

FORMULATION AND MANAGEMENT OF FOREIGN EMPLOYMENT POLICIES IN COUNTRIES OF DESTINATION*

CHAPTER 11

1. Introduction

Foreign workers are employed in many countries at all skill levels, even though some of them may originally have arrived as students, tourists or family members (see Chapters 4, 5 and 6, respectively), and then remained in the country to work. There are significant numbers of foreign workers in the European Union (EU); established countries of immigration such as Australia, Canada, New Zealand and the United States; the Gulf Cooperation Council (GCC) states; new immigration countries such as the Russian Federation; as well as a number of middle-income countries in the developing world, viz. Malaysia, South Africa and Thailand. As described earlier in Chapters 7 and 8, cross-border labour mobility between neighbouring developing countries is common, while considerable irregular labour migration also occurs not only from developing to developed industrialized countries, but also among developing countries themselves.

The preparation of nationals in countries of origin for their temporary employment abroad, discussed

in Chapter 10, cannot be wholly successful without the development of partnerships between these countries and countries of destination, either on a bilateral basis or in the context of regional economic integration or trade agreements (see Chapter 13), and the adoption of transparent, flexible and complementary regulations and policies in countries of destination. But, a “one-size-fits-all approach” to policymaking in this field is not feasible because countries of destination have to address their own sovereign concerns regarding the employment of foreign workers.¹

This chapter presents the principal policy options to be considered by countries of destination in their admission policies for both permanent and temporary migrant workers. It begins by underlining the increasing importance of labour mobility in the context of migration management and the need for an explicit official statement to guide public policy in this field and the appropriate administrative

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¹ A country-specific approach to policymaking is inevitable because, as Ruhs (2005: 203) observes, “the design and implementation of immigration policy remain principally the domain of **domestic** policymaking of sovereign and self-determining states” (original emphasis) and because of significant contextual differences between countries (e.g. levels of economic development, regulation of labour markets, degree of democratic institutions).

structure to put such policies into effect. Regarding the design of temporary labour migration programmes, in particular, the chapter builds on the policy discussions presented in Chapter 3 and appraises some of the challenges involved in the effective implementation of such schemes. The chapter goes on to assess the main elements of a comprehensive post-admission policy, taking account of the concerns of destination countries regarding the protection of their labour markets, the economic and social integration of newcomers and maintenance of social cohesion. It also considers the principal tools at the disposal of policymakers in destination countries to comprehensively address irregular labour migration and the related issue of an informal labour market. Finally, the chapter provides an overview of the types of cooperation and partnerships destination countries might enter into with countries of origin and transit as well as other pertinent stakeholders, to formulate and manage their foreign employment policies more effectively and equitably.

While state sovereignty is the prevailing order in international relations, it is not absolute. Global economic interdependence, exemplified in the globalization process (Chapter 1), has a strong bearing on national policymaking in this field. States have also entered into agreements that foresee a certain balance of interest among the parties regarding their respective regulation of international labour mobility or the treatment of migrant workers. Such concerns have become an important subject of international

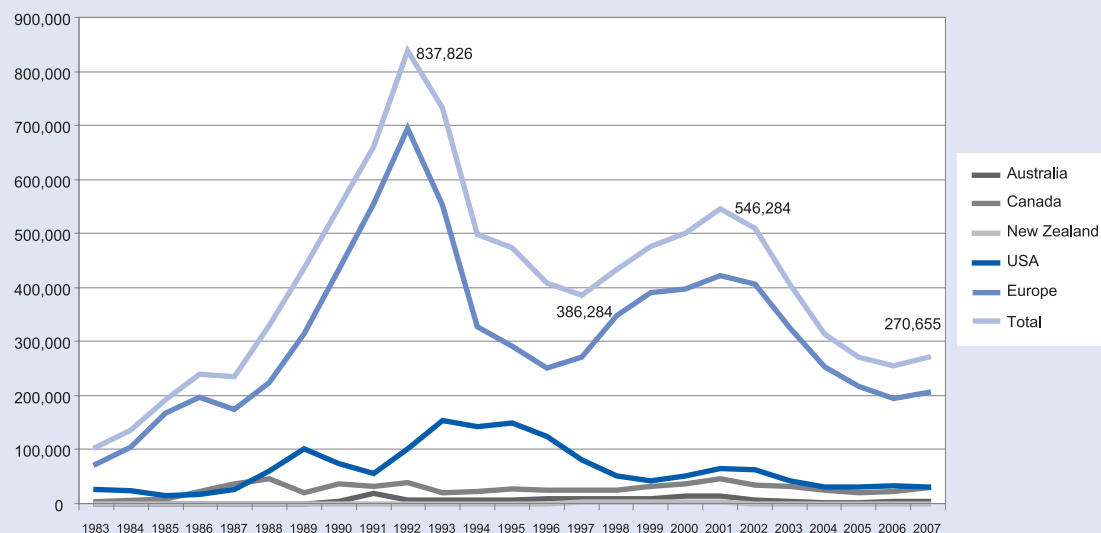
negotiations and are reflected in bilateral or regional trade and/or economic integration agreements (Chapter 13), and regional and international human rights and labour standards.

2. Labour Mobility at the Core of Migration Management

An important line of argument in this Report is that labour mobility lies at the heart of migration management today against a background of economic globalization and labour shortages at all skills levels in such key sectors as health care, construction and agriculture; significant demographic decline in industrialized countries, and a decrease in asylum applications in these countries (see Textbox 11.1). Consequently, more attention to, and resources for, migration management in these and more recent countries of destination (e.g. the Russian Federation) (see Textbox Reg. 2 in the Europe Migration Overview) might be devoted to the development of a greater choice of regular labour migration channels, facilitated by explicit policy statements in support of appropriate policies and regulations involving the whole government structure and administration. Appropriate instruments to monitor and evaluate the efficacy of foreign employment policies are also integral to taking labour migration more seriously (Ardittis and Laczko, 2008). However, to do so requires the existence of appropriate mechanisms to allow the collection of accurate and reliable data (see Chapter 9).

Textbox 11.1

The Evolution of Asylum Applications in IGC Participating States, 1983-2007*

**Note:**

* The Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) is an informal, non-decision making forum for inter-governmental information exchange and policy debate on the management of international migratory flows. The IGC brings together 16 Participating States, UNHCR, IOM and the European Commission. The IGC maintains databases on, among others, the number of asylum applications received in present and former IGC Participating States.

Present IGC Participating States are Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Former IGC Participating States from where IGC continues to collect data on asylum applications are Austria, France and Italy.

During the period 1983-2007, over 10 million asylum applications were filed in countries participating in the Intergovernmental Consultations (IGC; see above for a list of countries).

In 1985, some 100,000 asylum applications were received by IGC participating states. By 1989, annual applications had increased fourfold to 435,000. From 1983 to 1992, the major countries of origin were Sri Lanka, Iran, Turkey, Poland, the Czech Republic and former Zaire (today the Democratic Republic of the Congo).

In 1992, asylum applications reached a new peak of 840,000, with 85,000 applications received in July 1992, with most of the increase attributable to the rise in claims filed by persons from the former Federal Republic of Yugoslavia.

From 1993 onwards, numbers again dropped to a low of 390,000 applications in 1997; this was followed by a slight increase between 1998 and 2001, again owing to a rise in claims by persons from the former Federal Republic of Yugoslavia.

Since 2001, applications have continued to fall to stand at 240,000 in 2006, which corresponds to the number of annual applications in 1987.

In 2007, numbers increased for the first time since 2001 due to an increase in asylum applications by persons from Iraq.

Destination Countries

Throughout the period under review, Germany received the largest number of claims among all IGC participating states, with a peak of 440,000 in 1992, or 52 per cent of total claims filed in the IGC states for that year.

Distribution of Asylum Claims Among all IGC States, 1983-2007¹

Germany	27%	Belgium	4%
United States	16%	Norway	2%
United Kingdom	10%	Spain	2%
France	9%	Denmark	1%
Canada	7%	Australia	1%
Sweden	6%	Italy ²	1%
Netherlands	5%	Ireland	1%
Switzerland	5%	Finland	<1%
Austria	4%	New Zealand	<1%

Notes:

¹ Greece is not included in this chart because data is only available for 2006 and 2007

² Data for Italy are included only up to 2001.

France, the United States, the United Kingdom and Sweden receive most asylum applications, with Sweden, Austria, Switzerland and Norway receiving the largest number of claims in relation to their populations.

Source: *The Intergovernmental Consultations (IGC) Secretariat, Geneva.*

2.1 The Case for an Explicit Policy Statement to Guide and Inform the Elaboration of Transparent Regulations and Policies

Ideally, the immigration and labour migration policies and objectives² in destination countries should be clearly stated, and based on broad political and popular support, not only to enjoy wide legitimacy, but also to obviate the risk of subsequent policy inconsistencies espoused and pursued by different political formations, which often become apparent in the period leading up to general elections. For example, the importance of immigration to Canada's economic growth generally, and of labour migration in particular, to countervail the prevailing demographic profile and labour shortages together with the importance of integrating newcomers, is clearly articulated in the Citizenship and Immigration

Canada (CIC) Minister's *Annual Report to Parliament on Immigration*:

Immigration will play an increasingly important role in supporting Canada's economic prosperity and competitiveness. In a few short years, given our aging population, Canadians who leave school for the workplace will only offset the number of retirements. Immigration will therefore be a key source of labour force growth in the future. Moreover, the country is currently facing significant labour market shortages in some sectors and regions. Immigration can contribute to addressing both short- and long-term labour market needs by attracting people with the right mix of skills and talents to support economic growth today and in the future. With other industrialized countries confronting similar challenges with respect to sustaining population and economic growth, Canada will be operating in an increasingly competitive worldwide market for higher skilled workers.

...

Bringing immigrants to Canada is only part of the challenge. Just as important is ensuring that they

² For a list of the different types of impacts that policymakers should give regard to in defining policy objectives, see Ruhs (2005). High-level policy objectives (which may however also be conflicting) include: realization of labour market objectives, protecting national security, minimizing public expenditure, promoting social cohesion, compliance with human rights obligations, and promoting international development and cooperation (Spencer, 2003).

settle successfully upon arrival and integrate fully over the longer term. The challenges newcomers face are many: acquisition of English and/or French; recognition of their credentials, skills and work experience acquired abroad; and familiarity with the norms of the Canadian workplace and society, to name just a few. It will be important to look at ways in which the current range of settlement programs and services – including those provided by provincial and community partners – can be improved to better help immigrants in the early settlement period. (CIC, 2007a: 6).

The importance of migration for the economy of the United Kingdom and the contribution being made to the cultural and social fabric of the country are underlined in the proposal made by the government in 2006 concerning the introduction of a points-based system for migration management:

All the main political parties, employers' organisations, trade unions and educational institutions agree that migration is vital for our economy. Migration makes a substantial contribution to economic growth, helps fill gaps in the labour market, including key public services such as health and education, and increases investment, innovation and entrepreneurship in the U.K. Culturally we are enriched by people with diverse backgrounds from other countries (U.K. Home Office, 2006: 1).

Clear policy statements serve to guide and inform the elaboration and the adoption of comprehensible and coherent regulations and policies on foreign employment;³ and this for two reasons. First, they

³ In the South African context, for example, it has been argued that “[p]erhaps, as the current Minister has pointed out on more than one occasion, the biggest problem with the [2004 Immigration] Act is that its provisions are not informed by any substantively agreed on set of policy outcomes, given that the process of developing policy (in the form of a White Paper) was not completed before the process to draft legislation was put in place. As a consequence, amendments to immigration legislation since 2002 have been ad hoc and by default rather than by design” (Williams, 2007).

are an important part of the knowledge base on labour mobility, discussed in Chapter 9. Clear and coherent rules concerning migration and admission for employment, together with information about labour migration opportunities, would encourage regular labour migration and access to destination countries, with migrants either travelling individually and by their own means, or with the assistance of legitimate public or private employment agencies. Second, transparent rules also send a signal to host populations that the government has its labour migration policy “under control”, provided that the rules themselves reflect a realistic policy response to the prevailing labour migration situation in the destination country concerned. For example, an otherwise clearly defined admissions policy that however fails to devote sufficient attention to an obvious demand for domestic⁴ or agricultural workers (many of whom are often found in an irregular situation) will not be conducive to the development of a coherent and realistic response to the actual labour market situation in the country concerned.

2.2 Identifying an Appropriate Administrative Structure and the Need for a Coherent “Whole of Government” Approach

In many countries of destination, migration management falls within the responsibility of the ministry of the interior⁵ or a government department set up specifically for this purpose.⁶ Often, these ministries are also primarily responsible for the design and implementation of managed labour migration policies, which may result in the collision of two philosophies: an enforcement approach on the one hand, focusing on the control of borders and the prevention of irregular migration, particularly the eradication of its worst forms, i.e. human trafficking and smuggling, including trafficking for

⁴ Also referred to as “household service providers”.

⁵ E.g. the newly established Border Agency of the U.K. Home Office.

⁶ E.g. CIC Canada, the Department of Immigration and Citizenship in Australia, or the Singapore Immigration and Checkpoints Authority.

forced labour; and on the other hand, an approach which seeks to facilitate the planned admission of foreign workers (on a permanent or temporary basis) to fill gaps in the labour market, whether in highly skilled, semi-skilled or low-skilled positions. Given that the two approaches are hardly compatible, some commentators take the view that the economic and social considerations linked with the latter type of movement are better handled by officials in economic or labour ministries in collaboration with officials in other relevant departments, such as finance, education and health. Indeed, this is often the case in countries of origin, where labour emigration is the concern of specialized overseas employment departments in labour ministries (e.g. the Philippine Overseas Employment Administration (POEA) or the Pakistani Bureau of Emigration and Overseas Employment).

