighted at the international level – e.g. the Global Forum on Migration and Development. Also, it has been highlighted since the second half of the 1990s in France at the national level, and more recently, in other countries. The number of women's diaspora associations and networks are growing, although they may be lacking in some countries for cultural, social and economic reasons. Co-development activities often take place in close collaboration with international organizations or ministries of development or immigration. They can partly be considered public-private partnerships, thus differing from some of the NGO activities introduced previously.

2.7.3 Employers and Private Business Associations

Many female migrants are employed in factory work. A good practice to improve their protection is the negotiated codes of conduct guaranteeing minimum labour standards – a practice already well-known in the garment and apparel industry. As lessons learned from the garment industries show, the monitoring of implementation of the codes is crucial, particularly at the industrial sites of subcontractors.

The *Ethical Conduct and Good Practices of Overseas Employment Service Providers*, directed at all kinds of employment of female migrants, was adopted in November 2005 at United Nations Development Fund for Women's (UNIFEM) Regional Consultation of Overseas Employment Service Providers on Good Practices to Protect Women Migrant Workers in Bangkok, Thailand.⁵⁰ National associations from Bangladesh, Indonesia, Jordan, Lao People's Democratic Republic, Nepal, the Philippines and Sri Lanka agreed on the principles of protecting female migrant workers, particularly in low-skilled jobs. The Code of Conduct contains seven basic principles, ten regional actions of priority, and for each of the countries, a number of issues aimed at improving the situation of female migrant workers.

2.8 Conclusions

The chapter aimed to provide destination countries with insight into how their permanent and temporary migration policies could better incorporate gender differences. When assessing the need for foreign labour, evidence should include data on gender as well as micro-level studies. Such studies give more detailed information on the micro-processes within specific labour market sectors, including gender-specific information that might get lost if lists of shortage profes-

sions and quotas are solely built on economic modelling. Furthermore, when assessing needs, governments should not overlook domestic work and private care-related services.

This chapter provided recommendations on the development of permanent and temporary channels to obtaining legal entrance that offer equal access to women, given that employment-based entry channels are often dominated by men, while women are increasingly seeking to migrate in their own right. One measure

to be included in both permanent and temporary point-based systems is the acknowledgement of women's role as primary caregivers and the relaxation of strict age and work experience thresholds.

In terms of temporary labour migration, one key recommendation is to reduce dependency on a particular employer. This can be done in many ways, for example, by not limiting the validity of a work visa to a specific employer and allowing for employees to change their place of employment. Ideally, migrants should also be allowed to change their job type; being tied to domestic work, for example, often results in the long-term de-skilling of skilled women.

Therefore, another key area in need of action is the prevention of the de-skilling of female migrant workers. There is ample empirical evidence that skilled and highly-skilled female migrants work below their qualifications, hence underusing their education and professional experience.

The issue of family reunification for temporary workers staying over a year was also discussed. The negative social effects from the splitting of families could be reduced if principal migrants were allowed to bring their spouse and dependents to the country of destination. By granting access to the labour market for spouses, the host country may also benefit from their work contributions and attract more highly skilled migrants.

Domestic and care work is a sector of particular interest from a gender perspective. Further regulations are urgently needed as the demand for care workers is steadily increasing due to the ageing of Western societies as well as an increased labour-market participation of middle-class women. Countries in the OSCE area should try to create legal entry channels that take the reality of the whole sector into account. The number of domestic and care workers admitted should therefore better reflect the actual need. Such measures should help reduce the number of female migrants working in irregular employment situations.

The chapter also recommended special assistance for female migrant workers with bureaucratic processes and for the equal availability of services, such as integration, language and skills updating courses. Furthermore, the issue of violence against female migrants has been raised. The importance of protecting workers' rights and improving their working conditions by safeguarding them from mental and physical abuse has been highlighted. It has also been stressed that, in case of labour law violations and violence against women, it is crucial to draw a clear line between law enforcement and immigration enforcement. If migrants with a temporary visa or without proper documentation fear being deported when reporting injustices, their basic human and labour rights are likely to be violated.

Finally, attention was drawn to possible collaboration means between governments and non-state stakeholders, namely trade unions, NGOs and migrants' organizations, as well as business organizations. Good practices include reaching out and organizing migrant workers in novel ways; collaborating across the boundaries of institutions and organizations; disseminating information on labour rights to female migrant workers; advocating and providing legal support, especially in situations of personal crisis and violence; and, helping migrants access specialised and general services.

While this chapter has focused on countries of destination, most countries are also countries of transit and origin; the recommendations presented here should therefore be considered together with those made in Chapter 3 on bilateral and multilateral agreements.

Endnotes

- 1 World Migration 2008. Vol.4. Geneva; IOM, (2008:83).
- 2 Most residence permits can lead to permanent residence status; however, there are some exemptions, such as for trainees and au pairs. Persons with these permits may not be granted permanent status, but they can change their status to labour immigrants.
- 3 This turndown may have been caused by the passage of the Immigration Reform and Control Act (IRCA), which led to the legalization of a significant number of predominantly male farm workers.
- 4 Boyd (2006: 3).
- 5 *ibid.*
- 6 The point-based system models differ among countries, yet their main objective remains the same, since they are used by all governments as a primary tool for selection, admission and residence procedures regulating migration.
- 7 McLaren and Black (2005).
- 8 United Kingdom Home Office (2009b).
- 9 Rubin et al. (2008).
- 10 *ibid.*, 54.
- 11 Commission of the EC (2007); EP/IOM (2008); Boswell, Stiller and Straubhaar (2004); Rubin et al. (2008).
- 12 Sweden, Ministry of Justice (2008; 2009a; 2009b).
- 13 ILO (1975).
- 14 Sweden, Ministry of Justice (2009b: 5).
- 15 ILO (2007a; 2007b).
- 16 OSCE/IOM/ILO, 2006 *Handbook*, Chapter VI 4.3.4.
- 17 Citizenship and Immigration Canada (2007).
- 18 Ramirez-Machado (2003). Countries with specific laws and regulations are: Argentina, Austria, Brazil, Burkina Faso, Central African Republic, Denmark, Finland, Hungary, Italy, Malta, Peru, Portugal, Spain, St. Vincent and the Grenadines, South Africa, Swaziland, Sweden, United Republic of Tanzania, Zimbabwe.
- 19 Belgium, Bolivia, Canada (Ontario), Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Philippines and Venezuela. In France, in addition to the Labour Code, a national collective agreement regarding gardeners and gardener-caregivers of private households was enacted in January 1986; a national collective agreement regarding domestic workers was enacted in November 1999 and amended in March 2000.
- 20 David (2007).
- 21 Global Commission on International Migration (2005: 18).
- 22 Langevin and Belleau (2000: 31).
- 23 United Kingdom Home Office (2009a).
- 24 See Le Voy, Verbruggen and Wets (2004).
- 25 Anderson (2004: 89-101).
- 26 IOM World Migration Report (2008: 151-172).
- 27 For the national regulations in the EU, see EP/IOM (2008: 495-520); the EU Council Directive 2003.
- 28 Council of Europe (1950).
- 29 UN (2005: 83).
- 30 OSCE/IOM/ILO (2006: 148).
- 31 *ibid.*, 11.
- 32 Due to limitations of space, this *Guide* cannot deal with all relevant aspects of integration policies. For a more elaborate, practical policy handbook, please refer to EC (2007).
- 33 See www.frauenmachenkarriere.de, section "*Vielfalt gewinnt*" (translation: Diversity wins).
- 34 UN (2004).
- 35 Paoletti (2009: 3-6).
- 36 This practice clearly delineates the responsibilities of the immigration enforcement and other agencies charged with enforcement of labour and employment laws. This strategy only works in countries such as Germany, in which state officials of all levels do not automatically have to report to the immigration authorities if they come across an individual without proper documentation.

- 37 Paoletti (2009: 6); Supreme Court Decision: 535 U.S. 137 (2002).
- 38 ILO (2004; 2006).
- 39 Demaret (2008).
- 40 Collections of good practices by trade unions on labour migration in general can be found in ILO (2006); ILO-ACTRAV (2008).
- 41 Overseas Nurses Network and UNISON, 8 October 2008.
- 42 Mónica Orjeda, verikom e.V., Hamburg, Germany, personal communication 9 December 2008.
- 43 ABVAKABO FNV (2008); DGB Bildungswerk (2002).
- 44 ILO-ACTRAV (2008: 110).
- 45 Such services are provided by, for example: TRUSTED Migrants in The Netherlands; Kalayaan in the United Kingdom; the Services, Industrial, Professional and Technical Union (SIPTU) in Ireland; Interprofessional Union of Workers (SIT) in Geneva; and Domestic Workers United (DWU) in the United States (see ILO-ACTRAV, 2009: 57ff).
- 46 *ibid.*
- 47 Piper (2008).
- 48 See Anderson (2000: 89-101); Schwenken (2005).
- 49 RESPECT (2001b: 10-17; 2001a).
- 50 Another Voluntary Code of Conduct has been signed as a part of the Colombo Process by employment agencies in 2008, but it does not contain gender-specific provisions. The code is reproduced in IOM/EC (2008).

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3 Gendered Impacts and Gender-Sensitivity in Bi- and Multilateral Labour Agreements

Bilateral and multilateral labour agreements are increasingly being used by states wishing to better manage labour migration. As they are conceived, negotiated and implemented at present, they largely ignore gender issues and lack gender-sensitive monitoring mechanisms.

This chapter looks at different types of bilateral labour migration agreements. It highlights

why gender is an issue in such agreements and then showcases some ways in which it can be included into the agreements. The concept of “ethical recruitment” and its application to the healthcare sector is also explored. In commending the global perspective inherent in ethical recruitment, the chapter aims to show how this good practice can be improved and enriched by including gender. The possibility of extend-

TEXTBOX 3.1

What are Temporary Labour Migration Programmes (TLMPs)?

There are three major types of government involvement in TLMPs:

- government-to-government bilateral agreements and Memorandums of Understanding (MoUs) that spell out the obligations and rights of employers and migrants, and the roles of government agencies in recruitment, employment abroad and return;
- government supervision of private actors, for example when governments of countries of origin regulate recruiters;
- private-to-government agreements, as exemplified in those between American and Canadian farmer associations and Caribbean Government agencies that provide additional insurance and require some migrant worker earnings to be deposited in government-affiliated banks. There are also agreements between unions and governments to regulate recruitment in countries of origin.

Source: Based on Martin (2008: 2).

ing ethical recruitment to other sectors is also assessed.

3.1 Bilateral Labour Agreements on Temporary and Circular Migration

Bilateral labour migration agreements are steadily growing in number – Spain has signed seven¹ and the Philippines alone has signed 82 agreements with 59 destination states.² In fact, the number of bilateral labour agreements in the OECD area has increased five times since the 1990s, to 176 in 2003.³ Due to the number of countries involved in, and sectors covered under, bilateral agreements, it is difficult to have a full overview.⁴ There are many different types of bilateral labour migration agreements (Textbox 3.1). Most regulate temporary labour migration. Some agreements allow for circular migration, which implies that migrants are allowed to re-apply for temporary jobs abroad after returning home. Only very few agreements permit, under certain conditions, permanent immigration (Chapter 3.1.2).

