

Immigration policies in South and Southeast Asia : Groping in the dark?

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Structure of the presentation

- Key messages
- Overview of migration status of South Asia
- Emigration - foreign employment promotion?
- Immigration policies: features and issues
- Selected cases: India, Sri Lanka, Thailand
- Way forward.

Key Messages



- Most developing countries in Asia focus on promoting foreign employment at expense of immigration policies.
- There is lack of coherence or transparency in immigration policies in most developing countries.
- Immigration policy is governed by complexity of concerns - sovereignty (border control), security, protection of national labour market, foreign investment promotion and labour market needs.
- Protection standards especially for low skilled immigrant workers need considerable improvement in line with international standards.
- There is a dearth of information on immigration policies in developing Asian countries which need to be addressed.

Distribution of migrants by country income groups

(millions)	<i>Migrants in:</i>			Total
	Developing countries	High-income OECD countries	High-income non-OECD countries	
<i>Migrants from:</i>				
Developing countries	73.9 (47%)	61.8 (40%)	20.1 (13%)	155.8 (100%)
High-income OECD countries	3.4 (11%)	25.5 (85%)	1.2 (4%)	30.1 (100%)
High-income non-OECD countries	0.8 (17%)	3.6 (77%)	0.3 (6%)	4.7 (100%)
Total	78.0 (41%)	90.9 (48%)	21.6 (11%)	191 (100%)

Source: Ratha & Shaw, South- South migration and remittances, World Bank, January 2007.

Global distribution of migrants by region: 2005

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

Source: Ratha and Shaw, 2007.



Migration status of countries

- Diversity among South Asian countries
 - Primarily emigration: Bangladesh, Nepal, Sri Lanka, .
 - Mixed and mostly immigration: India and Pakistan host large foreign populations in relation to national workers overseas including those in transit.
- Southeast Asia:
 - Philippines and Indonesia primarily emigration countries or labour source countries
 - Malaysia and Thailand – net immigration countries.

Migration status – selected Asian countries

(Cols. 2-5: no of migrants: cols. 4 & 5 from World Bank Fact Book on migration and remittances)

Country (1)	Inflow (annual) (2)	Outflow (annual (3) recent avg.	Stock inside (4) 2005	Stock abroad (5) 2005
Bangladesh	Not available n.a.	400,000	1,031,850	4,885,704
India	n.a.	367'663 (2002)	5,700,147	9,987,129
Nepal	n.a.	200,000	818,582	733,662
Pakistan	n.a.	140,000	3,254,112	3,415,952
Philippines	n.a.	800,000	374,458	3,631,405
Sri Lanka	n.a.	200,000	368,228	1,000,000 (SLBFE)
Thailand	120,000 (skilled); 600,000 low skilled.	150,000	1,050,459	758,180

Migration policy or foreign employment policy

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

Emigration policy – selected Asian countries

Emigration (based on ILO sources)

Country (1)	Responsible agency (2)	Relevant legislation/Regulations (3)
Bangladesh	Ministry of expatriate welfare & Overseas Employment	Emigration Ordinance, 1982 (No. 29 of 1982)
India	Protectorate of Emigrants: Ministry of Indians Overseas	The Emigration Act, 1983
Nepal	Ministry of Labour	Foreign Employment Act, 2007 (Act No. 26 of the year 2042)
Pakistan	Bureau of Emigration & Overseas Employment	Emigration Ordinance, No. 18 of 1979 (updated 2004)
Philippines	Dept of Labour & Employment: POEA & OWWA	Migrant Workers and Overseas Filipinos Act of 1995 (No. 8042)
Sri Lanka	Ministry of Foreign Employment Promotion & Welfare; Sri Lanka Bureau of Foreign Employment	Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985 (amended 1994)
Thailand	Dept. of Employment: Ministry of Labour & Social Welfare	The Recruitment and Job-Seeker Protection Act B.E. 2528, 17 August 1985

Immigration policies - 1

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

Immigration policies -2

- Board of Investment – responsible for foreign direct investment schemes and work visas for managers, professionals and technicians.
- Business visas: for short term and long term with minimum defined investments
- Residence visa schemes for investors and those contributing to local development:
 - The Resident Guest Scheme in Sri Lanka
 - Pakistan, Philippines.
- National labour laws generally apply to these admitted regularly. Skilled workers get more rights including family unification. Low skilled workers regarded as temporary workers, and levies imposed to discourage their employment as in Singapore

Immigration policy– selected Asian countries

Country (1)	Responsible agency (2)	Legislation/Regulations (3) (ILO sources)
Bangladesh	Immigration, Bangladesh Police; Board of Investment (work visas)	Foreigners' Act 1946
India	Ministry of Home Affairs, Bureau of Immigration	Foreigners' Act 1946 ; The Passports (Entry into India) Act, 1967
Nepal	Department of Immigration, Ministry of Home	Immigration Act, 1992: Immigration Rules 1994; - Immigration (First Amendment) Act, 2001
Pakistan	Directorate General of Immigration & Passport, Ministry of Interior Board of Investment for work/business visas	Registration of Foreigners Rules, 1966
Philippines	- Bureau of Immigration / Department of Justice	Alien Social Integration Act of 1995 (No. 7919) Philippine Immigration Act of 1940
Sri Lanka	Controller of Immigration and Emigration Board of Investment	Immigrants and Emigrants Act, 1980
Thailand	- Immigration Bureau, Royal Thai Police - Department of Employment, Ministry of Labour & Social Welfare.	- Alien Work Act B.E. 2551 (2008) -Immigration Act, 12 July B.E. 2522 (1979) -Foreign Employment Act, 1978

Reasons for lack of coherent immigration policies

- Most movements informal or irregular in character including forced labour movements such as Myanmar and Afghanistan to neighbouring countries.
- Inflows relatively minor compared to outflows for some countries; Afghanistan, Sri Lanka, Philippines, Indonesia
- Policy focus on remittances and promotion of overseas employment
- Local economic conditions determine liberalisation of admission policies: Asia financial crisis and recovery
- Lack of coordination among relevant agencies dealing with labour, foreign affairs, immigration, police, and development .
- Public and media more concerned with welfare of national workers, and politicians and bureaucrats under pressure from these sources.
- Poor capacity to protect national workers overseas may motivate low priority to incoming foreign workers..