Irrespective of whether a destination country has opted for a centralized or decentralized administrative structure, migration, and labour migration in particular, call for a “whole of government” approach, in collaboration with agencies active outside of government, to ensure that all aspects of such migratory movements are sufficiently taken into account in the policy response (NESC/IOM, 2006). Needless to say, both centralized and decentralized systems have their strengths and weaknesses. For example, centralized systems as in Canada and Australia may find it a challenge to maintain the balance between enforcement and facilitation but they do provide responsive programme delivery across the board. On the other hand, while decentralized systems avoid potential internal lines of tension through the split of facilitation and enforcement functions, “whole of government” coherence can be harder to achieve when several ministries are involved in migration management. In those countries with decentralized systems, the formulation, implementation and management of successful foreign employment policies require responsive internal coordination mechanisms between and within government ministries (e.g.

foreign and home affairs/interior, labour, economy, finance, development) to ensure policy cohesion and coherence. These mechanisms may take the form of statutory immigration advisory boards, such as the one established in South Africa under the Immigration Act 2004 comprising representatives of a wide range of government departments and other stakeholders, namely the private sector, trade unions and the academic community (Williams, 2007). In federal countries, policymakers will need to consider whether internal coordination should extend to the constituent regional or state units, which, although they may not have primary and direct immigration-related powers, often have responsibilities regarding the settlement, integration and welfare of migrants.

3. Key Policy Considerations

Although certain policy elements concerning the employment of foreigners will differ according to the labour and demographic profile of the country concerned, three important general considerations will remain valid.

One such consideration concerns employment-based immigration and whether this is to form part of a country’s foreign labour admissions policy in accordance with national interests.⁷ As discussed in Section 5(1)(a) below, the established countries of immigration show a clear preference for this type of migration to boost their population and labour force and sustain economic growth, although they also support temporary foreign worker programmes to fill urgent labour market shortages (see Chapter 3). On the other hand, European countries have only recently begun to seriously consider the permanent admission of foreign workers, although labour shortages in a number of key sectors, in particular in health care, information communication technology (ICT), science and technology, and engineering,

⁷ However, as discussed in Section 8 below, a balanced national labour migration policy will also take account of the legitimate interests of countries of origin.

together with demographic decline, have meant that, even if not granted upon entry, permanent residence is increasingly facilitated for these categories of foreign workers.⁸

Second, clear, transparent and flexible foreign labour policies matched by efficient and streamlined administrative procedures are essential to successful labour migration management. The most appropriate way to address labour shortages, while also taking demographic issues into consideration, is through a combination of permanent and temporary foreign worker admissions. To be able to respond to increased local demands for foreign labour, the processing of entry applications should not be unduly lengthy. For example, the processing of employment-based permanent residence applications to Canada can now take up to four years or more in certain countries (Mason and Preston, 2007). In order to reduce this backlog, in March 2008 Canada proposed changes to its immigration laws that would enable applications from needed skilled workers to be processed more quickly.⁹ In the U.S., a backlog in labour certifications for the issue of immigrant visas (*Migration News*, July 2006; Abella 2006) means that it continues to be easier for employers to meet rapidly changing labour needs by hiring foreigners in the “temporary” skilled visa category (H-1B) and to subsequently sponsor them for immigrant visas, since H-1B visa

holders are allowed to remain in the U.S. for a total of six years (i.e. three years in the first instance, renewable for a further three years). The Russian Federation introduced new legislation in January 2007 to partly ease the excessively bureaucratic features of the previous labour migration system (see Textbox Reg. 2 in the Europe Migration Overview). These examples confirm the importance of the need to devote sufficient administrative resources to remove cumbersome bureaucratic procedures in the management of employment-based immigration and to avoid the conflation with existing temporary labour migration programmes. If this is not heeded, the inevitable result will be continued inefficiency and delays in the functioning of the migration system and policy incoherence.

Third, while the main aim in many industrialized countries is to facilitate the settlement of highly skilled workers, shortages in low-skilled and semi-skilled labour market segments also need to be filled. While many of these shortages are addressed by the temporary admission of migrant workers and, in the absence of appropriate policies, by irregular migrants, policy consideration should also be given to filling such vacancies with workers admitted on a permanent basis, particularly where the demand is of a structural nature, such as in the domestic services employment sector. The extent of demand in low-skilled sectors is perhaps best illustrated by the 2002 regularization programme in Italy, which was originally designed for migrant domestic workers. While the programme was eventually extended to include other categories of workers, just under half of the over 700,000 applications received were submitted by migrant women domestic workers (OECD, 2004, 2005). In such instances, therefore, the main policy challenge for governments is to openly acknowledge the existence of such specific demands and, in the absence of a local labour force able and willing to undertake the work in question, to convince the local population of the need and general benefit of admitting foreign workers through regular channels to fill such jobs.

⁸ This does not mean that it had previously not been possible for migrant workers to settle in European host countries. For a historical overview of how migrant workers became permanent settlers in western Europe following the halt to immigration after the 1974 oil shock, see Castles (2006). In March 2001, in proposing the Directive on the status of third-country nationals who are long-term residents, the European Commission observed that EU Member States granted secure residence status to such workers after two to 15 years of legal residence, as the case may be (with eight of the then 15 EU Member States requiring five years of continuous regular residence in the country), subject to such considerations as whether the person concerned constitutes an actual threat to public order or public security, possession of sufficient means and employment (European Commission, 2001). For example, in the U.K., migrant workers can apply for indefinite leave to remain (i.e. settlement) after a period of five years of employment under the ordinary work permit scheme, subject to **sufficient knowledge of the English language and life in the U.K.** See U.K. Immigration Rules (U.K. Home Office 2008: para. 134(iv)).

⁹ CIC, 2008: <http://www.cic.gc.ca/english/department/laws-policy/irpa.asp>.

In addition to these general considerations, a number of specific policy elements can be identified that, in broad terms, are relevant to destination countries seeking to manage foreign employment: (i) assessment of the demand for foreign workers in the light of current and projected shortages on the national labour market, and demographic considerations; (ii) design of a foreign labour admission policy; (iii) the protection of migrant workers in the workplace and the host country generally, with particular attention to be paid to ensuring social cohesion (through integration and fighting discrimination and xenophobia); (iv) prevention or reduction of irregular labour migration; and (v) consultation and cooperation with countries of origin at the bilateral, regional and international level, as well as development of partnerships with other key stakeholders with an interest in labour mobility, i.e. the private sector, trade unions and civil society at large (NGOs, diaspora and migrant associations). These specific policy elements are discussed in the remainder of this chapter.

4. Assessing the Need for Foreign Labour

Regardless of the type of labour migration system in place in any particular country, one of its objectives is to address labour shortages. However, the mere existence of a labour shortage does not necessarily also express a need for foreign workers. For this to be the case, the causes of actual and potential labour and skills shortages and their potential scale have to be analyzed and the effectiveness of various possible policy responses to address them, including migration policy, evaluated (Boswell et al., 2004). Even where labour shortages are generally recognized to exist, political factors and the need to manage conflicting and competing migration policy concerns will determine whether, and to what degree, shortages call for the admission of foreign workers.

4.1 Detecting and Projecting Labour Shortages

There is no clear consensus as to what constitutes a labour shortage,¹⁰ and much depends on how and where such a shortage is perceived. Shortages may occur not because there is an overall lack of workers to fill the jobs in question, but because of mismatches in the labour market:

In most cases, such shortages are not caused by an aggregate shortage of labour, but can be attributable to problems of mismatch between labour demand and supply. Jobs remain unfilled despite high unemployment rates, because workers lack the relevant qualifications or skills, are reluctant to take up work in particular occupations or geographical areas, or have insufficient information about job opportunities. Alternatively (or in addition), employers are unwilling or unable to offer sufficiently attractive salaries or conditions to encourage occupational or geographical mobility (Boswell et al., 2004: 3).

In Ireland, the Expert Group on Future Skills Need in a report in 2005 also drew a distinction between skill shortages and labour shortages. The Expert Group found that foreign workers with specific skills would probably be needed in certain sectors in Ireland with skills shortages (e.g. foreign chefs received most of the work permits in the first half of 2005) for a period during which national workers are acquiring the necessary skills; while labour shortages (i.e. insufficient workers at prevailing wages and conditions) were identified generally in low-skilled employment (i.e. agriculture, food processing and jobs in services such as the security industry and catering) (NESC/IOM, 2006).

Further, labour shortages are difficult to predict as there may be limits to the accuracy of the available

¹⁰ Boswell et al. (2004: 5) provide a working definition: “[I]n the most basic sense, labour shortages occur where the demand for workers in a particular occupation exceeds the supply of workers who are qualified, available and willing to do that job”. They then proceed to make the further distinction between aggregate labour shortages and shortages resulting from mismatches in the labour market.

information sources (Chapter 9), while the types of labour shortage (e.g. long or short-term, absolute or relative) may vary considerably among destination countries. A key feature of labour shortages is that they may be prevalent in only some employment sectors and at certain skill levels; for example, in the EU labour shortages have been identified in the ICT, engineering, health and education sectors, as well as among low and semi-skilled workers generally (e.g. agriculture, construction, food production and hospitality). The causes of labour shortages are various and influenced by a number of trends in labour demand and supply (Boswell et al., 2004) that are also linked to national and global economic patterns and demographic factors (discussed in Section 4.2 below).

One trend affecting labour supply is emigration: “outflows of nationals (...) can have an important impact on skills composition where high-skilled workers leave because of more attractive business or research conditions in third countries” (Boswell et al., 2004: 14). For example, emigration from the U.K. has become quite significant in the last few decades, with the country experiencing a total net loss of approximately 2.7 million nationals between 1966 and 2005. More than 198,000 nationals left the country in 2005, while only 91,000 returned. Moreover, two-thirds of those who left the country did so to take up or seek employment opportunities abroad (Srisankarajah and Drew, 2006). A similar net exodus, though to a lesser extent, was experienced in Germany (Landler, 2007).¹¹ However, not all countries quantify the emigration of their nationals and this question is rarely discussed in the context of designing foreign labour admission policies.

Conventional estimates of current labour shortages include, in particular, surveys and employers’ reports

on labour requirements in specific sectors.¹² However, such sources should be interpreted with some caution as they concern recruitment difficulties rather than labour shortages per se, and because employers may have unrealistic or overly ambitious expectations concerning growth in their sector. Governments can also conduct research into labour sectors and occupations. While such research may yield a more precise evaluation of the prevailing situation, it is less effective in predicting economic contraction or expansion and related changes in labour demand. More sophisticated econometric models are used to project future labour shortages, and these are considered essential for mid and long-term policy planning, especially for countries characterized by population ageing and decline, although theoretical and methodological shortcomings affecting their ability to produce accurate projections have also been identified.¹³ Indeed, there is always the risk of error as when governments subsidize the training of teachers, nurses or engineers to meet projected labour shortages only to find that ultimately students graduate in a period of unemployment (NESC/IOM, 2006). Regardless of the difficulties, government interventions play a critical role in developing labour migration policies, particularly as concerns the different approaches needed depending on whether the problem to be addressed is one of labour shortage or rather tightness in a particular sector, and to provide the wider macroeconomic overview. As noted by one commentator:

[I]t is necessary to recognize that, regardless of economic conditions and the number of vacancies advertised in a given economy, there is always the need for host countries to **manage the demand for migrant labour** [original emphasis]. This is

¹¹ In 2005, 144,800 Germans emigrated and only 128,100 returned – the first time in nearly four decades that more Germans left the country than returned (Landler, 2007, citing figures from the German Federal Statistics Office).

¹² E.g. the U.K. annual Employer Skills Survey (ESS) of approximately 4,000 employers, which inquires into the nature, extent, causes and implications of skills deficits, and the monthly Job Openings and Labor Turnover Survey (JOLTS) undertaken by the U.S. Bureau of Labor Statistics measuring labour market tightness and efficiency (matching) (Boswell et al., 2004; Abella, 2006).

¹³ For an overview of such models in Australia, Canada, Germany, the Netherlands, the U.K. and the U.S., see Boswell et al. (2004).

because the level of labour immigration that is in the interest of individual employers is unlikely to coincide with that in the best interest of the economy as a whole (Ruhs, 2006: 14).¹⁴

4.2 Taking Demographic Issues into Consideration

As discussed above, it is more complex to predict labour shortages in the long term owing to demographic factors, as well as national, regional and global economic changes. For example, in the EU, which mainly comprises labour destination countries, the ageing of the population is the result of a number of interactive demographic trends: a decline in birth rates; the post-war “baby boom” resulting in a large population now approaching retirement age; and rising life expectancy. Though the EU receives 1.8 million immigrants annually and will continue to do so, with 40 million people estimated to emigrate to the EU between now and 2050 thus boosting the labour force and bringing down the average age of the population, the longer-term demographic impact remains uncertain. There is general consensus, however, that immigration can only partially offset the negative effects of the ageing of the population and the labour force (European Commission, 2006a; Bijak et al., 2007).¹⁵ Based on current forecasts, the

EU is likely to experience significant labour shortages over the next 50 years according to projections that the share of the working age population (aged between 15 and 64) will decrease significantly from 67.2 per cent in 2004 to 56.7 per cent in 2050, or by 52 million inhabitants of working age (European Commission, 2005a).

4.3 Tools for the Assessment and Designation of Levels of Need

Once labour market shortages have been identified, different policy tools are used to assess and designate the levels of need for foreign workers taking account of the possible impact of their admission on the local labour force. These policies include immigration quotas, labour market tests, occupational shortage lists and employer fees, with no country allowing an unlimited number of foreign workers to enter, irrespective of the potential economic gains such labour migration might be presumed to bring.