3.1.1 Bilateral Labour Agreements and Gender

In reviewing a number of agreements, it becomes clear that only a small number contain specific provisions concerning women or gender. Some specific examples of agreements that have taken women and/or gender into account are:

- The bilateral labour agreement between Spain and Mauritania has an anti-discrimination clause that includes race, sex, sexual orientation, civil status, religion, affiliation, origin and social condition.
- The Temporary and Circular Labour Migration Plan between Colombia and Spain,⁵ which

aims to ensure equal access to employment for both men and women. It is overseen by IOM Colombia, local governments, *Unió de Pagesos* (a farmers' union in Catalonia, Spain) and the developmental NGO *Asociación América-España, Solidaridad y Cooperación* (AESCO, America-Spain Solidarity and Co-operation) in Spain and Colombia. Women are also considered “equal to men regarding employment” in the agreements between private Canadian entities in collaboration with the IOM and Colombia, Honduras and Mauritius.⁶

- The Additional Protocol of the Migration Agreement between Argentina and Bolivia extends all rights (to a temporary residence permit) to spouses, children and parents of the principal applicant.⁷ In addition, the agreements between Italy and Albania as well as Italy and Tunisia do not allow for family reunification unless the principal migrant has a one-year residence permit; if so, however, family members also have the right to work in Italy.⁸

It has been suggested that when bilateral labour migration agreements take gender into account, they can benefit female migrant workers. However, some agreements that take gender into account can still be problematic if not carefully considered. For instance, the recruitment of women with children has been seen as “less risky”, because it is thought that they are more likely to return home after their contracts end. This gender-specific assumption has been used by employers as a rationale for recruiting female migrants in various agreements. However, this notion appears not to hold in highly feminized sectors employing female migrants. For example, a circular migration programme of the Government of Ghana – aimed at sending nurses to the English-speaking world on temporary work contracts – failed because the nurses never returned.⁹

If bilateral agreements underwent gender impact assessments before their implementation, it would be possible for them to take into account the specific vulnerabilities inherent in female-dominated sectors and the particularities of women's experiences in male-dominated sectors.

3.1.2 Engendering Bilateral Labour Migration Agreements

While gender-specific provisions are largely absent from bilateral agreements, this does not mean that women cannot benefit from some of the general good practices that many agreements already exhibit.¹⁰ During the negotiation process of bilateral agreements, all of the following measures and aspects need to be taken into account and anchored in the negotiated text:

- **Make gender impact assessments an integral procedural component.**
- **Include the participation of gender advisers** with expertise on labour migration.
- **Include gender-specific, non-discrimination and rights-based clauses** in order to enhance policy coherence; the language and the content in these agreements should comply with the respective international human rights treaties.
- **Acknowledge female-specific vulnerabilities** by establishing protection measures concerning violence against women in the workplace and in workers' accommodations that are often provided in the agricultural and tourism sectors.
- **Implement a complaint mechanism for harassment or discrimination.** There is a need for common procedures to handle complaints, with the option of legal remedy.

- **Create protective provisions for sectors not covered by national labour law**, such as agriculture and domestic services, by introducing minimum standards.

- **Provide for appropriate healthcare and social security benefits.**

- **Establish common agreed on criteria for the recognition of skills and qualifications** in sectors of the labour market under negotiation.¹¹ Non-recognition almost inevitably leads to de-skilling and "brain-waste".

- **Consider the possibility of portability of retirement pensions, social security and health benefits** (Textbox 3.2).¹²

Furthermore, when considering engendering bilateral agreements, certain measures and aspects could be taken into account according to the stages of migration:

Pre-departure and on arrival:

- **Provide gender training to those selecting migrant workers in order to ensure a fair and transparent selection process** that gives potential female migrants equal access to employment abroad.
- **Disseminate information on legal migration opportunities and migrants' rights and obligations** to minimize the risk of female migrant workers being exploited or trafficked.¹³
- **Provide information on arrival** on national immigration and labour laws, the social welfare system, information on complaints mechanisms and contact details of counselling organizations, professional organizations and trade unions, etc.

Protective measures during the stay in the country of destination:

- **Provide gender training to administrative staff implementing bilateral agreements.**
- **Strive to provide equality of wages and work conditions.**¹⁴
- **Examine possibilities of family reunification for longer-term migrant workers.**¹⁵

may reduce the risk of overstay and the legal status turning into an irregular status.

- **Allow for the re-negotiation of contracts** regarding working conditions and remuneration in the case of repeat migration so that new skills gained can be considered.
- Consider policies that allow for **conversion of temporary work permits to permanent work permits** for those complying with the regulations.

On return:

- To ensure higher return, **consider the option of repeat migration.**¹⁶ This

- **Implement a gender-sensitive monitoring mechanism during the**

TEXTBOX 3.2

The Importance of the Portability of Social Entitlements for Women

What is portability of social security benefits? This refers to the ability to preserve, maintain and transfer social security rights acquired or being acquired from one private, occupational, or public social security scheme to another without losing one's contributions. ILO regards portability as a means for protecting migrants irrespective of their legal status.

Gender and Portability: Due to part-time work, discontinuous employment and informal or precarious working conditions, women tend to have more difficulties obtaining social security benefits and pension claims. At the same time, obtaining such entitlements is very important for them, since they are an important precondition for independence, particularly if provisions through marriage are lacking or are lost due to divorce. Lack of portability may be an obstacle for return migration and increase the insecurity of former migrants in their senior years, and their dependants, after they have returned to their countries of origin. Enhancing portability may also be an incentive for migrants to take up jobs in the formal sector. When wishing to qualify for pension, it would be a positive step if a low minimum number of years were required for female migrants, since many of them have worked discontinuously or in part-time employment.

Good Portability Practice: Less than one-quarter of all migrants worldwide live in countries in which the portability of pension entitlements is guaranteed by bi- or multilateral agreements. The European Commission considers the portability or reimbursement of pension entitlements to be a central precondition for the success of temporary and circular migration programmes. Hence, the European Union's legal framework grants portability to both EU and third country nationals.

Sources: Holzmann, Koettl and Chernetsky (2005); Cruz (2004); ILO (2006: 9.9); Global Commission on International Migration (2005: 18); OSCE/IOM/ILO (2006: 153-158); EC (2005: 2.3).

review process for sectors where a high proportion of women are employed (health, care, domestic services, tourism, etc.).

3.2 The Ethical Recruitment of Foreign Healthcare Professionals

The migration of healthcare professionals is and has always been an important domain of female-dominated labour migration.¹⁷ However, for a number of countries in the Global South, the emigration of nurses and doctors has caused a range of problems such as:

- the undersupply of health services, particularly in rural areas. For example, in 2006, 90 per cent of the 40,000–50,000 Indian nurses in the Gulf countries come from the State of Kerala;
- the de-skilling of healthcare professionals, for example, when doctors work as nurses or trained nurses work as assistant nurses because their certificates are not recognized in the country of destination. Despite de-skilling, these positions are attractive to many, since they can earn more abroad than practising their original professions in their countries of origin.

These problems are being acknowledged, and many countries have introduced ethical recruitment codes (Annex 4). Since women dominate nursing, such codes may be an important means to improve the situation of professional female migrant workers.

3.2.1 What is Ethical Recruitment?

For the recruitment of healthcare professionals to be ethical, national codes suggest that active recruitment activities, such as the direct advertise-

ment of job positions, should not be employed in developing countries unless a government-to-government agreement has been signed condoning such actions.

Furthermore, in addition to this guiding principle, national ethical recruitment codes agree that those who are recruited should:

- not be charged fees for obtaining overseas employment;
- be given adequate information about the prospective job prior to emigrating;
- be given proper services for integration and training.

The term “ethical recruitment” is interpreted or applied differently by different international bodies. The global trade union Public Services International (PSI, 2006)¹⁸ and the Commonwealth Secretariat (2003),¹⁹ for example, go beyond a narrow understanding and suggest that ethical recruitment requires the recruiting countries to compensate those countries losing their healthcare workers. Furthermore, the International Council of Nurses (ICN) suggests that recruited nurses should have freedom of movement and association, and be free from discrimination; they should be given “access to full employment” in a “safe work environment” and receive both proper training and “equal pay for work of equal value”.²⁰

Ethical recruitment agreements are meant to stem large-scale, active recruitment by a foreign government or foreign private institution, but not intended to bar individuals from applying on their own initiative and/or hinder them from being considered for foreign employment in a health sector position.

3.2.2 Gender and Ethical Recruitment

Ethical recruitment codes follow the general pattern shown in bilateral labour migration agree-

ments of not explicitly mentioning gender or women, despite governing a highly feminized sector.

The gender-neutral terminology and lack of gender-sensitive provisions in national codes are oversights that could have unintended consequences. For instance, the stipulation that recruitment can only occur when there are government-to-government agreements may be seen as positive since it aims to stem recruitment activities in countries that cannot afford to lose their healthcare professionals (Table 7). On the other hand, however, it may also discourage rich countries of destination from solving their nurse shortages by raising the profession's status and remuneration, since the codes imply that foreign, often cheaper, female workers are available through ethical means. Therefore, importing foreign nurses may only serve to consolidate nursing as a female profession with a relatively low status, unless additional steps are taken to raise the profession's remuneration and challenge its association with women. Furthermore, developing countries may use government-to-government agreements as a method of exporting their healthcare professionals or exporting unemployment as a tactic to

gain remittances. This could be detrimental to the public healthcare systems of source countries, and thus also to the non-migrants left working in and relying on them, many of whom are women.

Therefore, while ethical recruitment codes are an innovative approach to the problems surrounding the movement of healthcare workers from the developing to the developed world, gender needs to be further incorporated into their development and implementation. The codes could be made more gender-sensitive by following the recommendations listed above for bilateral labour migration policies. Additional recommendations address both gender and some of the vague aspects of current codes:

- **Extend the codes' reach to cover the private sector.** Covering the private sector would help discourage active recruitment in non-designated countries; this can benefit stationary nurses in non-designated countries if it helps retain some of their colleagues. If the private sector is included in the codes and well monitored, this would likely encourage better labour practices in the private institutions.

Table 7

Doctors and Nurses Trained Abroad Working in OECD Countries

OECD country	Doctors trained abroad		Nurses trained abroad	
	No.	Per cent of total	No.	Per cent of total
Australia	11,122	21	n.a.	n.a.
Canada	13,620	23	19,061	6
Finland	1,003	9	140	0
France	11,269	6	n.a.	n.a.
Germany	17,318	6	26,284	3
Ireland	NA	NA	8,758	14
New Zealand	2,832	34	10,616	21
Portugal	1,258	4	n.a.	n.a.
United Kingdom	69,813	33	65,000	10
United States	213,331	27	99,456	5

Source: World Health Organization (2006: 98).

- **Include temporary staff** in order to create equal principles of recruitment.
- **Define the line between active and passive recruitment more clearly.** The Canadian Policy Research Network calls for a dynamic, yet concrete definition of when and where recruitment activities should be deemed ethical or unethical.
- **Make the codes legally binding and include a monitoring system** that covers both the recruitment agencies and the employers in order to ensure that: recruitment was not conducted in non-designated countries; migrants were not charged fees; they were not deceived about the nature of their job; they received proper integration support; and they were given the same treatment, remuneration and labour rights as nationals.
- **Establish national strategies to tackle the nursing shortage**, such as raising its social and monetary status. This would benefit the women already working in this profession, as well as challenge the almost universal association of nursing with women.
- **Encourage and facilitate the transfer of technology and**

personnel to sending countries in order to assist in the development and stability of their health systems. Since most healthcare workers are women, this would be tantamount to improving the jobs of many women, creating more jobs for women, as well as improving the services on which many women rely.

3.2.3 Ethical Recruitment Extended?

To date, ethical recruitment codes have only been constructed for the healthcare sector; however, given the importance of other skilled and highly-skilled professionals for local and national development, together with the high global demand for such workers, it is plausible, and perhaps necessary, to extend ethical recruitment to the sciences and engineering (S&E) sector, research and university professors, among others.