Sri Lanka – immigration profile

- Foreign workers covered by Immigrants Act and responsibility of Department of Immigration under Ministry of foreign Affairs; Estimates of foreign workers in Sri Lanka not available.
- Skilled foreign workers admitted under Board of Investment (Special Economic Zones) and non-BOI projects,
 - from Japan, Malaysia, Republic of Korea, India, Pakistan, Bangladesh and China.
- Department of Immigration issues residence visas on approval by the concerned agency.
- There are some workers in irregular status who enter the country as tourists and opt to work for some companies, mostly foreign-owned (Indian, etc).
- Sri Lanka ratified International Convention on the Protection of the Rights of All Migrant Workers and their Families in 1996, with some restrictions on foreign worker employment, but has not modified national laws accordingly.



India

- A large recipient country; both regular and irregular status migrants and transit migrants.
- Free movement of persons and labour from Nepal: Nepali workers in low status jobs.
- India estimated irregular flows from Bangladesh – 15 to 20 mn, but Bangladesh disagrees; highly sensitive issue between the two countries.
- Substantial trafficking of women and children from Nepal, and Bangladesh into India.

Thailand: evolving immigration policies

- Migration transition in early 1990s becoming net immigration country: illustrative of country experimenting with such policies.
- Rapid growth resulted in large inflows of low skilled from Myanmar, Lao PDR and Cambodia.
- The Investment Promotion Act B.E. 2520 (1977) enables foreign investors to bring in foreign nationals for investment feasibility studies, and foreign technicians and experts to work in promoted firms.
- Low skilled workers demanded by industry. Amnesties and Regularisations
 - Mainly temporary worker programmes: MOUs with neighboring countries – Cambodia, Lao PDR and Myanmar
 - Area based and quota based admissions
 - Subject to national labour law
- One year employment contracts, tying to one employer and high registration fees have prevented desired outcomes.
- Alien Employment Act 2008; tries to address pending issues.

Thailand: Alien employment Act 2008

- Features
 - Redefines occupations that permit foreign workers;
 - provides for a levy on occupations;
 - allows foreigners from neighbouring countries who enter by “Border Pass” to seek temporary employment in Thailand;
 - provides for work permits of 2 years (previously 1 year) and extendable by a further 2 years.
 - more flexible in terms of management such as changing employer, location and duration and type of work.
 - Fund for repatriation by withholding part of wages.
- On protection of migrant workers, in principle all migrant workers shall receive the same treatment as Thai workers under the Labour Protection Law 2008, Social Security Law, and Workmen Compensation law.

Afghan refugees in Iran and Pakistan

- 3 million Afghans still in Pakistan and about one million in Iran. Some have stayed longer than 20-30 years.
- Second generation;
 - 79% in Pakistan and 71% in Iran are second generation Afghans born there. For them, return to Afghanistan is a misnomer.
 - Even long staying refugees have precarious status with no integration or settlement rights.
- Official policy: All refugees must return.

Policy contradictions and issues

- No coherent or clearly defined policies;
 - derived from immigration laws, national security considerations, investment promotion laws, etc
- Countries lack capacity to monitor inflows, stay or working conditions of immigrants.
 - E.g. Bangladesh BOI - 100,000 working but only 10,000 with permits; Sri Lanka – concern low skilled workers from India
 - Labour inspection services inadequate: e.g. Thailand.
- Double standards of protection for national workers overseas and foreign workers inside; immigrant children particularly vulnerable – Thailand stateless children.
- Sensitivity to inflow of foreign workers
 - Eg. Afghanistan, Nepal
- Temporary migration syndrome; contradiction in filling long term structural demand with temporary workers;
- Few policies for integration or naturalisation.

Some good practices

- Recognising contribution of migrant workers to destination countries and the need to promote rights and protection of migrant workers: ASEAN Declaration 2007.
- Addressing employment of foreign workers and overseas employment of national workers in one law: Mongolia
 - Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad, Law 12 of April 2001.
- Inter- ministerial coordination (Committee on Alien Work), and recognition of leading role of labour ministries: Thailand
- Bilateral MOUs with source countries: Malaysia, Republic of Korea, Thailand
- Amnesties and regularisations: Thailand

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:

- Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
- Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services... ;
- Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
- Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
- Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

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

Way forward for immigration policies

- Based on interstate cooperation and dialogue;
- Transparent policies with equal protection for both national and foreign workers in line with international norms (ILO Multilateral Framework on Labour Migration);
- Based on proper assessment of short term and long term labour market demand for migrant workers;
- Using regional integration frameworks for promoting freer mobility of persons & labour;
 - Within ASEAN, SAARC
- Accepting that some long term migrants need policies for settlement and integration;
- Improving immigration data and information to facilitate evidence based policies.