(a) Quotas

Quotas are common means of regulating the number of workers entering the labour market by establishing numerical programme targets or ceilings, and are seen as important tools by some destination countries. They can be used in various ways. National quotas and ceilings set fixed limits (either expressed as percentages of the labour force – e.g. Austria, Kazakhstan – or as absolute numbers – e.g. Italy, Spain) for the admission of foreign workers to a country. Quotas are usually established on a periodic basis, in most cases annually, often at a high governmental level (e.g. Republic of Korea - South Korea), based on such criteria as economic forecasts, employer reports or regional unemployment rates (e.g. Italy), and negotiated and administered in consultation with employers and trade unions, regional governments (e.g. Spain) and civil society. Quotas normally distinguish between different regions, industries and employment sectors

¹⁴ According to Ruhs (2006), assessment of the size of the required migrant labour force needs to take account of three considerations: (1) the expense to employers of recruiting migrant workers, which depends not only on employers’ recruiting and wage costs but also the employment conditions at which migrant workers are available; (2) that the demand for migrant workers in most countries is residual in that employers are first required to make all reasonable efforts to recruit local workers (i.e. nationals or lawfully resident migrants, or, in the EU context, EU nationals); and (3) that the employment of migrant workers is often only one of a variety of means to respond to a perceived shortage of labour, such as relocating to countries where labour costs are lower, increasing the working time of workers already in employment, or recruiting inactive (in particular, women) or unemployed local workers. Abella (2006) observes that these forms of adjustment to labour shortages have been particularly notable in Japan, which from the beginning adopted a policy of not importing low-skilled foreign workers.

¹⁵ Moreover, as far as meeting labour shortages in ageing societies is concerned, temporary labour migration (see Section 5.2 below) is viewed as a preferable solution because it boosts the national labour force while, assuming the migrants return home, not adding to the ageing population as permanent immigration would in the medium and long term (Abella, 2006).

and can also set a maximum ratio of foreign to local workers in individual enterprises.¹⁶

The disadvantage of quotas is that they can be overly rigid and thus unable to readily respond to shifting labour demands. It should be possible, however, to devise more flexible quotas that can be revised during the year in response to changing employer demand. For example, in 2007, Spain set a quota of 180,043, covering non-EU professionals, seasonal and other migrant workers, but that could be reviewed upwards to 200,000. This was a significant increase from the 2006 quota of 16,878 when the government found itself overwhelmed by requests from employers (*Migration News Sheet*, January 2007). Despite their potential inflexibility, quotas also provide advantages, offering a clearly defined benchmark for administrators and employers and allaying concerns about immigration in the national population.

(b) Labour market tests

Most European destination countries, as well as Canada and the United States, apply a labour market test to first-time applicants for a work permit, or to migrant workers already in the country who wish to change jobs. Though admission procedures are usually simplified, the existence of a quota does not necessarily mean that the labour market test is withdrawn. The test serves to ascertain whether there are local workers available, by either requiring employers to advertise the post for a set period of time (e.g. U.K.), or demonstrate that they have taken active steps towards recruiting local workers, or both (e.g. the Netherlands). A third option, sometimes also combined with the latter, is to require that foreign workers are paid the average or prevailing wage in the industry or sector concerned (e.g. Canada, U.S.). Where no local workers are either available or willing to accept the conditions offered, foreign workers can then be employed. In some countries, it is left to the employer to provide

evidence of labour scarcity (e.g. Mauritius, U.K.), whereas in other countries this is incumbent on the competent authority. For example, in Canada, before a foreign worker can be hired, the Department of Human Resources and Social Development Canada (HRSDC) must normally provide a positive labour market opinion (LMO) to certify the impossibility of finding suitable local candidates to fill the job in question and that the admission of foreign workers would not negatively affect the Canadian labour market (Canada, 2006).¹⁷ In the U.S., the need for certification by the U.S. Department of Labour in respect of specialty occupations (H-1B workers – see Chapter 3) has been replaced by a simpler system of legally binding employer attestations, whereby the employer undertakes to respect the terms and conditions under which the foreign worker will be engaged, such as the payment of an appropriate wage and that there will be no adverse effect on the working conditions of similarly employed workers (Abella, 2006). In the EU, the preference principle applies, requiring Member States to ensure that there are no suitable EU workers available prior to hiring a non-EU national lawfully resident within the EU or to newly admit a non-EU national for employment; however, more information is still needed to see how this principle operates in practice in different Member States. While a number of policy options exist in the application of labour market tests, it is also important for evaluation and enforcement measures to be built into their design to ensure they actually work in practice and serve the needs of employers, local workers and the economy (Ruhs, 2006).

Several countries (including Norway, Spain and the U.K.) have introduced exceptions to the labour market test in respect of certain professions with

¹⁶ See Abella (2006) referring to the approach taken in Latin America and the Caribbean.

¹⁷ When applying for a LMO, the employer has to demonstrate that: (1) all necessary efforts were made to recruit and/or train willing and available local candidates; (2) the wages offered are consistent with the prevailing wages paid to local workers in the same occupation in the region; (3) the working conditions for the occupation meet the current provincial labour market standards; and (4) potential benefits may result from the hiring of the foreign worker for the Canadian labour market (e.g. creation of new jobs, transfer of skills and knowledge, etc.) (Canada, 2006).

shortages, such as health professionals, engineers, teachers and ICT specialists, and either do not apply the test or relax the rules. This more flexible and less bureaucratic approach has considerable economic advantages, since it enables a speedier and more efficient admission of migrant workers to fill shortages in important employment sectors.

(c) Occupational shortage lists

Occupational shortage lists can be an efficient way to channel foreign workers into sectors of the economy suffering from a lack of workers with specific skills. In the U.K., the National Shortage Occupations List, modified in July 2008, indicates shortages for certain categories such as engineers, doctors, social workers, veterinary surgeons and teachers for compulsory schooling posts in England and Scotland.¹⁸ No labour market test is required to fill these posts under the ordinary U.K. work permit scheme.

In Australia, a Migration Occupations in Demand List (MODL) has been drawn up containing, as at 17 May 2008, 53 professional occupations/specializations and 49 trades persons' categories in which shortages have been identified nationally. The list is reviewed twice a year. Points are assigned to each category which can then be used by migrants applying for skilled migration visas (Australia, 2007; Abella, 2006) (see also Section 5.1(a) below).¹⁹

(d) Employer fees

Levying fees on employers for every foreign worker hired may be used to ensure that migrant workers

are in fact brought in to fill genuine gaps in the labour market rather than just as convenient – and perhaps cheaper – substitutes for local workers. In Singapore, such fees are charged to employers wishing to employ medium-level skilled, semi-skilled or low-skilled workers in certain sectors, such as manufacturing, construction and services, and which are increased if the worker is less skilled.²⁰ The official website refers to the foreign worker levy as “a pricing control mechanism to regulate the demand of foreign workers in Singapore” (Singapore Ministry of Manpower, 2008). Such policies serve to minimize distortions in certain sectors of the economy, for instance agriculture, that often depend on a foreign workforce, and make funds available to restructure these sectors to make them less dependent on migrants (Martin et al., 2006).²¹ However, the effective implementation of such policies depends on the extent to which governments of destination countries are prepared to recognize the merits of setting fees when weighed against the additional costs generated through increased government intervention and the introduction of adequate enforcement mechanisms to ensure that fees are not deducted from the wages of migrant workers (Ruhs, 2006; Ruhs, 2005).

5. Designing Foreign Labour Admission Policies: Permanent or Temporary Labour Migration?

Once there is a policy consensus on the need to admit foreign workers, policymakers need to decide whether to opt for employment-based immigration

¹⁸ However, there is currently no longer a need for nurses generally in the U.K., with the exception of certain categories of registered nurses. The National Shortage Occupation List is available at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/workpermits/businessandcommercial/occupationshortagelist.pdf>.

¹⁹ The MODL is available at <http://www.migration.gov.au/skilled/general-skilled-migration/skilled-occupations/occupations-in-demand.htm>. The May 2008 list also included two occupations in an Associate Professionals category (Chef and Dental Technician) and two occupations under the general heading Managers and Administrators.

²⁰ Moreover, the levy for these categories of foreign workers in Singapore is combined with a Dependency Ceiling, which means the employer will have to pay higher fees in sectors such as manufacturing or services if the percentage of foreigners to nationals in the workplace is higher (Singapore Ministry of Manpower, 2008). A foreign workers' levy is also applied in Malaysia and Taiwan Province of China (Abella, 2006).

²¹ Ruhs (2005) adds that such fees can also be used for a variety of other purposes: to generate funds for enforcement activities and integration assistance; to reduce the opposition of local workers to temporary labour migration programmes by compensating any losses suffered by such workers in terms of wages and/or working conditions; or to mitigate any adverse impact on local workers by funding their retraining and skills development.

or temporary labour migration, or a combination of both. As a general rule, employment-based immigration channels have usually been available to more skilled migrants, while temporary labour migration programmes are normally aimed at low-skilled workers (Chapter 3), largely because of a profound reluctance of local or resident workers to take up these jobs even in times of high unemployment.²²

In principle, there is nothing to stop destination countries from opening up employment-based immigration to low-skilled workers, and a few examples of such opportunities exist, particularly in Canada and the United States (see Section 5.1(a) below). Skilled workers continue to be preferred for permanent settlement because they are considered more likely to be able to adapt their skills in the event of an economic downturn. However, low-skilled temporary migration programmes are seen increasingly as affording a number of advantages to all stakeholders in the labour migration process (see Chapter 3), and some of these are also discussed below.

The issue of circular migration, relevant to both employment-based immigration and temporary labour migration as well as to the question of return to the country of origin, is discussed in a separate section from the standpoint of policy formulation in destination countries.

5.1 Employment-based Immigration

(a) Established countries of immigration

Today's established countries of immigration (e.g. Australia, Canada, New Zealand and the United States) have long implemented immigration programmes to admit foreigners for the purpose of employment on a permanent basis from the moment of their entry with a view to promoting economic growth and ensuring a stable population and labour force. In the period 2005-2007, over 400,000 immigrants in total in this category were admitted annually for permanent residence in the four countries concerned (Table 11.1). Both Australia and Canada registered an increase in this type of migration. Indeed, the Australian Government enlarged the Skilled Stream visa category by 20,000 in 2005-2006 (DIAC, 2006).

The figures for skilled immigration to the four countries are somewhat misleading because the number of persons admitted for employment is actually much higher when taking into account dependants in both the economic and family classes (see also Chapter 6), as well as refugees admitted for permanent residence who are all permitted to take up work. In Canada, in 2006, a total of 251,649 persons were admitted for permanent residence, and Canada's Immigration Plan for 2008 is to admit between 240,000 and 265,000 permanent residents (CIC Canada, 2007a). The United States foresees a fixed annual employment-based immigration quota of 140,000, defined in the Immigration Act 1990, although this can be adjusted by means of a complex formula. Moreover, the majority of persons (59%) granted permanent residence in 2007 were already living in the United States, with women accounting for 55 per cent of all new permanent residents (U.S. Office of Immigration Statistics, DHS, 2008).

²² "One of the most significant factors generating labour market mismatches is the unwillingness of resident workers to do certain low-skilled, low-status and low-paid work. ... Many professions have now become associated with immigrant or ethnic minority workers, often implying a social stigma for native, or non-minority workers. Occupational preferences may generate serious mismatches in situations of high unemployment, especially where social benefit systems provide limited incentives to take up low-paid or seasonal work" (Boswell et al., 2004: 15).

Table 11.1:**Employment-based Immigration to Australia, Canada, New Zealand and the United States as compared with Family and Humanitarian Admissions, 2004-2007**

	Skilled stream/class	Family	Refugees/Protected persons
Australia			
2004-05	77,880 ¹	41,740	13,178
2005-06	97,340	45,290	14,144
2006-07	97,920	50,079	13,017
Canada			
2004	133,745 ²	62,260	32,686
2005	156,310	63,354	35,768
2006	138,257	70,506	32,492
2007 (January to June)	59,248	31,860	12,774
New Zealand			
2004-05	34,649 ³	15,560	5,316
2005-06	34,801	16,684	4,982
2006-07	30,902	16,579	5,284
2007-08 (1 July to 8 March)	19,820	10,689	3,195
United States*			
2005	246,877 ⁴	649,085	142,962
2006	159,081 ⁵	802,577	216,454
2007	162,176	689,829	136,125

Notes:

¹ Includes the following categories: Employer Sponsored, Skilled Independent, State/Territory Sponsored, Skilled Australian Sponsored, Distinguished Talent, Business Skills.

² Includes the following categories: Skilled Workers, Business Immigrants, Provincial/Territorial Nominees, Live-in Caregivers (and their dependants).

³ Includes the following categories: Employee of Business, Entrepreneur, General Skill, Investor, Skilled Migrant, Work to Residence.

⁴ This is the employment-based preferences category which encompasses: priority workers; professionals with advanced degrees; skilled workers, professionals without advanced degrees, and needed low-skilled workers; special immigrants; investors (and their spouses and children).

⁵ The large number of persons admitted for permanent residence in this category in 2005 is explained by the American Competitiveness in the 21st Century Act 2000, which recaptured approximately 130,000 unused employment-based visas from 1999 and 2000 (U.S. Office of Immigration Statistics, DHS, 2008).

* Another significant category of permanent residents in the United States comprises diversity immigrants who are nationals of countries with low rates of regular immigration to the U.S. Since 1999, this category has been limited to 50,000. In 2005, 2006 and 2007, 46,234, 44,471 and 42,127 diversity immigrants, respectively, were admitted to the U.S.