Since S&E sectors are heavily dominated by men, female migrant scientists and engineers may face additional challenges; it would be essential, therefore, to engender any project concerning the ethical recruitment of scientists and/or engineers. Since there are no experiences with expanding ethical recruitment outside the health sector, the most important recommendation might be **the inclusion of gender experts in all stages of an ethical recruitment project** – from conceptualization to implementation and monitoring.

3.3 Conclusions

The inclusion of gender aspects in bilateral labour agreements is a pressing task given that more and more agreements are likely to be established in female-dominated sectors. If gender is not taken into consideration in the establishment and implementation of bi- and multilateral labour agreements, they run the risk

of exacerbating gender inequalities in the migration process in terms of access as well as treatment.

Female migrants can benefit from two different types of provisions in bilateral labour agreements: (a) general good practices that have a positive impact on women: these include protective provisions in sectors not covered by national labour law, for example, domestic

work; the recognition of skills and qualifications; fair work and wage conditions; access to and coverage of health care and social security benefits as well as their portability across national systems; and flexible provisions for family reunification; and (b) gender-specific provisions: these include gender impact assessments and the participation of gender experts as integral procedural components; acknowledgement of female-specific vulnerabilities; complaints mechanisms; fair consideration of female applicants; and training of staff in a gender and rights-based perspective. The chapter has further recommended gender-sensitivity training for all staff involved in the creation of such agreements, as well as including gender advisers with expertise on migration at all stages, from formulation to implementation.

In examining a fairly new form of labour migration management – government-to-government agreements for the ethical recruitment of healthcare professionals

– this chapter has commended these agreements for their novel inclusion of global justice concerns and suggested ways in which they can be improved, extended and made more gender-sensitive. In order to strengthen the innovative instrument of ethical recruitment codes, the *Guide* provides numerous suggestions: the codes should also cover the private sector (to date, only the public healthcare sector has subscribed to such codes); the codes should also oversee temporary staff; they should be made legally binding; adherence should be monitored through an institutionalized system; and finally, national strategies to solve the nursing shortage in countries of origin and destination should also be established in order to guarantee the sustainable access to high-quality health professionals for all populations. The *Guide* recommends the extended use of ethical recruitment codes and expanding them to other sectors in which employees are recruited from countries that suffer from severe brain drain.

Endnotes

- 1 According to the Migration Policy Institute and the Ministry of Labour and Immigration of Spain, Spain has signed bilateral labour migration agreements with: Bulgaria (2003), Columbia (2001), Dominican Republic (2002), Ecuador (2001), Mauritania (2007), Morocco (2001), and Romania (2002). From 1 January 2009, the bilateral agreements with Bulgaria and Romania are no longer in force. Spain has signed co-operation agreements of orderly management of migratory flows with Gambia, Guinea, Cape Verde, Mali and Niger. Moreover, Spain has signed pilot projects (bilateral tools with a lower rank than agreements, but working with the same principles) with El Salvador, Honduras, Mexico, Paraguay, the Philippines and Senegal.
- 2 Tomas (2008: 16).
- 3 Migration Policy Institute (2008: 20).
- 4 For a review of good practice elements, see IOM (2008a); Agencia Española de Cooperación Internacional (2008). A non-exhaustive collection of bilateral agreements has been compiled by the OECD (2004).
- 5 Orderly managed migratory flows agreement between Spain and Colombia.
- 6 Agreement between private Canadian entities in collaboration with the IOM and Colombia, Honduras and Mauritius.
- 7 www.mininterior.gov.ar/migraciones/inter_pdf/acuerdos/bolivia/adicionalconvenioargentabolivia.pdf (signed 14 January 2002).
- 8 See www.anolf.it/circulari/accordo_tunisia.htm.
- 9 Health Services Workers' Union of Ghana Trade Union Congress, 26 October.2008.
- 10 IOM (2008a).
- 11 Agreements signed between the UK and Spain as well as Spain and the Philippines.
- 12 Agreements, for example, signed between the Philippines and Austria, Belgium, Canada, France, Netherlands, Spain, Switzerland, United Kingdom; between India and Belgium; between Greece and Egypt; and between Spain and Bulgaria.
- 13 Agreements signed between Spain and Bulgaria, Columbia, the Dominican Republic, Ecuador, Mauritania, Morocco, Romania and Senegal, as well as between private Canadian entities and IOM Columbia, Honduras and Mauritius.

- 14 Agreement signed between Greece and Egypt.
- 15 Agreements signed between Argentina and Bolivia; Italy and Albania, Tunisia; Spain and Bulgaria, Columbia, Dominican Republic, Ecuador, and Mauritania.
- 16 An agreement signed between private Canadian Farmers' Associations and IOM Guatemala.
- 17 For details on the issue and data, see WHO (2006).
- 18 Public Services International (2006).
- 19 The Commonwealth (2003).
- 20 International Council of Nurses (2002).



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Policies and Practices in Countries of Origin

4

Countries of origin are in a unique position since they are likely to have access to migrant workers throughout the migratory process and as such, they can play an important role in facilitating safe migration and improving the situation of their female migrant workers.

One way of making the migration experience safer and more predictable for female migrant workers is to empower them through the dissemination of trustworthy information about the countries of destination and the basic human, labour and migrants rights of all migrants, irrespective of social or legal status. Migrants who know about migration and their rights are less likely to fall prey to scrupulous recruiters, transportation companies and employers. In case they face problems, they have the means to turn to the correct institutions, such as their embassies, non-governmental counselling and advocacy organizations, trade unions or ethnic community networks. They can also better negotiate within their families and realistically estimate what to expect while abroad. Governments of countries of origin can contribute to these empowerment processes; furthermore, it is their role to protect their citizens while being abroad.

Achieving these goals not only requires policies developed with these aims in mind but also an institutional framework that will help foster such policies. In this light, the chapter first outlines recommendations for a gender-sensitive institutional framework and examines private recruitment agencies and the means to regulate them. It then discusses the provision of pre-departure services as well as some protective measures. Moreover

it highlights issues related to the social cost of migration, the role of remittances and reintegration of returnees.

The activities of stakeholders other than governments and state agencies are integrated into the chapter in order to highlight the array of different actors that can work together towards improving migration experiences.

4.1 Gender-Sensitive Institutional Framework

Gender mainstreaming works through institutions and policies. The following recommendations outline numerous steps that governments can take to make their institutional set-ups more gender-sensitive:

- Recognize the importance of considering gender aspects in migration and including them in labour migration policies.
- Make ministries or departments more gender-sensitive by carrying out gender impact assessments and implementing a Gender Action Plan.
- Strengthen or establish a gender unit, desk or other structure that could deal with gender issues related to migrants and migrant workers within state agencies dealing with migration (e.g. Ministry of Labour, the Ministry for Foreign Affairs, the Ministry of the Interior).

This would also require providing a budget for gender-related activities.

- Provide gender training for policymakers and officials in state agencies dealing with migration to promote gender-sensitivity in daily practices and activities (Chapter 1).
- If party to CEDAW set up the necessary institutional arrangements to enable implementation of CEDAW commitments including those related to improving the situation of female migrant workers. Recently, significantly more states have been reporting on the situation of female migrants since this aspect has been included into their overall CEDAW reports. The provisions in CEDAW of particular relevance to female migrants are: the elimination of stereotyped roles for men and women (Art. 5); the suppression of all forms of trafficking in women and the exploitation of the prostitution of women (Art. 6); the equality of women's rights to acquire, change or retain nationality (Art. 9); the equality of women's rights in relation to education (Art. 10), employment (Art. 11) and health (Art. 12); and the recognition of the rights of women in rural areas (Art. 14). In November 2008, CEDAW adopted a General Recommendation No. 26 on Women Migrant Workers.¹

In working towards an institutional framework that includes at least some of the aspects mentioned above, governments create a good base for including gender aspects into labour migration policies.

4.2 Regulation of Private Employment Agencies

Recruitment agencies are of help to migrants if they can simplify paperwork and provide job-

placement and preparatory services. However, the practices of recruiters and private employment agencies have been widely criticized.² Some of the main concerns have been charging high placement fees, contracting workers under false conditions, and, in several cases, physical abuse and sexual exploitation of female migrant workers. From a gender perspective, it is important to establish if female migrants are more affected than men by the maltreatment and abuse of employment agencies in the recruitment and placement processes and if female migrant workers are more dependent on services provided by recruitment agencies. Based on an assessment of the situation, actions can be taken to address such malpractices.

4.2.1 Female Migrant Workers Benefit from General Standards

Female migrant workers may particularly benefit from employment agencies' compliance to general minimum standards, in particular when state-monitored, since this should ensure their reliability and a certain service quality, and safeguard them from risks of labour exploitation and trafficking. Employment agencies providing services to highly vulnerable employment sectors should be carefully monitored, such as migrant domestic and care workers, and hospitality and seasonal agricultural workers. However, low-skilled male migrant workers may also be significantly exposed to recruiter malpractices given their concentration in economic sectors prone to labour abuse, such as construction and agriculture.³ It is therefore important that governments protect their nationals by requiring at a minimum that employment agencies are accredited entities.

ILO Convention No. 181 on Private Employment Agencies (1997) prohibits private employment agencies from charging workers for their services, and provides that workers can join trade unions (Textbox 4.1). As of July 2008, only 20 countries have ratified the Convention, some of which are large countries of origin.⁴ Due to the low rate of

ratification, other measures are needed to regulate recruitment and employment agencies.

Governments can regulate and improve control of employment agencies through a number of measures that benefit not only female migrant workers, but all migrant workers:

- Establish strict requirements for the establishment of recruitment agencies, for example: minimum capital; a bond deposit

to insure against all valid and legal claims arising from violations of the conditions of grants; and the use of licences and employment contracts, and effective means to protect workers, particularly female workers, from exploitation and violence, such as providing alternative employers in problematic cases, a free phone number for emergency cases and complaints, and information on the rights of labour migrants. These measures reduce the dependency

TEXTBOX 4.1

ILO: Private Employment Agencies Convention, 1997 (No. 181)

In particular, Article 11 states: A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1(b) above, in relation to:

- freedom of association;
- collective bargaining;
- minimum wages;
- working time and other working conditions;
- statutory social security benefits;
- access to training;
- occupational safety and health;
- compensation in case of occupational accidents or diseases;
- compensation in case of insolvency and protection of workers' claims;
- maternity protection and benefits, and parental protection and benefits.

Article 8 of the Convention is particularly concerned with preventing the abuse of migrant workers.

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.
2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Source: ILO's Convention on Private Employment Agencies (1997).

of migrant employees on recruiters and employers, and empower them to complain in case of malpractice or mistreatment.

- Limit the duration of the validity of the business licences. Licence renewal can be made dependent on a positive re-evaluation. The evaluation should contain a section on non-discriminatory treatment of female customers.
- Restrict or forbid the process of transferring, conveying or assigning any other person, partnership or corporation to another agency.
- Forbid licensed recruitment agencies from conducting any recruitment activity outside of its registered office in the course of doing business.
- Revoke licences and permanently ban non-complying agencies from providing overseas employment.
- Ask migrant workers who have used a recruitment agency to evaluate the quality of the services and of the working/living conditions abroad after return. This will allow a more holistic understanding of the recruitment/employment experience, since upon completion of employment, migrants may feel freer to speak out about any malpractices or harassments they may have suffered.

4.2.2 Making Prospective Labour Migrants Recruitment-Savvy

It is very important to disseminate training material to potential labour migrants, educating them on the dangers of recruitment while providing them with basic information and the means to be cautious when looking for a job abroad. Such recommendations may be effectively provided by governments and state agencies in the countries of origin, because they can best ensure distribution of pre-departure information.

4.3 Pre-Departure Services

Pre-departure services have become a keyword when discussing the contributions of countries of origin to ensure safe migration. However, to ensure that they are of good quality, the following criteria should be considered:

- They should be of sufficient duration, easy to access and free of charge.
- They should be rights-based, thus equipping potential migrants with knowledge on labour, health, and other rights and obligations, including destination country requirements regarding admission, employment, professional qualifications and language skills, etc.
- They should neither romanticize nor demonize migration, but enable the participants to make up their own minds.

In the following section, examples of pre-departure services are presented, good practices given, and some challenges addressed.

4.3.1 Information on Safe Migration and Migration Orientation Programmes

To ensure the right to mobility and safe migration conditions for female migrant workers, countries of origin and destination can co-operate through raising awareness of migration realities (resulting in “informed choices”) and legal migration procedures. As a statistical evaluation of the IOM-operated Migration Resource Centres in Georgia (Kutaisi, Tbilisi, Gurjaani, Batumi) shows, women, particularly in their 20s and college-educated, make extensive use of the services provided; they account for 54 percent of the total number of visitors (2,161 in total).⁵ Pre-migration information is therefore in demand, especially by young women.

Canada: Country-Specific Pre-Departure Orientation Programmes

The Government of Canada funds a Canadian Orientation Abroad Program in the Philippines (the country of origin of most caregivers in Canada). The programme provides pre-departure counselling to potential immigrants coming to Canada, including live-in caregivers. It assists them in adapting to Canadian life and makes them aware of their rights. An information leaflet is distributed to every caregiver with their work permit, which includes information about rights, contact information for advocacy groups and steps towards recourse through provincial labour laws should they encounter an abusive employment situation. Furthermore, a revised communications strategy is being developed to improve employer awareness of their obligations when hiring a live-in caregiver.

Source: CEDAW Report, Canada: UN (2007: 40).

Information can be disseminated by using different channels to reach out to the largest possible target audience: information leaflets, popular programmes in the national media, such as radio talk shows or television programmes targeting women or community service. These channels have proven moderately effective. Information can also be disseminated by using migrant information offices, government agencies, specialized NGOs and others.

The information should be written in accessible languages and disseminated by states, employers, trade unions and other appropriate bodies or institutions. Pre-employment orientation programmes can assist in assessing prospective applicants' preparedness and qualifications for embarking on overseas employment. They can also alert the applicants to the fact of illegal recruitment, the realities of working abroad and the correct application and recruitment procedures.

4.3.2 Pre-Departure Skills Upgrading

In some countries, pre-departure programmes have been implemented, mainly on private household services, as a way of upgrading the skills of female migrants. While offering skills upgrading to female migrant workers, it is important that training programmes not only aim to strengthen their skills in low-wage sectors, but are also offered in other areas such as language

and technical skills. Furthermore, attention should be given to the quality and affordability of such programmes.

Upgrading of skills will greatly benefit the migrant who can seek employment on a more qualified level and earn higher wages, which will also be reflected in higher transfer of remittances to the benefit of the recipients and the country of origin.

4.3.3 Documenting Skills

While abroad, a common problem experienced by migrants is how to account for the work experience and skills gained in a given job, since expertise gained in one placement is often unrecognized in another. While this problem concerns both female and male migrants, female migrant workers are often more affected by de-skilling, since they have fewer job opportunities in destination countries outside the domestic services, care and hospitality sectors. Furthermore, due to the informal nature of many care services jobs, such as domestic work, female migrants may find it hard to increase their wages as their experience increases. One possible way of combating this is through official documentation of skills and work experience. A good practice initiated by trade unions has been to suggest to migrant workers that they record their work experience in a single document.

Skills Upgrading for Caregivers: “From Sri Lanka to Tuscany”

An example of a skills-upgrading programme is the pilot programme for Sri Lankan caregivers of children and the elderly, *From Sri Lanka to Tuscany*. The programme was carried out by the Italian Government in co-operation with IOM in the region of Tuscany, which has a severe shortage of care workers. Sixty successful applicants were chosen out of 250 candidates by the Province of Tuscany and the employer families. The participants received 60 hours of Italian language training in Colombo, Sri Lanka, at the Dante Alighieri Society and a 25-hour course in the field of personal care by IOM in co-ordination with the training department of the Tuscan Regional Authorities. The training was continued in Italy, leading to an Italian “Personal Care Assistant” qualification. In most cases, this certificate led to an increase in salary for the caregiver. The placement was monitored for six months. An added element to the programme was the cultural mediator. Both workers and employers could address the mediator, for instance, when problems arose due to language barriers. As a challenge in the pre- and post-departure training, IOM stated: *“Everyone agrees that the training is the most positive aspect, but we need to find a balance. If the pre-recruitment training in Sri Lanka is too long, families get impatient and threaten to pull out of the programme. If the training is too short, families are frustrated because then the workers aren’t trained properly”*. The project has been replicated in Moldova with 200 selected workers.

Source: Pandya (2005: 8-10).

4.4 Protective Measures

4.4.1 A Safety Net of Diplomatic Missions

Countries of origin put a great deal of effort into providing tailored services for their nationals who are labour migrants; some countries have also introduced specific services for their female citizens. Two countries that have taken a number of steps to assist their migrating nationals are the Philippines and Sri Lanka. In order to provide on-site protection for Filipino migrant workers, the Department of Labor and Employment (DOLE) established Philippine Overseas Labour Offices (POLOs) in over 30 selected strategic destination countries. This was achieved by providing the labor attachés assigned in various Philippine embassies abroad with extra staff and funding. The labor attachés help in verifying employers wanting to recruit and hire Filipino workers and provide their migrant workers with on-site services, especially in times of emergency or evacu-

ation.⁶ Consular personnel are also trained and provided with information, for instance, on how to assist female migrant workers who have left their employers due to maltreatment.

The Migrant Workers’ Welfare Fund, established by the Sri Lanka Bureau of Foreign Employment, is available to migrant workers who need funds in either Sri Lanka or countries of destination. The services provided by the Philippines and Sri Lanka may serve as guidance, but every country will have to consider its own context and possibilities. Countries of origin, particularly small states, may not have the resources to set up diplomatic missions in all countries in which their citizens work and live. Nevertheless, states with significant out-migration might be able to selectively and/or temporarily set up similar personnel in core countries of destination and provide gender-sensitive training for consular personnel.

A good practice example employed on return can be found in the Canadian Seasonal Agricultural

Workers' Program, which allows migrant workers to evaluate their employers after they have participated in the programme. Employers who do not comply with the agreed labour standards are put on a black list.⁷

4.4.2 Countering Violence against Women Migrants

Some countries of origin have reacted to the violence experienced by their nationals abroad and established different mechanisms to help them. In order to reduce violence against female migrant workers and assist those who have been subjected to violence, the following recommendations should be considered:

- Governments of countries of origin should inform their citizens before departure and via their diplomatic missions about up-to-date legal provisions in countries of destination to protect female migrant workers from all forms of violence. Such information should state where the migrant can find support services,

such as shelters, mediation services, NGOs and help lines. Similar information should be provided to the general public in countries of origin.

- Governments should provide sufficient resources and gender-sensitivity training for embassy and consulate personnel, and other relevant governmental officials, so they would be better prepared and able to respond to the needs of female migrant workers who have been subjected to violence and abuse.
- Governments should establish appropriate services for returning female migrant workers who have been victims of violence and/or support re-integration programmes initiated by NGOs.
- Governments should take note and document foreign sponsors who have a history of violence against women, in particular domestic violence (Textbox 4.2).

TEXTBOX 4.2

Protecting Victims of Violence: the Commission on Filipinos Overseas (CFO) Foreign Sponsor Watchlist System

In 1998, the Philippines created the Inter-Agency Committee on Inter marriages to address the problem of violence against spouses abroad and the trafficking of Filipino women. The Commission on Filipinos Overseas (CFO) put a *Foreign Sponsor Watchlist System* in place in order to:

[...] facilitate access to information on foreign partners who have racist backgrounds or may have petitioned Filipino women more than once, especially those with a history of domestic violence. The CFO Case Monitoring System effectively documents and monitors cases involving Filipinos overseas referred to CFO for assistance. The CFO Information System, on the other hand, develops and maintains gender-sensitive system to generate sex-disaggregated data.

A *Nationwide Guidance and Counselling Service* provides information on migration laws, marriage concerns and ways of coping with difficult situations, available welfare and support services abroad, and of their individual and conjugal rights.

Source: UN (2008: para. 69).

4.5 Limiting the Social Costs of Migration: Improving the Situation in the Country of Origin of Non-Migrant Family Members

Parental migration or the migration of only one member of the family has always been common. However, the number of non-migrant family members differs significantly by country of origin. There is no general trend towards an increase in the number of non-migrating family members. For example, recently there has been a significant decrease in the number of non-migrating children and spouses in some countries, such as Moldova (Textbox 4.3) and Albania,

In some countries, such as Tajikistan, mostly men leave for labour migration. In these countries, particularly in the rural areas, women make up the majority of the inhabitants. This scenario can have mixed effects on the non-migrating spouses. On the one hand, they may gain from increased civic participation as they takeover the roles from the spouses who have left; but on the other, they may be burdened by the increased workloads and responsibilities.

4.5.1 The Positive and Negative Effects that Migration Has on Non-Migrating Family Members in the Country of Origin⁸

Families and communities can profit from migration through remittances, thus increasing household income. This increase can improve the access to education, health care services, housing and small-scale investments.

Migration without the possibility of family reunification can have a negative social impact on family members, who have to deal with the physiological

effects of living apart. In particular, children can be very negatively affected by their parents' absence and care. This may have adverse effects on their physical and psychological health, which may be manifested by higher risks of school drop-out, drug and alcohol abuse and/or engaging in criminal activities. Large out-migration from certain areas of one gender or age group can thus have an important impact on the economic performance and the social cohesion of communities. However, such negative outcomes are not automatic and not necessarily linked to the parents' or spouses' absence.

Some countries are responding to the challenges faced by children who have one or two family members living abroad by developing programmes that exclusively address their needs and wants within the framework of their social policies, and to a certain degree, their migration policies. For example, this includes developing special support services: institutionalized child care, educational support, and counselling and psychological services at schools.

Other stakeholders, such as NGOs, also contribute by setting up a number of programmes. For instance, a programme that addresses the social cost of migration on children of migrants has been set up by the Filipino NGO Atikha. The programme contains a number of complementary components:⁹

- **Information and awareness raising:** Children of all ages are provided with realistic and accurate information about their family situation, which enables them to better cope with separation. Migration Realities Seminars raise awareness of the realities of migration. The Workshop "24 Hours in a Day of a Domestic Helper" helps children realize how hard their parents work and what the motivations for migration are.
- **Communication:** The programme "Bridging the Communication Gap" tries

TEXTBOX 4.3**Moldova: National and Local State Institutions Supporting Children of Migrants**

The Government of Moldova identifies various categories of children with difficulties, such as those without parental care due to the migration of parents. Moldova has been successful in involving a broad range of ministries at the national level and institutions at the local level in different activities aimed at assisting such children. The 2002 National Concept on Child and Family Protection and the 2003 National Strategy on Child and Family Protection acknowledged the challenges posed by migration to children's welfare. At the beginning of September 2005, Moldovan schools started to offer an optional course in life skills to help children facing these challenges. Due to the significant extent of migration abroad, the Ministry of Education, Youth and Sports (MEYS) put deputy headmasters in charge of keeping records on non-migrating children of migrants. MEYS promotes the policy of raising children within families. Accordingly, migrating parents' rare requests to leave children in residential institutions, such as orphanages, are now refused. In the District Departments of Education and Youth (DDEY), the Child Protection Inspector is responsible for children at risk. At the request of caregivers, the District Departments supply humanitarian aid to migrants' children whose parents do not send remittances. The Ministry of Health and Social Protection (MHSP) supports the foundation of community centres by providing various forms of assistance financed by the Fund of Social Investments of Moldova. Due to compulsory insurance, medical assistance is free to all children, regardless of whether or not they live with their parents.