Sources: (Australia DIAC, 2006; DIAC 2007), (CIC Canada, 2006, 2007b), (Immigration New Zealand, 2008a), (U.S. Office of Immigration Statistics, DHS, 2008).

The established countries of destination provide for employment-based immigration in two ways. The first involves the use of a supply-based points system (Australia, Canada, New Zealand), grounded on the assumption that “an increased supply of skilled workers will have a generally positive impact on innovation, productivity and growth” (Boswell et al., 2004: 41). Under points systems, applicants are selected in accordance with a number of objective

criteria.²³ For example, in Canada, the successful applicant must demonstrate (i) possession of minimum work experience in the chosen profession

²³ According to Abella (2006: 31), “the [points] system takes much of the discretion out of the selection process by specifying ... objective criteria, assigning points for each criterion, and requiring candidates to reach a certain minimum score. ... The points system today only applies to the process of screening potential entrants under skilled migrant schemes, especially professionals whose academic degrees and years of experience lend themselves to some kind of ordinal or cardinal ordering. ... The system aims at expanding the general supply of skilled workers, not at meeting the specific job offers of employers”.

or a related field; (ii) proof of adequate funds for settlement; and (iii) earn a sufficient number of points in six selection criteria to meet the “pass mark” of 67 points. These selection criteria comprise: education, knowledge of English and French (Canada’s official languages), experience, age, arranged employment in Canada, and adaptability (including previous work or study in Canada) (CIC Canada, 2008).²⁴ The second way is through a demand-based system as applied in the U.S., whereby the individual employer has to demonstrate that no national or resident foreigner is available for the job in question, which, broadly speaking, is usually satisfied by a labour market or resident worker test, discussed in Section 4.3(b) above, although recently these rules were relaxed in respect of H1-B visa workers. In the U.S., an employment-based preferences system is also in place for the admission of various categories of skilled workers, and no labour market test is required for the first category, Priority Workers, which comprises persons of extraordinary ability in the sciences, arts, education, business and athletics; outstanding professors and researchers seeking to enter in senior positions; and executives and managers of transnational companies with one year of prior service with the firm (OSCE/IOM/ILO, 2006, 2007). In countries applying mainly supply-based points systems (e.g. Australia, Canada, New Zealand), a demand-based component can also be discerned as additional points are awarded for the possession of a job offer from an employer in the country in question.

(b) European countries

Employment-based immigration to Europe also occurs, but in a less explicit manner. Under the revised German Immigration Law, which came into force on 1 January 2005, it is possible for a select group of highly skilled workers (i.e. senior academics and researchers and top-level managers in business and industry) to obtain permanent residence upon

admission (German Federal Ministry of the Interior, 2008). However, there are certain admission criteria to be met by the person concerned, such as a minimum annual income of EUR 85,000.²⁵ In 2005, only 900 persons benefited from this scheme (*Migration News Sheet*, September 2006), which contrasts sharply with the figures for employment-based immigration in the established countries of immigration. In European destination countries, most foreign workers are admitted on a time-limited basis, although some categories of workers can obtain a more secure residence status. In a number of countries, highly-skilled migrants are put on a “fast track” to permanent residence (e.g. Czech Republic, Norway, U.K.) (OSCE/IOM/ILO, 2006, 2007).

Points systems are also increasingly adopted in certain European countries as the most efficient means of regulating skilled migration. For example, the new points tier system introduced in the U.K., which is being phased in as of the beginning of 2008, is intended to regulate all forms of employment-based migration, permanent and temporary, high-skilled and low-skilled, as well as admissions for the purpose of study. The first two tiers, however, are reserved for highly skilled and skilled migrants, who are viewed as candidates for permanent settlement (U.K. Home Office, 2006; 2007b). In the Czech Republic, a Pilot Project for Permanent Labour Migration (2003-2008), administered by the Ministry of Labour and Social Affairs with the assistance of IOM, aims to facilitate the permanent residence of skilled persons from specific countries on the basis of a points system (Czech Ministry of Labour and Social Affairs, 2008; see also Portrait 2.1). In Germany, the provisions proposed in the previous immigration law envisaged the admission of skilled migrants based on a points system (Germany, 2001), although this proposed

²⁴ See specifically <http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp>.

²⁵ Representatives of German industry take the view that this salary threshold should be lowered to EUR 35,000 (*Migration News Sheet*, September 2006), particularly given a chronic shortage of IT specialists (i.e. 45,000 vacancies) and the fact that this threshold is nearly three times the salary of EUR 30,000-35,000 paid to entry-level computer programmers (*Migration News Sheet*, January 2008).

scheme was abandoned in the new compromise legislation that came into force on 1 January 2005.

5.2 Temporary Labour Migration

Given the prevalence of more “flexible labour market” practices in today’s globalizing world, temporary migrant worker programmes have been increased in many industrialized destination countries to fill the (mainly low and semi-skilled) jobs available and that cannot be filled by drawing on the domestic labour force (Martin, 2003; Chapter 3). In the European context, the view that temporary migration of low-skilled migrants should be avoided because it inevitably leads to settlement and unpredictable social impacts has given way to a more positive attitude as not all low-skilled activities can be delocalized to developing countries, and owing to the concern over demographic imbalances and ageing populations and the decline in the working age population (Castles, 2006).

This section focuses in more detail on the policy challenges in making temporary labour migration programmes work, and builds on the more general policy issues outlined in Chapter 3, which also provides an overview of the global and regional trends relating to temporary labour migration with particular reference to low and semi-skilled workers.

(a) The potentially positive impact of temporary labour migration

The potentially positive impact of temporary labour migration for all actors involved in, or affected by, that process (i.e. countries of destination and origin, and migrant workers, especially low-skilled workers, and their families) has been widely recognized by the international community in recent years (GFMD, 2008; UN, 2006; World Bank, 2006; GCIM, 2005; IOM, 2005; ILO, 2005; UN DESA, 2004) (see also Textbox 3.5), and there is a convergence of interests by countries of destination and origin regarding temporary labour

migration (Ruhs, 2005). For countries of origin, such programmes provide authorized access to the labour markets of richer destination countries, particularly for their low-skilled workers, and the positive development impact on their economies (i.e. transfer of remittances and know-how and creation of business and trade networks) is arguably optimized if their citizens’ stay abroad is temporary and they retain strong links with their home country. For destination countries,

[t]emporary migration ... is viewed as contributing to greater flexibility in the labour market. For many countries this is of considerable importance given their ageing workforces, the demands of industry for new skills, and the tendency of people to become less mobile as societies become more prosperous. Secondly, compared to permanent immigration, liberalizing temporary admissions is politically easier to sell to electorates that have come to feel threatened by more immigration. And, thirdly, some societies have experienced increasing difficulties with integrating long-settled immigrant communities, hence they opt for solutions that would not compound their problems (Abella, 2006: 1).²⁶

For migrant workers, such programmes provide access to authorized, albeit temporary, work abroad and the opportunity to earn higher wages (Ruhs, 2005).²⁷

²⁶ With regard to the first reason, it has been observed that such persons will be less inclined to migrate for lower skilled employment abroad because they are more likely to be attracted by better opportunities at home. See also Nonnenmacher (2007a): “temporary labour migration is seen as a means to meet sectoral, seasonal and peak demands for labour in a flexible manner. Its temporary character ensures that public opinion is less negative towards it than towards permanent migration. It alleviates concerns relating to the social integration of migrants and their reliance on public services and welfare payments” (Original emphasis).

²⁷ But also at the risk of restricting some of their rights, a “trade-off” which temporary migrant workers might be willing to accept to improve their economic situation (Ruhs, 2005). For arguments relating to the trade-off between migrant numbers and rights, see the discussion below and Chapter 3.

(b) Policy challenges

Despite the opportunities offered by temporary labour migration, there are a number of difficult policy challenges for destination countries relating to the design of specific programmes (Martin, 2003; Ruhs, 2005). The principal challenge is to ensure the feasibility, equity and efficiency of such programmes on a reasonably large scale, given past policy failures,²⁸ which can be summarized as follows: (1) segmentation and distortions of national labour markets causing certain sectors, such as agriculture, food production, hospitality and low-skill domestic services to depend on foreign labour; (2) the failure of temporary migrants to return to their countries of origin on completion of their employment, which is also identified as a particular disincentive for destination countries to develop new programmes; and (3) the exploitation temporary migrants, especially the low-skilled among them, are prone to during the recruitment process and in the workplace, and the risk of social exclusion and discrimination and xenophobia in destination countries.

The policy challenges created by labour market distortions in certain sectors and the dependence on foreign workers this may generate have been discussed in Chapter 3. Levying realistic (monthly) fees on employers for the hiring of foreign workers in the sectors concerned, as discussed in Section 4.3(d) above, to ensure that they seek out local workers or consider other alternatives such as mechanization of production processes or outsourcing (Ruhs, 2005), has been advanced as one possible solution to addressing the segmentation of the labour market. However, the problem here runs deeper and also relates to systemic issues such as low pay or lack of decent work (exacerbated by intense global competition) in these sectors.

Second, a number of policy interventions are applied (or have been advanced) with the objective of encouraging the return of migrant workers admitted under temporary labour migration programmes, such as:

- issuing temporary but longer-term work permits to enable workers in low-skilled occupations to repay the expenses incurred in connection with their migration and to save enough money with which to return home;
- requesting migrants to announce their return at the embassy or consulate of their former destination country, which also serves to facilitate their subsequent return to that country for a further period of employment;
- enabling migrants with valid work permits to travel relatively freely between their countries of origin and destination for family and business visits;
- enabling the transfer of social security payments (for pension and health benefits) to the country of origin (see also Section 6.5 below);
- designing a sponsor system for employers whose record on return counts towards their future prospects to sponsor and hire foreign workers;
- the formulation and implementation of relevant procedures to ensure the return of migrant workers who overstay, and enforcement measures such as workplace inspections and employer sanctions;
- requiring workers to invest a portion of their wages in special high-interest bearing savings accounts, the funds from which may be accessed on their return to their home country; and
- subjecting employers to financial security bonds which may be retained by the authorities if the worker does not leave after his or her permit has expired (Agunias and Newland, 2007; Ruhs, 2006; Ruhs, 2005; U.K. Home Office, 2005).

Some of these measures, especially the last two, raise labour and human rights concerns on account of

²⁸ Two past temporary programmes frequently described in terms of failures are the Bracero programme involving Mexican migrant workers to the United States (1942-1964) and the *Gastarbeiter* ("guest worker") programme in Germany (1955-1973). See also Chapter 3 and Ruhs (2006).

their coercive nature.²⁹ No temporary foreign worker programmes or bilateral labour migration agreements include all or even most of these mechanisms. It has been suggested that the establishment of small pilot projects to test the impact of the various components of a temporary (and circular – see Section 5.3 below) labour migration programme, including the return components, is the best way forward and one most likely to achieve optimal policy results (Agunias and Newland, 2007). Further, attempting to ensure the strict observance of temporariness throughout all temporary labour migration programmes appears an unrealistic policy objective and one likely to fail in practice, given that some of the jobs filled by temporary migrant workers are actually permanent in nature. Therefore, and as discussed below, a better policy option may be to identify criteria that would allow a limited number of foreign workers to transfer to a more secure status in the destination country (Ruhs, 2005; Abella, 2006).³⁰

Third, as observed in Chapter 3, the admission of larger numbers of temporary low-skilled foreign workers to high-income destination countries often involves a trade-off in the form of limited rights, to reduce the costs of low-skilled labour to employers and the economy as a whole.³¹ While such a trade-off may also result in economic gains for foreign workers and their families, a general survey of international human rights and labour

standards applicable to migrant workers reveals that few distinctions between the treatment of temporary foreign workers and nationals or more established foreigners employed in the country can be justified (Böhning, 2003) although, in practice, the situation may be very different. Beyond some restrictions regarding access to the labour market to safeguard the position of local workers and limits on family reunion, particularly in relation to short-term seasonal employment, the universal nature of human rights and labour standards precludes the imposition of unjustified limitations in respect of wages and working conditions. These issues are discussed further in Section 6.2 below.

5.3 Circular Migration

Temporary labour migration is often discussed by policymakers together with circular migration and return migration in view of the benefits to be gained by origin and destination countries and migrants themselves, in terms of transfer of skills and know-how and the business activities and investment that may result from the regular movement of migrants between the countries in question.

Circular migration has been broadly defined by the EU Commission as “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” (European Commission, 2007: 8). The team that prepared Roundtable 1.4 on Circular Migration for the first meeting of the Global Forum on Migration and Development (GFMD), held in July 2007 (see Textbox Int. 2), proposed the following definition: “Circular migration is the fluid movement of people between countries, including temporary or more permanent movement which, when it occurs voluntarily and is linked to the labor needs of countries of origin and destination, can be beneficial to all involved” (GFMD, 2007: 4). While there is as yet no widely accepted definition of the concept, as underlined in the definition proposed at the GFMD, circular migration clearly goes beyond temporary labour

²⁹ E.g. Abella (2006) argues that withholding a part of wages to use them as savings which migrants can only release on return contravenes ILO's Protection of Wages Convention No. 95 (1949), ratified by 95 countries and in force since 1952. Moreover, such compulsory deductions may encourage the migrant worker to avoid them by taking up unauthorized employment in the informal labour market.

³⁰ In some countries it is possible for migrants working on a temporary work permit to obtain permanent status (e.g. Canada, U.K.) provided that the conditions for admission for employment-based immigration are met. In Spain, migrant workers holding seasonal work permits (a type “T” permit) with an initial validity of nine months, may secure a more stable status after four years of temporary employment, whether consecutively or not (Cholewinski, 2005). Elsewhere, however, such as in the Gulf Cooperation Council (GCC) states (e.g. Kuwait), switching between temporary and permanent status is not possible. This is so also in Singapore, where migrant workers on temporary permits cannot acquire permanent residence status (Ruhs, 2006).