Source: UNICEF (2008); UNICEF Moldova (6 October 2008).

to enhance the quality of communication between family members.

- **Counselling:** Peer counselling trains children and young people to listen and give each other advice.

- **Fostering gender sensitivity:** In most cases in which women have migrated alone, boys and men have not taken over household responsibilities. As a result, girls suffer in particular from the burden of household chores, even at very young ages. The programme intends first to increase gender sensitivity and the acceptance of new roles for the next male generation. Second, in girls' workshops, girls realize that relegating housework to female family members is not natural and that they can ask other family members for help.

While policy responses to assist migrants' children are necessary, one should also keep in mind that many transnational families and global households have learned to cope with the negative aspects of separations; migration does not necessarily lead to the disintegration of families and couples. Furthermore, the great majority of migrating parents carefully consider with whom to leave their children. Moreover, migrants have also developed systems and routines in long-distance parenting, allowing their children to receive guidance from a distance. In many cases, advancements in information technology enable closer contact between family members living apart.

4.6 Optimizing the Benefits of Remittances Upon Return

Remittances are considered a key gain from migration, contributing to social development and poverty reduction. However, together with their positive contributions, there are also offsetting social and economic costs. Many empirical case studies have pointed out that gender plays a significant role in remittance transfers and use. Female migrants remit similar amounts of money to male migrants, but due to their lower wages, the former actually remit a higher percentage of their overall income. Thus, remittances pose a bigger economic burden on female migrant workers. Furthermore, studies have shown that female migrant workers continue to send remittances for a longer period of time. For those receiving remittances, studies have shown that women make up the largest receivers.

Many international organizations such as the United Nations International Research and Training Institute for the Advancement of Women (INSTRAW) have highlighted the connections between gender and remittances. In collaboration with partners, they have carried out case studies and implemented pilot programmes on gender and remittances in six paired countries: the Dominican Republic-The United States of America, the Philippines-Italy, Albania-Greece, Senegal-France, Morocco-Spain, Lesotho-South Africa.¹⁰

In some countries of origin, the financial system discriminates against women where local practices require them to have the approval of a male family member to open a bank account or to apply for credit. Women also face other discriminatory practices, such as the requirement of land and/or house deeds that may be in their husband's name, or the need to fill out written forms they do not understand. Governments should therefore strive to eliminate legal and administra-

tive barriers that limit equal access to financial services for both men and women.

The number of initiatives addressing the **transfer of remittances** is increasing and is largely driven by financial institutions, international and national government agencies. Where transfers via financial institutions are expensive, other alternatives could also be considered involving NGOs and other appropriate agencies in order to broaden the transfer options to migrant workers. Information technology (IT) and new technologies provide innovative ways to transfer remittances. However, there is a gender and generational gap in IT access and usability, which may cause exclusionary effects in cost-effective remittance access.¹¹ Thus, financial and IT literacy training is particularly important for women, both senders and receivers of remittances. In order to avoid an urban bias, such training and services also need to be extended to rural areas.

With the aim of optimizing the benefits from migration in countries of origin, much emphasis has been put on the **use of remittances** and savings, and on training remittance receivers, providing them with business and investments skills, and in some cases, micro-credit loans. Such initiatives may be particularly important for female remittance receivers who may lack knowledge and experience in money handling.

While the discussion on remittances is often focused on financial transfers, **social remittances** – e.g. in the form of skills or knowledge obtained abroad – can also have a positive impact on the communities of the country of origin. Projects aimed to facilitate the transfer of social remittances by female migrant workers to non-migrant women in their countries of origin have proved to be beneficial to both the women receiving the advice and to the female migrants whose knowledge and experiences are attributed an additional social value.

4.7 Reintegration of Migrant Women

Reintegration policies and/or programmes should encompass a broad range of activities consisting of three dimensions: political, social and economic.

Different groups of female migrants, such as single women or mothers, highly skilled or low-skilled women, demand different types of reintegration programmes. One specific group to take into consideration when designing reintegration programmes is **academically trained women** (Table 8). Women are overrepresented in the number of return migrants with university degrees in the Eastern Europe and Central Asia (ECA) region. In Georgia, for example, more than half of all female returnees possess a university degree, clearly outnumbering university educated men returnees. It is therefore important to accommodate these highly-skilled female migrants returning to their countries in the local job markets in order to fully use their qualifications in the local economy. As female migrant workers often do not work in their trained professions abroad, they may be in need of refresher courses upon return.

Reintegration programmes implemented by state agencies and NGOs can include a variety of

services and strategies to smooth the process of returning, such as:

- providing employment support and/or counselling;
- facilitating the transfer of pensions and other social benefits obtained abroad;
- making grants or low risk loans available for business ventures;
- offering additional training or access to further education;
- addressing social, family or other problems.

In efforts to make reintegration programmes more gender-sensitive, governments and policymakers should assess some of the particular needs of returnee migrant women. For example, the programme “Supporting the development of the state policy on social and economic integration of returning labour migrants in the Kyrgyz Republic”¹² launched by the Network of the Resource Centres for Labour Migrants in the Kyrgyz Republic, provides support to returning migrants in the areas of employment and social benefits. Although it could be improved by being more gender-sensitive, the programme is a good reintegration example.

Table 8

Proportion of Return Migrants with University Degrees, 2007

Country	Female (percent)	Male (percent)
Georgia	52.7	37.7
Bulgaria	31.5	25.0
Tajikistan (b)	28.8	17.2
Kyrgyz Republic (a)	30.3	20.0
Romania	11.5	12.8
Bosnia and Herzegovina	11.0	9.5

Source: Manssor and Quillin (2007:185).

Note: a. University degree; b. Master's degree or higher.

4.8 Conclusions

Countries of origin are in a unique position to facilitate safe migration of their female migrant workers. A supportive institutional and regulatory framework can protect and empower their female migrants in the *recruitment process and the pre-departure phase*. This includes disseminating information and providing training and skills upgrading to those migrating. Good preparation before departure is a prerequisite for a safe and successful migration experience.

Achieving a strong institutional framework requires: (a) recognizing the importance of including gender aspects in labour migration policies; (b) carrying out gender impact assessments and implementing a Gender Action Plan; (c) strengthening or establishing a gender unit or other structures dealing with gender issues related to migration; (d) providing gender training for all staff and gender desks dealing with migration-related matters in governmental departments and other bodies; and (e) covering the situation of female migrant workers in CEDAW reporting.

Private employment agencies need to comply with minimum standards, as outlined in ILO Convention No. 181. However, due to its low ratification rate, this *Guide* highlights further measures that can help to regulate recruitment agencies. It also suggests a number of specific pre-departure services that can be provided by state agencies and non-state organizations in the countries of origin to their labour migrants such as information materials, media programmes and pre-employment and pre-departure programmes.

Furthermore, the Guide recommends that governments should provide protective measures to their labour migrants abroad by establishing specific support services in diplomatic missions; appointing labour attachés and training their consular personnel to be gender-sensitive.

Moreover, this chapter addressed the social cost of migration and suggested ways of improving the situation for non-migrant family members. In particular children can be negatively affected by their parents' absence. Therefore, governments and non-governmental organisations could provide special support services such as institutionalised child care, educational support and counselling.

Also highlighted was the key role that remittances play in migration. They are seen as a central outcome of migration, contributing to socio-economic development. Like many policies, financial systems to remit money appear gender-neutral, ignoring the different barriers faced by men and women. In order to obtain the highest optimization of migrants' remittances, governments and relevant organizations should aim to foster equal access to financial services for both men and women, and to establish low-cost services to remit money.

Finally, the chapter addressed the reintegration of migrant women and suggested the implementation of different reintegration programmes serving different groups of women, as well as the inclusion of a variety of flexible and tailored services to smooth the often uneasy process of returning. Such services include: facilitating the transfer of pensions and other social benefits obtained abroad; granting low risk loans available for business ventures; offering additional training or access to further education; and addressing social, family or other problems related to the migrant's return.

Endnotes

- 1 For a detailed application of CEDAW on migration, see UNIFEM (2008b).
- 2 Kuptsch (2006).
- 3 Moreno-Fontes Chammartin (2008: 39).
- 4 Countries that have ratified Convention 181 are: Albania (30 June 1999), Algeria (6 June 2006), Belgium (28 September 2004), Bulgaria (24 March 2005), Czech Republic (9 October 2000), Ethiopia (24 March 1999), Finland (25 May 1999), Georgia (27 August 2002), Hungary (19 September 2003), Italy (1 February 2000), Japan (28 July 1999), Lithuania (19 March 2004), Republic of Moldova (19 December 2001), Morocco (10 May 1999), The Netherlands (15 September 1999), Panama (10 August 1999), Poland (15 September 2008), Portugal (25 March 2002), Spain (15 June 1999), Suriname (12 April 2006) and Uruguay (14 June 2004).
- 5 IOM (2008c). Data provided by IOM Mission to Georgia.
- 6 Tomas (2008: 15).
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- 8 Toyota, Yeoh and Nguyen (2007).
- 9 Dizon-Anonuevo (2008) and personal communication, July 2007 and October 2008 by Helen Schwenken.
- 10 INSTRAW (2008).
- 11 Moreno-Fontes Chammartin (2008: 49). Some IT companies and financial service providers have set up initiatives to build IT skills at the community level, particularly among women migrants, and non-migrating children and spouses of migrants, such as the Tulay IT Skills Training Programs for Overseas Filipino Workers & Dependents, and similar projects in seven other Asian countries (Lori Forman, Microsoft, Regional Coordinator, Community Affairs, Asia Pacific, China, Japan, 27 October 2008).
- 12 Network of the Resource Centres for Labour Migrants, Bishkek, 9 October. 2008.



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Annexes

Annex 1a: Ratification of International Conventions Protecting Migrant Workers and Women

OSCE participating States

COUNTRY	CEDAW Convention 1979	ICERD Convention 1965	Protocol to Prevent, Suppress and Punish Trafficking 25 December 2003	The United Nations International Convention on the Protection of the Rights of all Migrants Dec.-1990	The ILO Conventions on Migrant Workers 1975
Albania	11/04/94 (a) (b)	11/05/94 (a) (b)	12/12/00 (a) 21/08/02 (b)	05/06/07 (a) (b)	09/12/78 (a) 12/09/06 (b)
Andorra	15/01/97 (a) (b)	05/08/02 (a) 22/09/06 (b)			
Armenia	13/09/93 (a) (b)	23/06/93 (a) (b)	15/11/01 (a) 01/07/03 (b)		09/12/78 (a) 27/01/06 (b)
Austria	17/07/80 (a) 31/03/82 (b)	22/07/69 (a) 09/05/72 (b)	12/12/00(a) 15/09/05 (b)		
Azerbaijan	10/07/95 (a) (b)	16/08/96 (a) (b)	12/12/00 (a) 30/10/03 (b)		
Belarus	17/07/80 (a) 04/02/81 (b)	07/03/66 (a) 08/04/69 (b)	14/12/00 (a) 25/06/03 (b)		
Belgium	17/07/80 (a) 10/07/85 (b)	17/08/67 (a) 07/08/75 (b)	12/12/00 (a) 11/08/04 (b)		
Bosnia and Herzegovina	01/09/93 (a) (b)	16/07/94 (a) (b)	12/12/00 (a) 24/04/02 (b)	13/12/96 (a) (b)	09/12/78 (a) 02/06/93 (b)
Bulgaria	17/07/80 (a) 08/02/82 (b)	01/06/66 (a) 08/08/66 (b)	13/12/00 (a) 05/12/01 (b)		
Canada	17/07/80 (a) 10/12/81 (b)	24/08/66 (a) 14/10/70 (b)	14/12/00 (a) 13/05/02 (b)		
Croatia	09/09/92 (a) (b)	12/10/92 (a) (b)	12/12/00 (a) 24/01/03 (b)		
Cyprus	23/07/85 (a) (b)	12/12/66 (a) 21/04/67 (b)	12/12/00 (a) 06/08/03 (b)		09/12/78 (a) 28/06/77 (b)
Czech Republic	22/02/93 (a) (b)	22/02/93 (a) (b)	10/12/02 (a) Not Ratified		
Denmark	17/07/80 (a) 21/04/83 (b)	21/06/66 (a) 09/12/71 (b)	12/12/00 (a) 30/09/03 (b)		
Estonia	21/01/91 (a)	21/10/91 (a) (b)	20/09/02 (a) 12/05/04 (b)		

COUNTRY	CEDAW Convention 1979	ICERD Convention 1965	Protocol to Prevent, Suppress and Punish Trafficking 25 December 2003	The United Nations International Convention on the Protection of the Rights of all Migrants Dec.-1990	The ILO Conventions on Migrant Workers 1975
Finland	17/07/80 (a) 04/09/86 (b)	06/10/66 (a) 14/07/70 (b)	12/12/00 (a) 07/09/06 (b)		
France	17/07/80 (a) 14/12/83 (b)	28/07/71 (a) (b)	12/12/00(a) 29/10/02 (b)		
Georgia	26/10/94 (a) (b)	02/06/99 (a) (b)	13/12/00 (a) 05/09/06 (b)		
Germany	17/07/80 (a) 10/07/85 (b)	10/02/67 (a) 16/05/69 (b)	12/12/00 (a) 14/06/06 (b)		
Greece	02/03/82 (a) 07/06/83 (b)	07/03/66 (a) 18/06/70 (b)	13/12/00 (a) Not Ratified		
Holy See		21/11/66 (a) 01/05/69 (b)			
Hungary	06/06/80 (a) 22/12/80 (b)	15/09/66 (a) 04/05/67 (b)	14/12/00 (a) 22/12/06 (b)		
Iceland	24/07/80 (a) 18/06/85 (b)	14/11/66 (a) 13/03/67 (b)	13/12/00 (a) Not Ratified		
Ireland	23/12/85 (a) (b)	21/03/68 (a) 29/12/00 (b)	13/12/00 (a) Not Ratified		
Italy	17/07/80 (a) 10/06/85 (b)	13/03/68 (a) 05/01/76 (b)	12/12/00 (a) 02/08/06 (b)		09/12/78 (a) 23/06/81 (b)
Kazakhstan	26/08/88 (a) (b)	26/08/98 (a) (b)	31/07/08 (a) (b)		
Kyrgyz Republic	10/02/97 (a) (b)	05/09/97 (a) (b)	13/12/00 (a) 02//10/03 (b)		
Latvia	14/02/92 (a) (b)	14/04/92 (a) (b)	10/12/02 (a) 25/05/04 (b)		
Liechtenstein	22/12/95 (a) (b)	01/03/00 (a) (b)	14/03/01 (a) 20/02/08 (b)		
Lithuania	18-01-94 (a) (b)	08/06/98 (a) 10/12/98 (b)	25/04/02 (a) 23/06/03 (b)		
Luxembourg	17/07/80 (a) 02/02/89 (b)	12/12/67 (a) 01/05/78 (b)	13/12/00 (a) Not Ratified		
The former Yugoslav Republic of Macedonia	18/01/94 (a) (b)	18/01/94 (a) (b)	12/12/00 (a) 12/01/05 (b)		09/12/78 (a) 17/11/01 (b)
Moldova	01/07/94 (a) (b)	26/01/93 (a) (b)	14/12/00 (a) 16/09/05 (b)		
Monaco	18/03/05 (a) (b)	27/09/95 (a) (b)	13/12/00 (a) 05/06/01 (b)		
Montenegro	23/10/06 (a) (b)	23/10/06 (a) (b)	23/10/06 (a) (b)	23/10/06 (a) Not Ratified	09/12/78 (a) 03/06/06 (b)

COUNTRY	CEDAW Convention 1979	ICERD Convention 1965	Protocol to Prevent, Suppress and Pu- nish Trafficking 25 December 2003	The United Nations Interna- tional Convention on the Protection of the Rights of all Migrants Dec.-1990	The ILO Conventions on Migrant Workers 1975
Netherlands	17/07/80 (a) 23/07/91 (b)	24/10/66 (a) 10/12/71 (b)	12/12/00 (a) 27/07/05 (b)		
Norway	17/07/80 (a) 21/05/81 (b)	21/11/66 (a) 06/08/70 (b)	13/12/00 (a) 23/09/03 (b)		09/12/78 (a) 24/01/79 (b)
Poland	29/05/80 (a) 30/07/80 (b)	07/03/66 (a) 05/12/68 (b)	04/10/01 (a) 26/09/03 (b)		
Portugal	24/04/80 (a) 30/07/80 (b)	24/08/82 (a) (b)	12/12/00 (a) 10/05/04 (b)		09/12/78 (a) 12/12/78 (b)
Romania	04/09/80 (a) 07/01/82 (b)	15/09/70 (a) (b)	14/12/00 (a) 04/12/02 (b)		
Russian Federation	17/07/80 (a) 23/01/81 (b)	07/03/66 (a) 04/02/69 (b)	12/12/00 (a) 26/05/04 (b)		
San Marino	26/09/03 (a) Not Ratified	11/12/01 (a) 12/03/02 (b)	14/12/00 Not Ratified		09/12/78 (a) 23/05/85 (b)
Serbia	12/03/01 (a) (b)	12/03/01 (a) (b)	12/12/00 (a) 06/09/01 (b)	11/11/04 (a) Not Ratified	09/12/78 (a) 24/11/00 (b)
Slovak Republic	28/05/93 (a) (b)	28/05/93 (a) (b)	15/11/01 (a) 21/09/04 (b)		
Slovenia	06/07/92 (a) (b)	06/07/92 (a) (b)	15/11/01 (a) 21/05/04 (b)		09/12/78 (a) 29/05/92 (b)
Spain	17/07/80 (a) 05/01/84 (b)	13/09/68 (a) (b)	13/12/00 (a) 01/03/02 (b)		
Sweden	07/03/80 (a) 02/07/80 (b)	05/05/66 (a) 06/12/71 (b)	12/12/00 (a) 01/07/04 (b)		09/12/78 (a) 28/12/82 (b)
Switzerland	23/01/87 (a) 27/03/97 (b)	29/11/94 (a) (b)	02/04/02 (a) 27/10/06 (b)		
Tajikistan	26/10/93 (a) (b)	11/01/95 (a) (b)	08/07/02 (a) (b)	07/09/00 (a) 08/01/02 (b)	09/12/78 (a) 10/04/07 (b)
Turkey	20/12/85 (a) (b)	13/10/72 (a) 16/09/02 (b)	13/12/00 (a) 25/03/03 (b)	13/01/99 (a) 27/09/04 (b)	
Turkmenistan	01/05/87	29/09/94 (a) (b)	28/03/05 (a) (b)		
Ukraine	17/07/80 (a) 12/03/81 (b)	07/03/66 (a) 07/03/69 (b)	15/11/01 (a) 21/05/04 (b)		
United Kingdom	22/07/81 (a) 07/04/86 (b)	11/10/66 (a) 07/03/69 (b)	14/12/00 (a) 09/02/06 (b)		
United States of America	17/07/80 (a) (b)	28/09/66 (a) 21/10/94 (b)	13/12/00 (a) 03/11/05 (b)		
Uzbekistan	19/07/95 (a) (b)	28/09/95 (a) (b)	28/06/01 (a) 12/08/08 (b)		

(a) Date of signature, (b) Ratification

OSCE Partners for Co-Operation Mediterranean Partners for Co-Operation

COUNTRY	CEDAW Convention 1979	ICERD Convention 1965	Protocol to Prevent, Suppress and Punish Trafficking 25 December 2003	The United Nations International Convention on the Protection of the Rights of all Migrants Dec.-1990	The ILO Conventions on Migrant Workers 1975
Algeria	22/05/96 (a) (b)	09/12/66 (a) 14/02/72 (b)	06/06/01 (a) 09/03/04 (b)	21/03/05 (a) (b)	
Egypt	16/07/80 (a) 18/09/81 (b)	28/09/66 (a) 01/05/67 (b)	01/05/02 (a) 05/03/04 (b)	19/02/93 (a) (b)	
Israel	17/07/80 (a) 03/10/91 (b)	07/03/66 (a) 03/01/79 (b)	14/11/01 (a) 23/06/08 (b)		
Jordan	03/12/80 (a) 01/07/92 (b)	30/05/74 (a) (b)			
Morocco	21/07/93 (a) (b)	18/09/67 (a) 18/12/70 (b)		15/08/91 (a) 21/06/93 (b)	
Tunisia	24/07/80 (a) 20/09/85 (b)	12/04/66 (a) 13/01/67 (b)	13/12/00 (a) 14/07/03 (b)		

(a) Date of signature (b) Ratification

OSCE Asian Partners for Co-Operation

COUNTRY	CEDAW Convention 1979	ICERD Convention 1965	Protocol to Prevent, Suppress and Punish Trafficking 25 December 2003	The United Nations International Convention on the Protection of the Rights of all Migrants Dec.-1990	The ILO Conventions on Migrant Workers 1975
Japan (1992)	17/07/80 (a) 25/06/85 (b)	15/12/95 (a) (b)	09-12-02 (a) Not ratified		
Republic of Korea (1994)	25/05/83 (a) 27/12/84 (b)	08/08/78 (a) 05/12/78 (b)	13/12/00 (a) Not ratified		
Thailand (2000)	09/08/85 (a) (b)	28/01/03 (a) (b)	18/12/01 (a) Not ratified		
Afghanistan (2003)	14/08/80 (a) 05/03/03 (b)	06/07/83 (a) (b)			
Mongolia (2004)	17/07/80 (a) 20/07/81 (b)	03/05/66 (a) 06/08/69 (b)	27/06/08 (a) (b)		

Note: (a) Date of signature (b) Ratification

Annex 1b: Ratifications of the ILO Declaration on Fundamental Principles and Rights at Work