³¹ See also Ruhs and Martin (2006).

migration³² and is also used in connection with the temporary or permanent return of members of the diaspora, many of whom are already settled in the host country (Agunias and Newland, 2007).³³

Consequently, in order to harness the benefits from circular migration in line with a “development-friendly” approach (see Section 8 below), policymakers in destination countries may consider a number of options to facilitate circular movements, either in respect of temporary migrant workers, while they are working in the host country or to enable them to return to that country for successive periods of employment, or permanent foreign residents. As far as the latter are concerned, policymakers should be aware of disincentives that might preclude or hinder permanent foreign residents from conducting employment, business or investment activities beneficial to the development of their countries of origin and which also have positive trade and business impacts on the host countries. Thus, the adoption of flexible laws and policies in host countries is important for generating and supporting circular movements or to promote sustainable returns. Such dispositions would, for instance, enable migrants to travel outside the country without prejudice to qualifying periods in view of a more secure residence status or naturalization;³⁴ assure foreigners with long-term or permanent residence status of the

possibility to return in the event of a temporary or medium-length return to their country of origin;³⁵ and facilitate the portability of pensions and other benefits (Agunias and Newland, 2007).³⁶ The EU Council Directive on the status of third-country nationals who are long-term residents, adopted in November 2003, is an important measure in this regard.³⁷ Article 9 of the Directive provides that third-country nationals who hold long-term resident status (for which they are eligible after five years of residence in a participating EU Member State) can leave their country of residence for a period of up to 12 consecutive months without losing their status.³⁸ The European Commission has suggested that this 12-month period might be extended for a 2-3-year period to promote circular migration of long-term residents.

With regard to temporary migrant workers, the Commission proposes that circularity be promoted within the development of the evolving EU law and policy framework for regular migration to the EU by enabling highly skilled migrants and remunerated trainees to return to work in the EU following a period of lawful employment, training or study

³² However, return for short stays is excluded from the concept. In this regard, the UN Secretary-General's 2006 *Report on International Migration and Development* observes: “Migrants who return for a period and leave again are said to be engaged in ‘circulation’. Circulation, however, does not occur when migrants return only for short visits but essentially remain settled abroad” (UN, 2006: 68, para. 247). See also the section on Migration Terminology at the end of the Report, which contains an adapted version of the definition discussed at the GFMD.

³³ In the EU context, the two main forms of circular migration that are most relevant concern third-country nationals settled in the EU, and persons residing in a third country who wish to come to the EU temporarily for employment, study, training or for a combination of these activities (European Commission, 2007).

³⁴ E.g., in the U.S., migrants applying for permanent residence cannot travel abroad without prior special permission, which is a lengthy and cumbersome process, and an application for naturalization can only be submitted at the end of a continuous five-year period of residence (Agunias and Newland, 2007).

³⁵ “It is thought that migrants who have rights to long-term residence in countries of destination may be more willing to try life back home if they can be assured of being able to emigrate again. Security of residence in countries of destination may thus promote either return or circulation. Similarly, allowing dual citizenship may be conducive to return” (UN, 2006: 70, para. 254).

³⁶ Cooperation between host and home countries concerning information on jobs and business opportunities in the latter is also important to facilitate circulation among migrants who are permanent residents (Agunias and Newland, 2007). Other means of facilitating circular migration include policies relating to the recognition of qualifications acquired in the destination country and relaxed investment and tax regimes.

³⁷ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ 2003 L 16/44. The Directive should have been transposed into the laws of EU Member States by 23 January 2006. Three EU Member States are not participating in this measure, i.e. Denmark, Ireland and the U.K. because they negotiated opt-out provisions at the time the treaty amendments providing the EU with competence to legislate in the asylum and immigration field were adopted, although it is possible for Ireland and the U.K. to opt into the Directive at a later date.

³⁸ Member States may also provide that absences exceeding this period or for specific or exceptional reasons shall not entail withdrawal or loss of the status.

there, and through the introduction of residence/work permits valid for several years for low-skilled seasonal migrants to permit them to return to the EU for a period of consecutive years for seasonal work (European Commission, 2007).

While the emphasis on the contribution circular migration could make to development normally concerns highly skilled migrants, who have most to

offer in terms of the transfer of skills and know-how, this does not mean that the regular temporary migration for employment of low or semi-skilled migrants cannot, if managed properly, bring benefits to all parties concerned. This is well illustrated in the recent proposals by the European Commission discussed above, and the example of the temporary and circular migration of agricultural workers from Colombia to Spain (see Portrait 11.1).

Portrait 11.1

Circular Migration for Co-development

Amalia is a peasant woman from the municipality of Puerres (Nariño, southern Colombia) near the border with Ecuador and has been working in the fields since she was a small girl. She heads her own household and, until three years ago, Amalia and her four children lived on less than three U.S. dollars a day. In an effort to improve her life and future prospects for her children, she migrated to Spain under the Temporary and Circular Labour Migration Model (MLTC), together with other peasants from this region, to work in the vineyards and the fruit orchards around Barcelona during the harvesting season. A decision that changed her life.

The agricultural working experience of Colombian peasants, together with their facility to adapt to different people and cultures as they work alongside Moroccan and Romanian migrant workers, has meant that temporary migrant workers like Amalia are increasingly in demand by Spanish employers.

The MLTC, initially implemented by a group of Spanish farmers (Unió de Pagesos, UP) and currently supported by IOM Colombia and funded under the European Union's AENEAS programme, benefits approximately 1,200 Colombian temporary migrant workers.

Under this temporary labour migration scheme, Amalia has travelled to Lleida in Spain already three times for periods of less than six months to work for different agricultural companies during the harvest season. Her wages are far higher than what she could earn for the same kind of work in Colombia; in fact, her hourly earnings are equal to two days of work in her own country.

During her stays in Spain, Amalia has also been able to benefit from training to identify and formulate development projects to benefit her home community in Colombia. The community is being followed by UP and IOM throughout the entire process to help them carry out their projects.

For that reason, Amalia and other temporary migrants from Puerres have become development agents for the community after they returned home. With advice from Amalia and support from the Unió de Pagesos through its *Fundación Agricultores Solidarios (FAS)*, the temporary migrants implement their development projects, in which they also invest part of their savings accumulated while working in Europe. This has enabled the peasants' association to which Amalia belongs to identify and implement projects such as growing quinoa (a traditional local cereal) and breeding guinea pigs and trout, and so to contribute to the community's development.

The achievements of these temporary labour migration projects, as illustrated by this example from Puerres, go well beyond the possibility of earning more money for their work so as to be able to meet recurring expenditures such as for health care, education and housing. In fact, the possibility for migrants, such as Amalia, to migrate and work abroad temporarily is the more important and long-lasting contribution to the local economy and community, as it clearly demonstrates the benefits of leaving the country through regular migration channels and of actively participating in a temporary labour migration model

for co-development that not only benefits the migrant workers themselves, but also the country of origin and the country of destination.

Thanks to the Temporary and Circular Labour Migration Model, every time Amalia returns from Spain, besides savings and gifts for her four children, she also brings back with her opportunities for socio-economic development and a better quality of life for herself, her family and the entire community.

Source: IOM Bogotá.

6. Post-admission Policies: Labour Market Regulation, Protection of Migrant Workers, Social Cohesion and Integration

Post-admission policies comprise a number of interrelated policy elements, namely: labour market regulation, including access to and mobility within the labour market, and recognition of qualifications; the protection of migrant workers in the employment context; facilitation of social cohesion; enhancement of social welfare, in particular through access to adequate healthcare, education and housing; and social security provision (OSCE/IOM/ILO, 2006, 2007). In many destination countries, the content of these policy elements are determined by the extent to which the governments concerned have accepted international standards, such as international human rights and labour norms. Even if conditions in these countries are such that it is not possible to formally comply with these standards, they may still serve as a model for the development of national legal frameworks. As observed in the Introduction, the protection of migrant workers (particularly those with temporary or irregular status) in a globalizing labour market is one of the most difficult and sensitive challenges facing policymakers. The content of post-admission policies is shaped further by participation in regional and bilateral agreements (see Chapter 13). In the EU, for example, full access to the labour market for most EU citizens is a reality,³⁹ which means that the focus of policy concerns

regarding these nationals has shifted essentially towards recognition of their qualifications and the provision of adequate social protection, rather than regulating their access to the labour market per se. Irrespective of the policy directions agreed to at the multilateral, regional and bilateral level, however, these still have to be effectively implemented at the national level. Clearly, some policy elements, such as the adequate protection of workers in countries of destination, will also be determined to a certain extent by the existence of appropriate unilateral policies in countries of origin, which are discussed in Chapter 10, or through the adoption of bilateral arrangements between countries of origin and destination (see Section 8 below and Chapter 13).

6.1 Labour Market Regulation

Regulating the labour market in the context of migration for employment is largely concerned with the restrictions governments may legitimately impose on migrant workers regarding their access to the labour market, particularly during the first work authorization, and the mobility of migrant workers within this market with a view to protecting the local workforce.

While in many countries access to the labour market for migrants is regulated by a variety of administrative restrictions affecting both workers and employers, reductions in and streamlining of such bureaucracy as well as providing greater autonomy to workers over their employment status are emerging as effective practices, to ensure that available jobs in destination countries are filled quickly and efficiently without

³⁹ With the exception of nationals from the ten central and eastern European new EU Member States in five former EU-15 Member States, which continue to apply transitional arrangements (see Chapter 13 and Textbox 13.3).

resorting to irregular migrant workers, and also to provide more safeguards for the worker. For example, to enhance the protection of migrant workers in the labour market, the important recent reform introduced by the Irish Employment Permits Act 2006, which came into force on 1 February 2007, provides for the work permit to be granted to the worker rather than the employer. The permit also lists entitlements and the principal employment rights of the employee (Ireland, DETE, 2007(a), 2007(b)). For similar reasons,⁴⁰ it is advisable that migrant workers enjoy a degree of mobility, at least within the same employment sector and also in the context of temporary labour migration schemes, in order to reduce the risk of exploitation that may arise from being tied to one employer.⁴¹ Such exploitation can be exacerbated by the illegal practice of retaining the passports of migrant workers and in those situations where employers provide accommodation to migrants only as long as they continue to work for the employer (i.e. “tied accommodation”) (Ruhs, 2005). As noted earlier in connection with employment-based immigration, it is possible for certain groups of migrant workers who initially entered on a temporary basis to be granted free access to the labour market and eventually permanent residence. While this practice is prevalent in respect of the admission of skilled migrants in Canada and the U.S. and EU destination countries, where settlement is usually encouraged today, this

is not the policy in the GCC and Asian countries of destination, where employment of foreign workers is perceived as strictly temporary.⁴² Nonetheless, as discussed in Section 5.2(b) above, provided that the rules are transparent, a defensible argument may be made for allowing for some transition from temporary labour migration to employment-based permanent residence, particularly where migrants have resided and worked in a country for a number of years and are successfully integrated. There are also advantages to the employer in ensuring a readily available supply of workers into sectors where there is a structural demand for such labour and in not having to train new workers.

Eliminating discrimination against women migrant workers in respect of access to the labour market and the adoption of appropriate policies in this area are also important considerations. First, the demand for domestic workers, nurses and entertainers may appear neutral at first sight, but in practice recruitment to fill the available jobs is effectively aimed at women. Second, the majority of women migrant workers end up in low-skilled jobs and, in some countries, are also subject to intrusive questioning regarding possible pregnancy and even pregnancy tests before being permitted to take up employment, practices that amount to unlawful sex discrimination in international human rights law (OSCE/IOM/ILO, 2006, 2007).

Putting in place appropriate mechanisms to recognize the diplomas and qualifications of migrant workers acquired in their countries of origin or third countries would give them more opportunities to make an optimal contribution to the destination country, and to the country of origin in terms of remittances and the eventual transfer back home of additional skills and know-how. The phenomenon of “brain waste” is particularly pronounced in the case

⁴⁰ The Institute for Employment Rights in the U.K. reasons as follows: “The rules on the possibility of migrant workers to change employer are of fundamental importance within the labour market. The operation of the labour market in allocating labour to where it is most useful, and the individual’s right to work, each point in the direction of allowing migrant workers to change employer where they consider it advantageous to them to do so. There are also basic issues as regards fairness. The narrower a worker’s options as regards a change of employer, the greater the scope for an employer to impose unfair pressure as regards performance, conditions at work, or terms of employment. This is a matter of legitimate concern not just to the individual in question, but to interested third parties such as co-workers and trade unions” (Ryan, 2005: 40).

⁴¹ Under the new Irish work permit rules, however, the worker issued with a first permit must stay with the same employer for a period of 12 months unless there are exceptional circumstances. With regard to the U.K., it has been proposed that migrants should be able to obtain an unlimited right to change employer and occupation after a short period, i.e. three months (Ryan, 2005).

⁴² Concerning the GCC States, this is also connected to the fact that the foreign population greatly outnumbers citizens, thus giving rise to security concerns (Ruhs, 2005).

of unauthorized employment in which many migrants end up because of the absence of regular migration opportunities, and adversely affects women in the care and domestic work sectors, where demand, as noted above, frequently remains unrecognized (OSCE/IOM/ILO, 2006, 2007).

6.2 Protection in Employment

While equal treatment of local and migrant workers is an accepted principle of international human rights and labour law, such protection has to be assured in practice, which can be realized only in a framework of partnerships between governments and social partners. In this regard, a number of difficulties are identified and policy solutions proposed.