OSCE participating States

COUNTRY	Freedom of Association and Collective Bargaining		Elimination of Forced and Compulsory Labour		Elimination of Discrimination in Respect of Employment and Occupation		Abolition of Child Labour	
	Conv. 87 (1948)	Conv. 98 (1949)	Conv. 29 (1930)	Conv. 105 (1957)	Conv. 100 (1951)	Conv. 111 (1958)	Conv. 138 (1973)	Conv. 182 (1999)
Albania	1957	1957	1957	1997	1957	1997	1998	2001
Andorra								
Armenia	2006	2003	2004	4004	1994	1994	2006	2006
Austria	1950	1951	1960	1958	1953	1973	2000	2001
Azerbaijan	1992	1992	1992	2000	1992	1992	1992	2004
Belarus	1956	1956	1956	1995	1956	1961	1979	2000
Belgium	1951	1953	1944	1961	1952	1977	1988	2002
Bosnia and Herzegovina	1993	1993	1993	2000	1993	1993	1993	2001
Bulgaria	1959	1959	1932	1999	1955	1960	1980	2000
Canada	1972	Not Ratified	Not Ratified	1959	1972	1964	Not Ratified	2000
Croatia	1991	1991	1991	1997	1991	1991	1991	2001
Cyprus	1966	1966	1960	1960	1987	1968	1997	2000
Czech Republic	1993	1993	1993	1996	1993	1993	2007	2001
Denmark	1951	1955	1932	1958	1960	1960	1997	2000
Estonia	1994	1994	1996	1996	1996	2005	2007	2001
Finland	1950	1951	1936	1960	1963	1970	1976	2000
France	1951	1951	1937	1969	1953	1981	1990	2001
Georgia	1999	1993	1997	1996	1993	1993	1996	2002
Germany	1957	1956	1956	1959	1956	1961	1976	2002
Greece	1962	1962	1952	1962	1975	1984	1986	2001
Holy See								
Hungary	1957	1957	1956	1994	1956	1961	1998	2000
Iceland	1950	1952	1958	1960	1958	1963	1999	2000
Ireland	1955	1955	1931	1958	1974	1999	1978	1999
Italy	1958	1958	1934	1968	1956	1963	1981	2000
Kazakhstan	2000	2001	2001	2001	2001	1999	2001	2003
Kyrgyz Republic	1992	1992	1992	1999	1992	1992	1992	2004

COUNTRY	Freedom of Association and Collective Bargaining		Elimination of Forced and Compulsory Labour		Elimination of Discrimination in Respect of Employment and Occupation		Abolition of Child Labour	
	Conv. 87 (1948)	Conv. 98 (1949)	Conv. 29 (1930)	Conv. 105 (1957)	Conv. 100 (1951)	Conv. 111 (1958)	Conv. 138 (1973)	Conv. 182 (1999)
Latvia	1992	1992	2006	1992	1992	1992	2006	2006
Liechtenstein								
Lithuania	1994	1994	1994	1994	1994	1994	1998	2003
Luxembourg	1958	1958	1964	1964	1967	2001	1977	2001
The former Yugoslav Republic of Macedonia	1991	1991	1991	2003	1991	1991	1991	2002
Moldova	1996	1996	2000	1993	2000	1996	1999	2002
Monaco								
Montenegro	2006	2006	2006	2006	2006	2006	2006	2006
Netherlands	1950	1993	1933	1959	1971	1973	1976	2002
Norway	1949	1955	1932	1958	1959	1959	1980	2000
Poland	1957	1957	1958	1958	1954	1961	1978	2002
Portugal	1977	1964	1956	1959	1967	1959	1998	2000
Romania	1957	1958	1957	1998	1957	1973	1975	2000
Russian Federation	1956	1956	1956	1998	1956	1961	1979	2003
San Marino	1986	1986	1995	1995	1985	1986	1995	2000
Serbia	2000	2000	2000	2003	2000	2000	2000	2003
Slovak Republic	1993	1993	1993	1997	1993	1993	1997	1999
Slovenia	1992	1992	1992	1997	1992	1992	1992	2001
Spain	1977	1977	1932	1967	1967	1967	1977	2001
Sweden	1949	1950	1931	1958	1962	1962	1990	2001
Switzerland	1975	1999	1940	1958	1972	1961	1999	2000
Tajikistan	1993	1993	1993	1999	1993	1993	1993	2005
Turkey	1993	1952	1998	1961	1967	1967	1998	2001
Turkmenistan	1997	1997	1997	1997	1997	1997	Not Ratified	Not Ratified
Ukraine	1956	1956	1956	2000	1956	1961	1979	2000
United Kingdom	1949	1950	1931	1957	1971	1999	2000	2000
United States of America	Not Ratified	Not Ratified	Not Ratified	1991	Not Ratified	Not Ratified	Not Ratified	1999
Uzbekistan	Not Ratified	1992	1992	1997	1992	1992	Not Ratified	2008

Annexes 1a and Annex 1b have been compiled by evaluating the following sources:

CEDAW Convention 1979

<http://www.un.org/womenwatch/daw/cedaw/states.htm>

ICERD Convention 1965 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

Protocol to Prevent, Suppress and Punish Trafficking (25 December 2003)

<http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en

The ILO Conventions on Migrant Workers 1975 (C143)

<http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C143>

The ILO Declaration on Fundamental Principles and Rights at Work

<http://www.ilo.org/declaration/follow-up/annualreview/ratificationstatus/lang--en/index.htm>

Annex 2: Model Employment Contract for Domestic Work

In the European Union, domestic workers must be given a written statement of employment, according to the European Information Directive (Directive 91/533/EEC of 14 October 1991 on the obligation of employers to inform workers about the conditions applicable to their contract). This should contain the minimum employment conditions such as the kind of work, wages, and working hours. This model employment contract is for the provision of domestic services in a private household. It can also be used for the provision of other personal services, such as childcare and home care for the elderly.

The parties of this contract are:

Name _____

Address _____

Tel. _____

Hereafter called the “Employer”

And

Name _____

Born in (City, Country) _____ on (Day, Month) _____ 19 _____

Address _____

Tel. _____

Hereafter called the “Employee”.

The parties have agreed on the following:

1. Starting date of employment

The Employee will start to work for the Employer on _____ (Date)

2. Kind of services /activities, and place of work

a) The Employee shall provide domestic services in the private house of the Employer:

(If possible, specify the services in more detail below) _____

The Employer shall request the Employee to carry out only such duties as can be reasonably considered within the remit of the above-mentioned activities. All additional duties shall be by prior agreement only and shall attract an agreed additional payment.

b) The Employee will / will not live in. (Delete what is not appropriate.)

3. Volume of work, working hours, irregular hours and rest periods

a) The Employee will work on a weekly basis a total of _____ hours, and not more than 48 hours per week including overtime.

Working hours will be on Monday / Tuesday / Wednesday / Thursday / Friday (Delete as appropriate)

From _____ (Time) to _____ (Time)

For overtime hours, an additional payment of the sum of _____ per hour applies.

b) If the Employee has to work during the weekend as well, the following conditions shall apply:

- The Employee shall have a rest period of 35 continuous hours at least once a week.
- For working hours during the weekend / Sunday / or _____ (delete or specify as appropriate), an additional payment of the sum of _____ per hour applies.

c) The Employee has a right to a minimum rest period of _____ (for example, half an hour, or whatever is customary for the sector or region) per 6 hours of continuous service.

d) In the case of on-call work or flexible working hours, the minimum period to announce working hours shall be _____ (for instance, 4 days in advance in the case of flexible scheduling of working hours, or 12 hours in advance for on-call hours). When these minimum periods are not observed, the Employee shall receive the sum of _____ as an additional payment for irregularity.

Note: On the basis of the European Working Time Directive (Directive 2003/88/EC of 4-11-2003 concerning the organization of working time), working hours can be no longer than 13 hours per day and 48 hours per week (including overtime!) on average, taking into account a 4-month reference period. The minimum rest per 7 days is 35 hours of continuous rest (a 24- hour period plus the minimum nightly rest of 11 hours), in case the working day is longer than 6 hours, a minimum rest period needs to be given, the details of which will have to be regulated at national level by law or collective agreement).

4. Wages

From the commencement of the employment period, the wage paid to the Employee shall be the sum of: _____ gross (i.e. including taxes) per week.

(Note: The wage should be at least the legal minimum wage, and/or based on the collectively agreed minimum wage for similar work, and/or based on the customary wage that is paid for similar work in the city/region where the work is done.)

The wage shall be paid to the Employee weekly in cash / once a month into the bank account of the Employee. (Delete whichever is not appropriate.)

The Employer shall supply detailed **pay slips** to the Employee that set out:

- payment intervals (weekly, fortnightly or monthly);
- rate of pay per hour;
- details of overtime payments in respect of all hours above the agreed norm;

- details of all tax or social security deductions;
- details of other deductions from pay (which can only be made after prior agreement).

5. Holidays

The Employee has a right to paid holidays of a minimum of _____ weeks a year. *(Note: the minimum, based on the European Working Time Directive, is 4 weeks; more should be specified where this is customary in the sector and or region concerned).* The Employee has in addition the right to paid public holidays.

The exact periods of holidays shall be agreed between the Employee and Employer, taking into account the interests of both parties. The Employee shall enjoy a minimum continuous period of holiday of at least _____ *(for instance, 2 weeks)* per year.

The Employee also has a right to additional holiday pay of _____ per cent *(if this is normally applicable to similar Employees in the country concerned according to law, collective agreements, or practice).*

6. Sickness

In the case of sickness the Employee shall announce his/her absence before 09.00 of the scheduled day of work by a phone call to the Employer, giving the reason for the absence.

The Employee shall have a right to a minimum of _____ weeks of paid sickness leave, *(based on the legal minimum in the country and/or the collectively agreed minimum for similar work, and/or based on the customary minimum in the city/region where the work is done for similar work).*

7. Pregnancy and maternity

The Employee has a right to pregnancy and maternity leave of _____, *(according to at least the legal minimum for an Employee in the country concerned. Note: the minimum maternity leave according to EU regulations is 14 weeks in total, to be taken starting at least 2 weeks before confinement.)*

8. Additional rights / conditions / facilities

The Employee has a right to / the Employer is obliged to provide the following: *(Insert / delete as appropriate from the following)*:

- a. _____ in cash to provide for travel costs *(a weekly/monthly sum, or the actual costs)*;
- b. _____ % of the gross salary, i.e. the sum of _____ per year to save for old age / pension;
- c. _____ % of the gross salary / the sum of _____ per _____ to pay for sickness insurance;
- d. _____ % of the gross salary to be paid at the end of each calendar year as a bonus;
- e. In the case of living-in: a maximum deduction of _____ per _____ for room and board.
- f. The Employee cannot be charged for breakages or other small accidents that occur during the normal work routine. In case of exceptional damages, a maximum of _____ percent of the wage can be charged, not exceeding a maximum that can be considered fair and reasonable having regard to all reasonable circumstances.
- g. The Employer shall ensure that at all times the Employee is fully insured with respect to all activities connected to her/his employment.
- h. Travel to other places of work (for example, to holiday homes, accompanying family on vacation, etc.) shall be only on the basis of prior, voluntary agreement and such periods shall be regarded as paid employment attracting remuneration (basic and premium pay, as appropriate) and reimbursement of costs incurred.
- i. The Employer shall ensure that the Employee is promptly reimbursed for all out-of-pocket expenditure incurred during the course of his/her employment (for example, travel fares, purchases for children or those under his/her care, entrance charges, etc.).
- j. The Employer shall respect the privacy and personal dignity of the Employee. In the case of living-in domestic Employees, this entails provision of separate, adequate accommodation (i.e. private room[s]) to which no one else shall have access save with the permission of the Employee.
- k. The Employer shall facilitate the Employee in the free exercise of personal pursuits including leisure and sports activities, participation in religious services, meeting friends, participating in social events, etc.
- l. The Employer shall take all reasonable steps (for example, by provision of explanatory booklets and leaflets, etc.) to ensure that the Employee is aware of his/her statutory entitlements as an Employee and shall facilitate the Employee in seeking information and advice concerning such rights from a trade union, advocacy agency, etc. In accordance with international and national law, the Employer shall not restrict in any way the Employee's right to trade union membership and representation.

9. Duration and ending of the employment contract

This employment contract is agreed for an indefinite duration / for a fixed term of _____
(Delete as appropriate.)

Either the Employee or the Employer can end the contract, taking into account the minimum legal or collectively agreed provisions for ending labour contracts which normally apply to Employees doing similar work. This means that the Employee shall have a minimum notice period of _____ and the Employer shall have a minimum notice period of _____.

10. Identity documents

The Employee has sufficiently proved his/her identity to the Employer by showing his/her passport or other identity document (*if so desired*).

The Employer does not have the right to withhold any personal documentation belonging to the Employee (such as passport, visa, identity cards, etc.).

This employment contract is agreed between the parties as signed below, and made in two originals.

In _____ (Place)
Signature of the Employer

On _____ (Date)
Signature of the Employee

Replicated from ETUC (2005: 60-64).

Annex 3: Commonwealth Code of Practice for the International Recruitment of Health Workers

COMMONWEALTH CODE OF PRACTICE FOR THE INTERNATIONAL RECRUITMENT OF HEALTH WORKERS

INTRODUCTION

Many Commonwealth countries, both developed and developing, are experiencing shortages of skilled health workers. These shortages, which tend to be more severe in small island states, remote and rural areas, and some African countries, reduce countries' capacity to provide good quality health services to their populations.

2. Some countries are responding to the problem by systematically recruiting nurses, midwives, doctors, pharmacists, and other health care workers from other countries, in particular from developing countries. Whilst this is helping some recipient countries to overcome their staff and skills shortages, it deprives source countries of knowledge, skills, and expertise for which large amounts of resources have been expended. Although this type of international recruitment provides many health workers with opportunities to develop their careers, gain valuable experience, and improve living conditions for themselves and their families, it has also resulted in negative experiences for others.
3. Commonwealth Ministers of Health have agreed that, in keeping with Commonwealth values of co-operation, sharing and supporting each other, a consensus approach to dealing with the problem of international recruitment of health workers should be adopted.
4. This Code of Practice for the International Recruitment of Health Workers is intended to provide governments with a framework within which international recruitment should take place. The Code is sensitive to the needs of recipient countries and the migratory rights of individual health professionals. The Code does not propose that governments should limit or hinder the freedom of individuals to choose where they wish to live and work. Commonwealth governments may wish to supplement the Code with additional guidance particular to their own national needs and situations.
5. Commonwealth member states are encouraged to take into account existing arrangements, treaties between countries and within regions in the application of this Code, and any international guidelines relating to the movement of persons across borders.
6. The Commonwealth shall seek to encourage the adoption of the Code by countries outside the Commonwealth. International organizations such as the International Labour Organization (ILO), World Health Organization (WHO), the International Council of Nurses (ICN), and the International Council of Midwives should be encouraged to promote the Code to their non-Commonwealth members.

PURPOSE

7. The Code provides guidelines for the international recruitment of health workers in a manner that takes into account the potential impact of such recruitment on services in the source country.
8. The Code is intended to discourage the targeted recruitment of health workers from countries which are themselves experiencing shortages.

9. The Code seeks to safeguard the rights of recruits, and the conditions relating to their profession in the recruiting countries.

STATUS

10. The Code is not a legal document. Within the context of Commonwealth principles of co-operation and consensus, it is hoped that governments shall subscribe to it.

GUIDING PRINCIPLES

11. This Code applies the principles of transparency, fairness and mutuality of benefits as these relate to relations among Commonwealth countries, and between recruits and recruiters.

Transparency

12. Transparency should characterise any activities to recruit health care workers from one country to another. This would normally involve an agreement between recruiting countries and the source countries.

13. The Code requires recruiters to be transparent about the type of skills, expertise, the number of recruits, and grades being sought.

Fairness

14. Recruiters should not seek to recruit health care workers who have an outstanding obligation to their own country, for example, contract of service agreed to as a condition of training. However, it is the responsibility of recruits to disclose such information, right from the outset of indicating their interest in working outside their country of origin.

15. Fairness requires that recruiters provide full and accurate information to potential recruits on:

- the nature and requirements of the job that they are expected to perform;
- countries to which they are being recruited;
- administrative and contractual requirements;
- their rights.

16. Fairness also requires that recruiters provide recruits with accurate information about selection procedures.

17. Recruiters should also ensure that, while working abroad, the recruits shall be protected by the same employment regulations and have the same rights as equivalent grades of staff in the receiving country, for example, rates of pay, professional development and continuing education, and, where possible, access to training.

18. The Code of Practice does not wish to undermine the right of health workers to migrate to countries that wish to admit and employ them. The Code seeks to encourage the establishment of a framework of responsibilities between governments – and the agencies accountable to them – and the recruits. This framework would balance the responsibilities of health workers to the countries in which they were trained – whether of a legal kind, such as fulfilling contractual obligations, or of a moral kind, such as providing service to the country which had provided their training opportunities – and the right of health professionals to seek employment in other countries.

Mutuality of benefits

19. The capacities of countries that need to recruit staff and those that lose their skilled personnel vary significantly. Recruiters may be in a position to consider ways in which they could provide assistance to source countries.
20. The expression of the principle of mutuality of benefits should/could take the form of technical assistance from recruiting countries to those from which countries are recruiting (source countries).

COMPENSATION / REPARATION / RESTITUTION

21. Governments recruiting from other Commonwealth countries should/[may wish to] consider how to reciprocate for the advantages gained by doing so. This could include:
 - programmes to reciprocate for the recruitment of a country's health workers through the transfer of technology, skills and technical and financial assistance to the country concerned;
 - training programmes to enable those who return to do so with enriched value
 - arrangements to facilitate the return of recruits (subject to application of the non-discrimination principle and to the rights of the workers concerned in accordance with immigration and other laws).

SELECTION PROCEDURES

22. The recruit, prior to signing a contract, should ensure he/she fully understands details therein and is prepared to commit him/herself to honour the contract.

REGISTRATION

23. Registration/licensure to practise is the responsibility of the relevant regulatory body in each country and the specific requirements should be made known to recruits. It is the responsibility of the recruit to understand and comply with the jurisdictional requirements around registration/licensing and education.

WORKFORCE PLANNING

24. In addition to managing migration, Commonwealth member countries should explore and pursue additional strategies for retaining trained personnel.

Adopted at the Pre-WHA Meeting of Commonwealth Health Ministers 2003, Geneva, Switzerland, on 18 May 2003

Annex 4: Ethical Recruitment Codes in the Health Sector

National Codes	Name of Code	Web address
United Kingdom	“Code of Practice for the international Recruitment of Healthcare Professionals” (2004)	www.dh.gov.uk
Scotland	“Code of Practice for the International Recruitment of Healthcare Professionals in Scotland” (2006)	www.bda.org
Ireland	“Guidance for Best Practice on the Recruitment of Overseas Nurses and Midwives” (2001)	www.dohc.ie
Canada (remains a proposal put forth by the Canadian Policy Research Network, 2007)	“The Ethical Recruitment of Internationally Educated Health Professionals: Lessons from Abroad and Options for Canada” (2007)	www.cprn.org
Organizations/Associations’ Codes		
Commonwealth Secretariat	“Commonwealth Code of Practice for the International Recruitment of Health Workers” (2003)	www.thecommonwealth.org
World Health Organization	“WHO Code of Practice on the International Recruitment of Health Personnel” (draft 2008)	http://www.who.int/bulletin/volumes/86/10/08-058578/en/index.html
International Council of Nurses	“Ethical Nurse Recruitment: Position Statement” (2007)	www.icn.ch/psrecruit01.htm
Public Services International	“Policy Statement on International Migration with Particular Reference to Health Services” (2005)	www.world-psi.org
Australian Nursing and Midwifery Council	“Position Statement Ethical Recruitment of Internationally Qualified and Registered Nurses and Midwives” (2007)	www.anmc.org
European Federation of Nurses Associations	“EFN Good Practice Guidance for International Nurse Recruitment” (2005)	www.efn.be/version1/EN/pos_stat_Work.html
World Organization of Family Doctors (WONCA)	“A Code of Practice for the International Recruitment of Health Care Professionals: The Melbourne Manifesto” (2002)	nrha.ruralhealth.org.au/cms/uploads/publications/melbourne_manifesto.pdf
Academy Health Initiative (United States)	“Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Nurses to the United States” (draft 2008)	www.fairinternationalrecruitment.org

Source: Becklake (2008), a non-exhaustive collection.



Abbreviations and Acronyms

ABVAKABO FNV	Dutch Workers' Union (Netherlands)
ACTRAV	Bureau for Workers' Activities, ILO
AECI	<i>Agencia Española de Cooperación Internacional</i> (Agency for International Cooperation) (Spain)
ATH-ELE	<i>Asociación de Trabajadoras del Hogar</i> (Domestic Workers' Association) (Spain)
CEDAW	Committee on the Elimination of Discrimination against Women
CEPREDENAC	<i>Centro de Coordinación para la Prevención de los Desastres Naturales en América Central</i> (Coordination of Natural Disaster Prevention in Central America)
CFO	Commission on Filipinos Overseas (The Philippines)
CIS	Commonwealth of Independent States
CISL	<i>Confederazione Italiana Sindacati Lavoratori</i> (Italian Confederation of Workers' Unions) (Italy)
CoE	Council of Europe
DGB	<i>Deutscher Gewerkschaftsbund</i> (German Trade Union Federation) (Germany)
DOLE	Department of Labor and Employment (The Philippines)
DWU	Domestic Workers United (United States)
ECA	Eastern Europe and Central Asia
EFCA	Euroasia Foundation of Central Asia
EFN	European Federation of Nurses
EIRD	<i>Estrategia Internacional para la Reducción de Desastres</i> (International Strategy for Disaster Reduction, ISDR)
ETUC	European Trade Union Confederation
EU	European Union
FEDERCOLF	<i>Federazione Sindacale dei Lavoratori a Servizio dell'uomo</i> (Domestic Employee Federation) (Italy)
FIDALDO	Federazione Italiana Datori di Lavoro Domestico (Domestic Workers' Union) (Italy)
FILCAMS-CGIL	<i>Federazione Italiana Lavoratori Commercio Alberghi Mense e Servizi</i> (Italian Commerce Hotels Refectory and Services Workers Federation) (Italy)
FISASCAT-CISL	<i>Federazione Italiana Sindacati Addetti Servizi, Commerciali, Affini e del Turismo</i> (Italian Assigned Services, Commerce, Similar and Tourism Unions Federation) (Italy)
GIA	Gender Impact Assessment
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICN	International Council of Nurses
ILO	International Labour Organization
INSTRAW	United Nations International Research and Training Institute for the Advancement of Women
IOM	International Organization for Migration
IT	Information Technology
MoU	Memorandum of Understanding
NGO	Non-governmental organization
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OIM	<i>Organización Internacional para las Migraciones</i> (IOM)
OPS	<i>Organización Panamericana de la Salud</i> (Pan American Health Organization, PAHO)
OSCE	Organization for Security and Co-operation in Europe
PSI	Public Services International
SOPEMI	Continuous Reporting System on Migration
TGWU	Transport and General Workers' Union (UK)
TLMP	Temporal Labour Migration Programme
UFCW	United Food and Commercial Workers of Canada
UN	United Nations
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIFEM	United Nations Development Fund for Women
UNISON	Scotland's Public Service Union
VAWA	Violence Against Women Act (United States)
WHO	World Health Organization



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