One difficulty concerns the need to ensure that national labour laws are applicable to employment sectors such as agriculture and domestic work or household employment, which, in some countries, have been excluded, either wholly or in part, from the legal protection foreseen under these laws,⁴³ a particularly important consideration when addressing discrimination against women migrant workers in the domestic service sector. Second, more careful attention deserves to be paid to the protection of a number of specific labour rights that are more likely to be neglected in the context of temporary labour migration, such as security of employment and access to vocational/ language training. Protection of the former requires that migrant workers are not dismissed first during downturns in the economy without good reason, while provision for the latter, particularly language training, ensures that migrant workers and their family members are able to adjust more quickly to their new environment and can upgrade their skills with the resulting benefits this may have in terms of their employment in the destination country and eventual return to their

country of origin. Third, ensuring that migrant workers may join or form a trade union in the sector concerned would make it possible for them to exercise their rights in the workplace (OSCE/IOM/ILO, 2006, 2007). Though the principles of freedom of association and collective bargaining are well established, in some countries obstacles continue to hamper the full exercise of trade union rights by irregular migrant workers (ILO Committee on Freedom of Association, 2001 and 2002). In addition to the important role of organizing migrant workers and protecting their labour rights, trade union activities may also include: conducting campaigns for ethical recruitment to counter the effects of the "brain drain"; making arrangements with local banks to reduce the cost of remittance transfers; entering into bilateral agreements with other trade unions in origin or destination countries; participation in government pre-departure orientation schemes in the country of origin (e.g. the Philippines); provision of assistance to migrant workers to enable them to keep in contact with their country of origin; and, particularly in Africa, collaboration with employers to fight the spread of HIV/AIDS (OSCE/IOM/ILO, 2006, 2007). Finally, the protection of labour rights of irregular migrant workers is especially problematic in practice and is discussed in more detail in Section 7.1 below.

6.3 Facilitating Social Cohesion

In a world characterized by high labour mobility, the nature of the relationship between the migrant and the host society is changing rapidly, where such concepts as assimilation, integration and multiculturalism are no longer entirely satisfactory either as explanatory or prescriptive terms. New approaches are needed to define a host society's core values and principles, while at the same time providing scope for diversity. There is no single formula for success: permanent resident migrants may require policies quite different from those that are required by temporary migrants. In general terms, however, the starting point is the recognition

⁴³ For example, in the Province of Ontario, Canada, agricultural workers are not covered by the legal minimum standards foreseen in the Employment Standards Act relating to maximum hours of work, daily and weekly rest periods, statutory holidays and overtime pay (Brem, 2006).

of the migrant as a legitimate participant in social and economic processes, and acknowledgement and definition of **mutual** rights and responsibilities.

The need to ensure social cohesion in host countries is a crucial determinant of policymaking. Large-scale migration for employment to address labour shortages and demographic deficits is not considered feasible in many parts of the world because of the perceived difficulties in integrating a significant number of foreigners into the host society and providing them with adequate social services. Canada, however, which in 2006 admitted over 250,000 migrants on a permanent basis and more than 110,000 temporary migrant workers, demonstrates that larger-scale admissions are possible with careful planning and where appropriate reception policies are in place (CIC Canada, 2007a). Moreover, in practice, the social fabric of the host country is more likely to be at risk when migrants are subject to various forms of discrimination, both in the workplace and in the general community, and where there are no proper integration mechanisms in place.

Discrimination against migrants is a serious barrier to the realization of social cohesion and integration:

Discrimination produces differential treatment in labour markets, preventing equal opportunity, provoking conflict within the working population and undermining social cohesion. Discrimination reinforces attitudes that constrain certain identifiable groups to marginalized roles and poor conditions in the work force. The results of consistent denial of employment opportunities, relegation to ghettos, lack of education or training opportunities, absence of police protection, and multiple discriminations in community life are exclusion and ultimately, breakdown of social cohesion. Migrant workers face various forms of discrimination in employment and occupation, and discrimination suffered by migrants often begins at the recruitment stage. Difficulties in

finding suitable employment often result in highly qualified men and women doing relatively menial jobs.

Discrimination prevents integration. The consequences of past policies that neither anticipated nor prevented discrimination can be seen in ethnic ghettos, high unemployment, low school attainment, higher violence and crime rates in numerous countries. It is evident that the longer migrants and their offspring live and work in a host society under discriminatory provisions, the more likely it is that this prejudice and discrimination will prevent them from reaching similar economic and educational attainments as the majority population (Taran et al., 2006; OSCE/IOM/ILO, 2006, 2007: 144).

Though the principle of non-discrimination is at the core of international human rights and labour law, and its applicability to migrants has been reinforced by regional human rights tribunals (Cholewinski, 1997, 2007), effective implementation of this principle in policy and practice is lacking in many countries. For example, research conducted under ILO auspices in western Europe and North America revealed significant and persistent discrimination against migrants concerning the hiring process (ILO, 2006). Discrimination also has multiple impacts on women migrants, many of whom work in gender-segregated and unregulated sectors of the economy (e.g. domestic services and the commercial sex industry) (OSCE/IOM/ILO, 2006, 2007). Prevention of discrimination against migrants, therefore, calls for the development of a comprehensive and multifaceted agenda for action comprising a wide range of legislative, administrative, educational and cooperative measures.⁴⁴

⁴⁴ Some of the key elements of this agenda identified by the ILO include: strengthening the rule of law by adopting relevant international standards: outlawing racist and xenophobic behaviour; elaborating administrative measures and procedures to fully implement legislation; setting up independent human rights/anti-discrimination bodies with powers to address discrimination against non-citizens; encouraging the communication media to emphasize positive images of diversity and migration; including diversity training in educational curricula; putting in place practical measures and procedures in the workplace, and cooperating with civil society and community groups (ILO, 2006; OSCE/IOM/ILO, 2006, 2007).

The link between social cohesion in host societies and the integration of migrants is commonly accepted, but there are different conceptions of integration (IOM, 2006), some of which, like assimilation, do not sit comfortably with modern understandings of social cohesion. There is growing consensus, however, that integration is a two-way process entailing responsibilities and obligations on the part of both the migrant and host society.

While the term is used and understood differently in different countries and contexts, “integration” can be defined as the process by which migrants become accepted into society, both as individuals and as groups. It generally refers to a two-way process of adaptation by migrants and receiving societies, while the particular requirements for acceptance by a host society vary from country to country. Integration does not necessarily imply permanent settlement. It does, however, imply consideration of the rights and obligations of migrants and host societies, of access to different kinds of services and the labour market, and of identification and respect for a core set of values that bind migrants and host communities in a common purpose (IOM, 2006: 2).⁴⁵

The resort to the use of voluntary or obligatory “integration contracts” in a number of EU Member States, such as in Denmark and France (European Commission, 2006c), and settlement strategies in the established countries of immigration⁴⁶ reflects this dual approach, and from the point of view of the destination country, the concern to ensure that

⁴⁵ See also Council of the EU (2004).

⁴⁶ E.g. the national Immigration Settlement Strategy of the New Zealand Immigration Service, which identifies the following six goals for migrants and refugees, namely that they are able to: (i) find employment appropriate to their qualifications and skills; (ii) be confident in using the English language in the local setting or access appropriate language support to bridge the gap; (iii) access appropriate information and responsive services available to the wider community (e.g. housing, education and services for children); (iv) form supportive networks and establish a sustainable community identity; (v) feel safe in expressing their ethnic identity and are accepted by, and are part of, the wider host community; and (vi) participate in civic, community and social activities (Spoonley et al., 2005).

new arrivals understand and adhere to the core social values of the host society.

Irrespective of whether migration for employment is permanent or temporary, an element of integration is important because it contributes to the health and safety of migrant workers and facilitates the exercise of their rights in the workplace and in the host community (i.e. social and cultural rights – see Section 6.4 below), and prepares migrants for eventual return to their home countries. Practical measures assisting integration include the establishment of migrant information and resource centres, such as the Information and Resource Centres for Migrants in Portugal and Slovakia (OSCE/IOM/ILO, 2006, 2007); facilitating learning of the local language, including during working hours; and access to vocational training, which, as discussed in Section 6.2 above, is rarely afforded to migrant workers in a temporary situation. Moreover, supporting private sector and civil society initiatives, such as those of NGOs and trade unions,⁴⁷ which interact with migrant workers on a daily basis at the grass roots level, is also key to successful integration.

Social cohesion and integration are also facilitated by the provision of opportunities for migrants to be reunited with their families in the host country. While international human rights standards proclaim the family as “the natural and fundamental group unit of society”,⁴⁸ this principle has not been elaborated to provide for a right to family reunification for migrants. EU law constitutes an exception, however, because it affords a generous right to EU citizens who exercise their right to free movement to be joined by members of their families, and a more limited right to third-country nationals lawfully resident in the EU who hold a resident permit valid for one year or more and have reasonable prospects of obtaining

⁴⁷ Trade unions play a key role in assisting the integration of migrants in many host societies by organizing language courses and establishing information centres (OSCE/IOM/ILO, 2006, 2007).

⁴⁸ E.g. International Covenant on Civil and Political Rights 1966, Article 23(1): “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.

the right to permanent residence.⁴⁹ In general, however, the established countries of immigration admitting migrants for permanent settlement and employment do not place any obstacles before those migrants wishing to bring in close family members. Similarly, European countries admitting migrant workers (usually in the higher skills categories) on a long to medium-term basis also admit spouses and children. However, the position is very different in the GCC States and Asian host countries, such as Malaysia and Singapore, where the admission of foreign workers is perceived as strictly temporary.⁵⁰ Similarly, low-skilled temporary or seasonal migrant workers in Europe and North America are often precluded from bringing their family with them (e.g. seasonal agriculture workers in the U.K. and Canada) or face time restrictions (e.g. a one-year waiting period in Spain). While it is legally possible to justify such restrictions for a limited period of time, the longer they are in force the greater the social and humanitarian costs are likely to be for migrant workers and their families, for their integration prospects and for both host and home societies. Consequently, the design of family reunion policies needs to be very carefully assessed and balanced to ensure that these costs are kept to a minimum and to preclude human rights violations.

6.4 Enhancing Social Welfare

The difficulties governments in industrialized countries are increasingly experiencing in ensuring social protection for their nationals in the context of ageing societies, particularly in those European countries which have traditionally supported robust social welfare systems, have adversely affected the access migrants may have to these diminishing resources.

The principal policy challenges therefore centre on the appropriateness of drawing distinctions between citizens and migrants in the social sphere, the extent to which differentiated access to such rights and services based on the specific category of migrant is permissible, and whether the rights concerned, if afforded, should be tailored in accordance with migrants' specific cultural needs.⁵¹ While migrants who are permanent residents are normally treated on equal terms with citizens (e.g. Canada, U.K.), the position of migrant workers who are in a country on a temporary or time-limited basis, and of irregular migrants (see Section 7 below) is considerably less advantageous.

The challenge of according foreign workers equal treatment with nationals in the social sphere is reflected well in the gap that exists between the content of international human rights standards adopted in this field and their application in practice. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (see Textbox 13.1) (which, to date, has not been ratified by a single high-income destination country) stipulates that emergency medical care must be available to all migrant workers and their families, including those in an irregular situation,⁵² and yet the more widely ratified International Covenant on Economic, Social and Cultural Rights (1966) guarantees the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health",⁵³ which has been interpreted broadly by the Committee monitoring its application to include "preventive" health care (UN ECOSOC, 2000). In practice, many destination countries grant irregular migrants access to emergency health care, although these policies are

⁴⁹ See respectively Council Regulation 1612/68/EEC of 15 October 1968 on free movement for workers within the Community, OJ 1968 L 257, Article 10, and Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251/12, Article 3(1). See also Chapter 6.

⁵⁰ However, in Singapore, foreign professionals and executives can be accompanied or joined by spouses and dependent unmarried children under the age of 21 (Singapore Ministry of Manpower, 2008).

⁵¹ E.g. tailoring the provision of health care and social services to the specific needs of migrant women.

⁵² Article 28 in Part IV of the Convention, which applies only to migrant workers and their families in a regular situation, is broader in scope because it grants lawfully resident migrants equal treatment with nationals regarding "access to... health services" (Articles 43(1)(e) and 45(1)(c)).

⁵³ International Covenant on Economic, Social and Cultural Rights (1966), Article 12(1).

often not explicit and access for irregular migrants is difficult because of bureaucratic obstacles and the fear of expulsion if they make themselves known, exacerbated by the obligation on officials to denounce irregular migrants to immigration authorities (Cholewinski, 2005). Similar policy contradictions stem from the implementation of the right to education, which too is to be enjoyed by everyone and, at a minimum, to be provided free for all at the primary or elementary level.⁵⁴ In practice, however, the children of migrants often experience difficulties in gaining access to an appropriate level of education in the destination country, which are compounded by the lack or inadequate knowledge of the host country's language, and subsequent recognition of the education and the diplomas received there on return to their countries of origin. As with access to health care, these difficulties are exacerbated in respect of the children of irregular migrants. Giving proper effect to the right to "an adequate standard of living", including housing,⁵⁵ also to be enjoyed by everyone and defined more generously than the mere provision of basic shelter (UN ECOSOC, 1992), remains problematic in a context of scarce and expensive accommodation in large cities in destination countries where many migrant workers and their families tend to congregate.

With regard to schemes facilitating the temporary migration of low-skilled workers, policymakers in a number of destination countries have attempted to address the problem of the availability of adequate accommodation by imposing a legal obligation on employers to provide this accommodation in accordance with minimum standards. For example, as observed in Chapter 3, the Low Skill Pilot Project in Canada requires employers to assist temporary migrant workers to find suitable and affordable accommodation, and under the Seasonal Agricultural Workers Scheme (SAWS) in the U.K., employers must

ensure clean and sanitary accommodation (OSCE/IOM/ILO, 2006, 2007).

6.5 Social Security

Social welfare, as referred to in the preceding section, and social security are closely interrelated; indeed, medical care is one branch of social security, and certain categories of persons (e.g. the unemployed, families with children, the elderly) may also be eligible for social benefits to assist them with their payments for accommodation. Regarding foreign workers, three specific interests concerning social security rights can be identified: (i) entitlement to social security and benefits on equal terms with national workers (which, however, may be denied to them on the basis of their nationality or because they have been unable to meet requirements of residence and/or payment of contributions); (ii) to maintain acquired rights on leaving the country (including the portability of benefits); and (iii) to benefit from the cumulative rights acquired in different countries (OSCE/IOM/ILO, 2006, 2007).

One of the best ways to ensure appropriate social security coverage for migrant workers is through bilateral or multilateral agreements that are particularly relevant with regard to the second interest (maintenance of acquired rights). Multilateral agreements have the advantage of setting common standards, thus avoiding the problem of different rights available under different bilateral agreements for migrant workers from different countries, and easing bureaucratic procedures by establishing common administrative rules in the implementation of the agreement (OSCE/IOM/ILO, 2006, 2007). EU rules on the portability of social security benefits are instructive in this regard. While initially applicable only to EU citizens moving and working within the EU, they have now been extended also to third-

⁵⁴ Ibid. Article 26; Convention on the Rights of the Child (1989), Articles 2 and 28(1)(a); Migrant Workers Convention (1990), Article 30.

⁵⁵ International Covenant on Economic, Social and Cultural Rights, above n. 53, Article 11(1).

country nationals moving within the EU.⁵⁶ These rules are also applicable to third-country nationals lawfully resident in the EU who are citizens of countries with which the EU has concluded Association Agreements (e.g. Algeria, Morocco and Tunisia, and Turkey). An example of a multilateral agreement on social security in a different part of the world is the Caribbean Community and Common Market (CARICOM) Agreement on Social Security (1996) in force since 1 April 1997, which has been ratified by 13 CARICOM members.⁵⁷ The agreement safeguards entitlements to long-term benefits by providing for the aggregation of all periods in which contributions were paid to social security systems in member states (Nonnenmacher, 2007b).

In the absence of bilateral and multilateral agreements, it is also possible to secure social security coverage for migrant workers on a unilateral basis. Examples of unilateral measures in host countries include equal treatment of local and migrant workers; waiving long qualifying periods in favour of migrant workers; crediting insurance periods completed in other countries; and reimbursement of medical expenses for migrant workers who, upon retirement, return to their country of origin and do not qualify for a pension and thus the statutory health scheme (OSCE/IOM/ILO, 2006, 2007).⁵⁸

⁵⁶ See, respectively, Council (of the European Union) Regulation 1408/71/EEC of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, OJ 1971 L 149/2 (as amended) and Council Regulation 859/2003/EC of 14 May 2003 extending the provisions of Reg. (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality, OJ 2003 L 124/1.

⁵⁷ CARICOM has 15 full members (Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadines, Suriname, Trinidad and Tobago) and five associate members (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands).

⁵⁸ Unilateral measures can also be adopted in countries of origin, such as the imposition of requirements (liabilities) on recruitment agencies to pay social security contributions to the national security system for each worker recruited for employment abroad (e.g. Philippines, Indonesia); voluntary coverage for nationals working abroad (e.g. France, Jordan, Philippines); and the possibility for the payment of retroactive contributions to returning migrant workers for periods spent abroad (OSCE/IOM/ILO, 2006, 2007).

7. Preventing and Reducing Irregular Labour Migration and Unauthorized Employment

There is a general consensus in countries of destination that irregular labour migration needs to be prevented and reduced, and yet, at the same time, that perfection in this endeavour is not a realistic policy objective and that it is not possible to eliminate irregular flows altogether (Papademetriou, 2005). Moreover, as discussed in Chapters 8 and 9, there are still few credible estimates to verify the actual scale of the phenomenon, which, by its very nature, is statistically not quantifiable, although it is possible to point to a number of data sources (e.g. census results, registers of foreigners, border and in-country apprehensions of irregular migrants, demographic statistics – births, deaths and hospitalization rates – and regularization data) which can assist in arriving at more reliable estimates of irregular migration (Jandl, 2003). While policymakers may differ as to its impact, the fact is that irregular migration in most destination countries, including Europe and North America, remains prominent, if not foremost, in policy thinking on international migration and, since September 11, 2001, has also been increasingly linked to security concerns (Castles, 2006; Papademetriou, 2005).⁵⁹

It is also important to make a clear distinction between unauthorized employment and irregular migration (IOM, 2008). In most countries of destination, resources and means to address unauthorized employment have so far been limited, and have instead focused mainly on the traditional forms of dealing with irregular migration, such as strengthening border controls, imposing restrictions on entry (e.g. visa requirements, including airport transit visas) and applying voluntary or, more commonly, forced return. At times, measures have been formulated with little consultation of countries of origin, and some of these strategies

⁵⁹ For the irregular migration/terrorism nexus and for some words of caution about equating the two, see Papademetriou (2005).

have inevitably given rise to human rights concerns. Moreover, while coercive measures are generally deemed necessary,⁶⁰ they are unlikely in themselves to stop the movements of irregular migrants.

Consequently, coercive measures are best implemented in tandem with more constructive measures. For example, there is a need to reconcile security concerns with the protection of the human rights of migrants (Schoenholtz, 2007) and, in particular, of irregular migrants, who are most vulnerable to exploitation in the migration process as well as in the destination country.

Furthermore, it is acknowledged that a preventative approach is required and that an isolationist strategy is bound to fail, which means that destination countries need to collaborate and cooperate with transit and origin countries to develop coherent complementary approaches with the help of employers and civil society actors. As observed in Chapter 8, there is a clearly discernible trend towards the development of such cooperative approaches.

7.1 The Need for a Comprehensive Approach

The need to adopt a comprehensive approach to address irregular migration is advocated by EU institutions. In July 2006, the European Commission issued a Communication on policy priorities to address irregular migration, which includes cooperation with countries of origin, secure borders, the fight against human trafficking, secure travel and identity documents, regularizations, tackling unauthorized employment, an effective return policy, improving information exchange, and carriers' liability (European Commission, 2006b). A number of these policy priorities are described in Chapter 8 with reference to specific examples in various parts

of the world, whereas for the purpose of underlining the need for a more balanced overall approach, this section will focus on a number of constructive measures to be envisaged by policymakers, such as the introduction of specific safeguards in the employment context for male and female irregular migrants; the opening up of more regular labour migration opportunities; consideration of a range of regularization options; and recent initiatives linking readmission arrangements to labour migration and visa facilitation.

One fundamental issue is that of minimal guarantees for **protection**⁶¹ needed as part of a comprehensive and preventative approach, and without which a restrictive policy to prevent or reduce irregular migration would lack credibility. Irregular migrant workers require special protection from slavery-like practices, forced labour, and inhuman and degrading treatment, as well as safeguards for their personal security and rights in the workplace. Although a migrant's immigration status should not constitute an obstacle to accessing protection in the employment context (IACHR, 2003), in practice it is very difficult for irregular or undocumented migrants to claim their rights before employment tribunals or courts primarily because of the fear of expulsion. This difficulty arises also in relation to rights pertaining to past employment, such as payment of outstanding wages, which employers often refuse to pay to irregular migrants, and is exacerbated if the employment contract is rendered void because of the irregular immigration status of the worker (Ryan, 2005). Some innovative and practical ways of protecting irregular migrant workers have been advanced by the Brussels-based NGO, Platform for International Cooperation on Undocumented Migrants (PICUM) (see Textbox 11.2). One appropriate policy response is to separate the protection of employment rights from immigration

⁶⁰ E.g. Papademetriou (2005): "A strong "law-and-order" component to the overall approach to illegal [irregular] immigration is nonetheless necessary because illegal [irregular] immigration subverts a society's legal order and undermines or perverts a variety of foreign and domestic policy priorities."

⁶¹ European Commission (2006b: 3): "Fundamental rights must be protected and promoted. Irregular migrants must be offered a humane and dignified treatment particularly as they are often victims of traffickers' networks and exploited by employers."

enforcement on the basis that exploitation in the workplace is to be avoided generally in respect of **all** workers. Complementary measures relate to adequate monitoring and inspection of the workplace, focusing on the detection of abuse rather than irregularity and particularly in those sectors where workers are most likely to be subject to exploitative conditions or forced labour (i.e. agriculture, domestic work, garment industry, the construction sector and sex work). There is also a significant gender dimension to be considered; women migrants are particularly vulnerable to becoming irregular, especially in the domestic services sector, which is often unregulated and not covered adequately, if at all, by national labour laws. Further efforts are therefore needed to regulate household employment, for instance by preventing the immediate return of victims of migrant smuggling and human trafficking and instead providing for a period for recovery and reflection, and possibly a residence permit, depending on the

victim's circumstances.⁶² The position of irregular migrants has been especially weakened in the social sphere because they are often perceived as "scrounging" on the state and thus not eligible to benefit from national welfare systems even though the vast majority of them are in employment. In contrast to such realities, and as observed in Section 6.4 above, are the strong assertions in international human rights treaties affording basic social rights, such as health care, education and housing to everyone regardless of their nationality or immigration status (OSCE/IOM/ILO, 2006, 2007; Cholewinski, 1997, 2005).

⁶² Indeed, this kind of protection is applied at the national level in some countries and also by the EU Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings, or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ 2004 L 261/19, which had to be transposed into the laws of EU Member States by 6 August 2006.

Textbox 11.2

Ten Ways to Protect Undocumented Migrant Workers

Every day millions of undocumented migrant workers labour in different sectors of the economy in Europe, the United States and in many other countries worldwide. Undocumented migrant workers often work and live in inhumane conditions, with very little or no pay at all and insufficient legal protection. Facing exploitation and abuse, many undocumented migrant workers believe that they have no other option than to accept this situation. Fearing that they may be deported if they spoke out, an overwhelming number suffer in silence.

The following is a brief overview of ten methods used by NGOs, trade unions and activists in Europe and the United States to strengthen the position of undocumented migrant workers and to defend their rights (PICUM, 2005).

1. Engaging Public Support Through Events and Consumer Campaigns

Undocumented migrant workers are too often thought of as taking advantage of public benefits and as causing or aggravating unemployment for nationals. Changing the poor image of undocumented migrant workers and gaining the support of the public is of paramount importance in order to protect their rights. Without this support, undocumented migrant workers stand little chance of fighting the exploitation and abuse many face on a daily basis. Many organizations therefore endeavour to raise general awareness in the population of the fact that undocumented migrants have human rights and also contribute considerably to local economies.

2. Collecting Data

Policies on migration, employment and social inclusion are often developed in the absence of concrete data about undocumented migrants. As a result, many of these policies are ineffective. Collecting both qualitative and quantitative data on undocumented migrants is of utmost importance.

NGOs can play a crucial role by setting a relevant research agenda and in overcoming the many difficulties in gathering relevant information on undocumented migrants.

3. Informing Undocumented Migrant Workers of their Rights

Undocumented migrant workers do have rights, but many are unaware of this and put up with exploitation and abuse without challenging employers who violate their rights. Informing undocumented migrant workers about their rights is the first step towards ending the silent suffering of millions of undocumented migrant workers.

4. Building Capacities Through Empowerment

In order to stop the exploitation of undocumented migrant workers, they must be helped to acquire the ability to effectively exercise their rights. Empowering and building the leadership capacities of undocumented migrant workers allows them to defend themselves and even to engage in and influence the decision-making affecting their lives. This is essential in order for them to become agents of their own rights.

5. Unionizing Undocumented Migrant Workers

“What we’ve always said is that ‘a worker is a worker is a worker; there is no such thing as an illegal worker.’” Pauline Doyle of the Transport and General Workers’ Union (T&G).

There are several obstacles preventing undocumented migrant workers from joining a trade union, and not all traditional union structures and working methods are directly applicable to undocumented migrant workers. Yet many trade unions in Europe and the U.S. have managed to overcome these difficulties, leading to a higher level of protection of undocumented migrant workers.

6. Working with Employers to Prevent Exploitation and Advocating for Laws to Hold them to Fair Labour Standards

Another means by which many organizations prevent abuse and exploitation of undocumented migrant workers is by working together with employers. Several successful examples exist of organizations inviting, and sometimes pressuring employers to respect well-defined minimum standards of employment.

Yet there is also a need for legal measures to hold abusive employers accountable for the exploitation of undocumented migrant workers. Such measures are indispensable to ensure effective protection of undocumented migrant workers’ rights.

7. Challenging Exploitation and Abuse through Mediation and Collective Actions

Other ways to raise the enforcement and the effectiveness of the protection of undocumented migrant workers include mediation with those employers who wish to avoid going through the various administrative procedures involved in the official claims process, and collective actions such as public protests, demonstrations, strikes and campaigns, where mediation does not reach the desired solution and where filing a complaint in the legal system is not a solution.

“Nobody wants a bunch of angry workers on their doorstep or circling their car, making it hard for them to do their work...now, essentially all it takes is a call from our organization to the employer, telling him that so-and-so worked for him for x number of days, that he owes him x amount, and when can he get a check over to our office?”, said Julia Perkins of the Coalition of Immokalee Workers.

8. Asserting Undocumented Migrant Workers’ Rights in the Legal System

When conciliatory means of protecting workers’ rights prove unproductive, undocumented migrant workers can resort to formal legal channels. But this can be difficult and strewn with many obstacles, such as the fear of being deported, high legal fees and having to prove the abuse.

“As undocumented migrant workers we do have rights, the trade unions and everyone else tell us that we do, but the problem is exercising them. It’s like having a Porsche without knowing how to drive”, said Henry Cardona of the Collectif des travailleurs et des travailleuses sans statut légal – Genève (CTSSL).

Nonetheless, the law protects undocumented migrant workers in many countries, and undocumented migrant workers in Europe and in the United States have won many cases.

9. Working with Government Agencies to Promote Undocumented Migrant Workers’ Rights

Undocumented migrants tend to be reluctant to approach government agencies. Nevertheless, many government agencies and labour inspectors do not let the legal status of workers impede their main task of upholding fair working conditions and sanctioning employers who fail to observe labour requirements.

Liaising with these agencies can therefore be helpful, since they often can and will intervene to protect undocumented migrant workers.

10. Advocating for Legal Status of Undocumented Migrant Workers

A final means of preventing abuse and exploitation is regularizing the status of undocumented migrant workers.

There are many arguments for regularizing undocumented migrant workers: it leads to the increased visibility of this particular social group and thus to increased protection. It is strongly arguable that it is not only the workers who benefit, but society at a large. Regularizing undocumented migrant workers is a means to combat the informal economy and to stop the deterioration of general working conditions, which in the end affect all workers.

Source: Michele LeVoy, PICUM – Platform for International Cooperation on Undocumented Migrants.

Although there is no demonstrable evidence to sustain that the creation of **more opportunities for regular migration** will necessarily result in less irregular labour migration, the opening up of more channels for regular migration, that are equitable and sufficiently attractive in both scale and benefits to deter individuals from taking up irregular employment, has a place in any comprehensive approach.

Limited regular labour migration channels and the failure of some traditional preventive measures have drawn greater attention to **regularization policies** as a means of reducing irregular labour migration. While immigration rules in some destination countries contain limited regularization provisions applicable to individuals as apart of their overall immigration policy (e.g. U.K.) (Apap et al., 2000), the implementation of more visible and large-scale collective regularization exercises poses a dilemma. On the one hand, it has been argued that regularization rewards irregular migrants for entering without

authorization or overstaying their entry entitlement and, indeed, encourages further irregular entries. On the other hand, it clearly provides a solution for individuals who, for legal, political, humanitarian or practical reasons, are unable to return to their country of origin. Proponents of regularization point out that there are also distinct economic and social advantages for destination countries in promoting regularization, including integration into the labour market of those irregular migrant workers who are unlikely to be paying taxes and social security contributions. For example, in November 2006, the Head of the Russian Federal Migration Service was reported as stating that the presence of approximately 10 million irregular migrant workers in the territory cost the economy more than USD 9.3 billion in unpaid taxes, which was equivalent to the Russian Federation’s total budget on education and healthcare (Russian News and Information Agency, 2007). Moreover, regularization prevents the creation of a marginalized group of persons living and working in the midst of the host society. Consequently,

policy-makers have chosen to undertake both sporadic and periodic regularizations: the most recent examples being the collective decision of the German Länder in November 2006 to allow the regularization of persons holding the temporary and precarious “tolerated status” (*Duldung*) (Geyer, 2007); a pilot regularization of migrant workers in an unauthorized situation conducted in the Russian Federation in the last quarter of 2005 (OSCE/IOM/ILO, 2006, 2007); and the large-scale regularization of irregular migrant workers in Spain in 2005, which resulted in nearly 700,000 applications (Arango and Jachimowicz, 2005: see also Map 7a). Regularization and/or registration programmes have also been implemented recently in a number of Latin American and Southeast Asian countries (see Textbox 8.3 and Maps 7a and 7b). However, the downside is that regularizations may have limited application and thus not necessarily be of lasting effect as the individual in question may for a variety of reasons slip back into irregularity.⁶³ Some EU Member States, particularly in northern Europe, are negatively inclined towards large-scale regularizations as these may have adverse impacts on other Member States in view of the abolition of internal EU border controls.⁶⁴ ILO has argued in favour of an individual right to “earned adjustment” for irregular migrants who cannot be removed and have demonstrated good prospects of settling in the host country (ILO, 2004).

Return is often regarded as the counter measure to further regularization measures, and is sometimes seen as a means of guaranteeing the integrity of regulations concerning regular migration for employment. Return mechanisms are most effective when they include and promote an option for voluntary return (see Textbox 8.5). Readmission agreements, referred to in Chapter 8, are considered as a necessary deterrent by countries of destination,

but are often viewed with reluctance and scepticism by countries of origin, in particular concerning commitments to take back irregular migrants without papers but who are deemed to be their citizens, or non-citizens who transited their territory on the way to the destination country. Within the context of international cooperation (see also Section 8 below and Chapter 13), return measures, such as readmission, have been increasingly connected to the opening up of further regular migration channels, such as labour market quotas for some foreign nationals (e.g. Italy) (OSCE/IOM/ILO, 2006, 2007). Similarly, at EU level, readmission agreements have been negotiated with the Russian Federation, Ukraine and a number of Western Balkan countries,⁶⁵ in conjunction with visa facilitation agreements, and the European Commission (2007) has proposed the development of mobility partnerships between interested groups of EU Member States and third countries.⁶⁶

7.2 Addressing the Informal Labour Market

It is increasingly acknowledged that irregular migration is essentially a labour market and not only a legal or security issue; the fact that many irregular migrants are able to find work in the informal economy indicates that there is a clear link between irregular migration and the labour market (Awad, 2006). In EU Member States, the informal economy accounts for between seven and 16 per cent of GDP (Mormont, 2002), although the majority of workers who comprise it are nationals.

The use of irregular migrant labour in certain employment sectors in countries of destination, especially in low-skilled sectors (viz. agriculture, construction, hospitality and catering, cleaning and domestic services), creates a dependence relationship

⁶³ E.g. if continued regular status is tied to employment and the migrant loses his or her job.

⁶⁴ Indeed, this approach resulted in the adoption of the EU Council of Ministers Decision referred to in n. 70 below.

⁶⁵ Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia.

⁶⁶ The EU and a number of its Member States recently signed mobility partnerships with Cape Verde and Moldova (see Chapter 13).

and distortions in the labour market that is somewhat similar to the criticism levelled at past temporary labour migration programmes (see Chapter 3 and Section 5.2(b) above). A common policy response in destination countries involves the imposition of legal sanctions against private employment agencies and employers, although in practice such measures have not yielded many successful prosecutions. Often, this ineffective outcome is tied to the absence of adequate workplace monitoring and inspections, identified in Section 7.1 as being particularly important in those sectors where migrants are most prone to be subject to exploitative conditions. However, as observed in Chapter 8, the viability of such monitoring and inspections also gives rise to particular difficulties in some sectors, such as domestic services, where conducting inspections in private households leads to concerns regarding infringements of privacy, and in agriculture, where irregular employment is not easily detected because the place of work covers a large area. One recent discernible policy trend has been to focus less on legal sanctions and instead to encourage and reward self-regulation and incentives for compliance. For example, the U.K. Gangmaster Licensing Authority, established in 2005 for the licensing of recruitment agencies providing workers for the agriculture and food-processing sectors,⁶⁷ will only inspect those agencies which in its view are at a medium to high risk of future non-compliance on the basis of a statistically sound risk profile mechanism (OSCE/IOM/ILO, 2007). In Australia, the recent law on employer sanctions focuses largely on education and the encouragement of voluntary compliance among employers, reserving criminal prosecution for persistent offenders or more serious offences such as forced labour or knowingly employing trafficked migrants.⁶⁸

⁶⁷ The Authority was established in the aftermath of a tragic incident in 2003 when 20 Chinese cockle pickers, recruited through such gangmasters (which at the time functioned essentially without regulation), drowned when working in the sea off the coast of northwest England.

⁶⁸ Migration Amendment (Employer Sanctions) Act 2007. See Commonwealth of Australia Law at [http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/8CA4BABF172D6AECCA257352002244E5/\\$file/0072007.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/8CA4BABF172D6AECCA257352002244E5/$file/0072007.pdf).

Other policy responses have targeted certain employment sectors in which significant numbers of irregular migrant workers are found, and involve partnerships between government ministries, the private sector and trade unions.⁶⁹

8. Cooperation and Partnerships

The formulation and successful management of foreign employment policies in destination countries cannot be envisaged without cooperation and collaboration with other countries at the bilateral, regional and multilateral level, and the development of a network of partnerships between relevant ministries and interested stakeholders.

Chapter 13 discusses international cooperation in some detail, but, in summary, cooperation and collaboration with other countries occurs at various levels:

- **Bilateral** – between countries of destination and origin to develop equitable, temporary and circular labour migration programmes; and to facilitate the mobility of skilled, semi-skilled and low-skilled migrant workers under bilateral labour migration and trade agreements. Bilateral arrangements are also negotiated by destination countries to secure the readmission of irregular migrants by their country of origin or transit.
- **Regional** – in the framework of regional cooperation processes (RCPs) where information

⁶⁹ E.g. in October 2002, the Belgian Ministry of Employment and Labour, and the Construction Confederation employers' organization signed a partnership agreement to combat unauthorized employment in the Belgian construction sector. Under this agreement, the government undertook to develop monitoring activities on unauthorized work in construction; the employers committed themselves to mount a campaign aimed at providing information to their members and raising awareness with a view to promoting transparency and publicity about the situation on construction sites, which was to include the signing of a "charter of commitment"; and the establishment of a working group of government and employers' representatives was proposed for the prevention of unauthorized work and to improve standards of detection. However, while supporting the goal of preventing unauthorized work, trade unions were aggrieved that they had been excluded from the initiative (Mormont, 2002).

and effective practices on mobility for the purpose of employment and preventing/reducing irregular migration, including human trafficking and smuggling (especially trafficking for forced labour), can be shared and discussed, as well as more formal regional regimes that already provide for an element of labour mobility, such as regional economic integration regimes (e.g. EU, CARICOM and the Common Market of the South (MERCOSUR)) and Regional Trade Agreements (RTAs).

- **Multilateral** – in the context of global trade negotiations under the auspices of the World Trade Organization (WTO), particularly the temporary movement of service providers under Mode 4 of the GATS (see also Chapters 1, 2, 5 and 13) and such processes as the Global Forum on Migration and Development (GFMD) and the Berne Initiative, which produced the *International Agenda for Migration Management (IAMM)* (IOM/Swiss Federal Office for Migration, 2005); the ILO's *Multilateral Framework on Labour Migration* (ILO, 2006b) adopted by its tripartite membership; and the implementation of international agreements protecting the human and labour rights of all persons, including migrant workers and members of their families.

While the design of foreign employment policies is usually perceived as touching closely on matters of sovereignty in destination countries and rarely, if at all, discussed externally,⁷⁰ consideration should be given to the scope of such policies and their impact on countries of origin, particularly where there is a significant presence (regular or irregular) of migrant workers from the country concerned (Crush, 2007). Moreover, it is difficult to envisage the formulation and application of successful “development-

friendly” policies in the absence of cooperation with countries of origin on at least some aspects of policy design and implementation.⁷¹ Such collaboration is particularly crucial in the design and implementation of temporary labour migration programmes where, as noted above, there is a considerable convergence of interest between countries of destination and origin (Ruhs, 2005).

The involvement of other interested stakeholders in policy formulation and implementation is also important. It is difficult to contemplate the development of successful temporary migrant worker programmes to fill job shortages in certain sectors of the economy without the acquiescence of the private/business sector and trade unions concerned with the protection of the interest of local workers as well as incoming migrant workers. Civil society actors, such as diaspora organizations, migrant associations and NGOs, also play an essential role in the implementation of integration strategies given that such strategies can only be put into effect productively at the grass roots level. Civil society can also play a part in the establishment of cooperative mechanisms with countries of origin to promote circular migration or brain circulation.

9. Conclusion

The four terms or labels that probably best sum up the task of formulating and managing successful foreign employment policies in destination countries, able to produce benefits for all countries involved in labour mobility, as well as the migrants themselves, are transparency, comprehensiveness, flexibility and cooperation and/or partnerships: **transparency**, in the sense of drawing up a consensual statement on labour migration defining policy objectives and

⁷⁰ However, in the context of the development of an EU common law and migration policy framework, EU Member States have agreed to inform each other of any recently adopted or planned national immigration measures that are likely to have a significant impact on several Member States or the EU as a whole. Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, OJ 2006 L 283/40.

⁷¹ According to Ruhs (2005), there is a certain obligation on destination countries to make their policies “development-friendly” largely because of the asymmetries in the regulation of international labour migration (i.e. relatively fewer opportunities for countries of origin to regulate emigration – because of the human right to leave one's own country – than for destination countries to regulate immigration).

outcomes, and in developing clear and workable rules and regulations that can be understood by those who apply them, by migrants affected by them and by the public at large; **comprehensiveness**, in the sense of recognizing that successful policies are not merely concerned with the admission of foreign workers to fill existing labour shortages, but that they need to relate more broadly to the economic and demographic situation in destination countries and to the whole migration process from departure to the treatment of migrant workers (and their families) in the workplace and the host society, including policies for their integration, to their return and reintegration at home, as well as the possibility of further circulation between their country of origin and host country; **flexibility**, in the sense of recognizing that policies may need to accommodate both temporary labour

migration and long-term or permanent employment-based immigration and, in certain instances, to provide a bridge between these; and the development of **cooperation and/or partnerships** with countries at a bilateral, regional and global level, as well as with other interested stakeholders nationally and across borders.

Admittedly, many of the policy responses advanced in this chapter are hardly new in themselves; but, taken together, they offer a broad foundation for a coherent, albeit complex, policy framework, which, if implemented prudently, should contribute considerably to the appropriate formulation and management of foreign employment programmes in destination countries.

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Textbox 11.2 - Ten Ways to Protect Undocumented Migrant Workers

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