

# TRANSNATIONAL MIGRATION IN TRANSITION: STATE OF THE ART REPORT ON TEMPORARY MIGRATION

Collected Working Papers from the EURA-NET project

Edited by Pirkko Pitkänen and Sergio Carrera



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## EXECUTIVE SUMMARY

This state-of-the-art report presents the points of departure and preliminary findings of the FP7 project Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People (EURA-NET). In the report, European, Asian and international perspectives and standards on temporary migration are being investigated, and temporary governance legislative initiatives and programmes are being scrutinised in the European and Asian states under examination in EURA-NET: China, Finland, Germany, Greece, Hungary, India, the Netherlands, the Philippines, Thailand, Turkey and Ukraine. By uncovering how politics structure temporary transnational movement issues in migrant-sending, migrant-receiving and transit countries and by making international policies and practices visible, EURA-NET seeks to promote dialogue between researchers and policy-makers both on national and international scales. Key guiding questions concern the ways in which the policy documents frame who is a temporary and who is a permanent/settled migrant, and the time that they envisage for conferring inclusion, security of residence and rights.

The EURA-NET research on EU, international and Asian standards on ‘temporary migration’ and the national reports show that there is no commonly accepted definition of ‘what’ is temporary migration and ‘who’ is qualified as a temporary migrant. The concepts and target groups employed are typically dependent on national specificities in respect of historical, political, economic and societal backgrounds, as well as on different interests at play in the setting of priorities and formulation of migration policies. The study revealed that there is a lack of research literature analysing the temporariness and transnational characteristics of recent migration flows. Further, while considerable attention has been paid by researchers and policy-makers to the quantum of traditional migratory movements, there is a lack of statistical data on temporary transnational migration as such. This lack of knowledge on the quality and extent of temporary transnational migration and its relation to time-bound policies constitutes a serious hindrance for policy making.

A selective and utilitarian rationale (needs-based assessment) by the state at times of defining migratory regimes as ‘temporary’ were identified in a number of countries taking part in EURA-NET, such as Finland, Germany and the Netherlands. In all country cases, including those in Asia, the migration policy may be characterised as a policy of ‘national interests’ and ‘national security’. Short-termism predominates in rationale behind these migration policies – with ‘national security’ constituting a key driving factor. A majority of the country systems under analysis are not prepared at times of facing migratory phenomena falling outside ‘permanent migration’, such as issues related to the rights of short-term migrants, family matters and socio-economic integration questions.

The logic of temporariness is gradually expanding or even contaminating larger groups of ‘migrant categories’ which extend beyond the so-called ‘low skilled’. The situation described in some of the European and Asian country reports is exemplary at times of illustrating a move by which even those migrants qualified as ‘highly skilled’ are increasingly subject to temporary migratory regimes. This is often the case when the role of the state in regulation of migration is more limited, such as in situations where corporations or business actors have a more prominent role. This is for instance the case in what concerns ‘intra-corporate transferees’ and ‘trade in services’. Here also it is important to interrogate the consequences of these schemes for migrant workers and their socio-economic inclusion including labour standards and rights.

The regulation of human mobility as temporary migration, and in particular the one for employment purposes, shows a direct relationship with irregularity of entry and stay (often negatively labelled as ‘illegal immigration’) of those whose socio-economic characteristics do not perfectly match with the state framings or criteria of ‘temporariness’. For most countries in Asia, temporary labour migration (particularly for those in ‘less-skilled’ occupations) is no pathway for permanent residence, but is

rather subject to constant contract renewal. Moreover, as described in the country report on China, the temporary migration requirements are often so high that very few people qualify for regular temporary entry and stay. When these people do no longer meet the temporariness legal criteria they fall into irregularity, exclusion and are subject to expulsion and return policies.

The research revealed a number of European, international and Asian standards covering mobility as temporary migration. Some of these standards limit the discretion enjoyed by nation states at times of framing certain kinds of cross-border movements as temporary migration and limit protection, security of residence, family life, labour standards and inclusion of individuals.

# 1. INTRODUCTION

Pirkko PITKÄNEN

A key tendency in the contemporary world is the increase in people's transnational activities and mobility back and forth between nation-states for different reasons. One type of transnational mobility is a temporary repetitive movement across borders, without necessarily returning home. People may also leave one country, move to a second, and then either return to their initial home country, or move on to a third. As O'Reilly (2007: 281) states, people 'migrate, oscillate, circulate or tour between their home and host countries. Some retain a home in more than one place, some work in one place and live in another; others simply move, while others still simply visit.'

Although temporary migratory movement across national borders is not a new phenomenon, there appears to be many transformational shifts in today's world. First, the number of people without any permanent country of residence has grown dramatically in recent years. Second, the chains of transnational movements have lengthened and spread considerably. Third, repetitive and circular movements across national borders seem to be growing. Forth, it is obvious that people's border-crossing movements increasingly take place outside the regulatory norms of the countries in question.

While considerable attention has been paid by researchers to the drivers and patterns of permanent migratory movements, so far the research has failed to generate an adequate understanding of the transformative characteristics of people's temporary transnational movements. This state-of-the-art report presents preliminary findings of the FP7 project Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People (EURA-NET) which seeks to attain an understanding of the current characteristics and related policy impacts of temporary transnational migration, particularly between European and Asian countries. The state of affairs in the European-Asian context is being introduced as a case study, with a view to applicability of lessons learned to other world regions.

The European-Asian transnational space has been taken as the main unit to analyse the topic in question for several reasons: First, it has been considered that an attempt to gather a world-wide geographical coverage into one single inquiry would face insuperable methodological challenges to illustrate multi-level transformation processes under way. Second, the primary axis of the current transnational migration is along the states in the South to the North, and from the East to the West. Third, Asia is a region experiencing particularly high emigration to Europe (and other continents). Forth, not just Chinese, Indians, Filipinos, Thais and other Asians have an increasing presence in Europe, but also Europeans increasingly travel to Asia to work and for vacation. Among the key factors contributing to temporary migration and mobility between Europe and Asia there is the growing role of multinational corporations and foreign investments and the resulting needs for a highly specialised workforce from abroad. On the other hand, the transborder mobility of professionals and unskilled workers has become more global because of the economic restructuring that is making hanging on to a job universally precarious. There are also many facilitating factors and agencies for people's transnational movements, such as recruitment agencies, rapid and easy travel and communication, transnational diasporic communities, NGOs and trade unions.

It is relevant to ask how policies structure temporary border-crossing movements both in sending, transit and receiving societies and on international scales. In the following chapters temporary governance legislative initiatives and programmes will be investigated on European, Asian and international levels as well as in the European and Asian countries under examination in the EURA-NET project: China, Finland, Germany, Greece, Hungary, India, the Netherlands, the Philippines, Thailand, Turkey and Ukraine. Particular attention will be paid to the ways in which the legal systems frame and understand 'temporariness' of mobility as well as to the set of rights and security of residence which

they grant the temporary migrants. The key questions attached are: Does temporary migration play a role in policymaking on national and international scales, in which context, and if so what role is that? How the national migration policies frame what is temporary migration? What is the relationship between temporary and permanent migration? What is the relationship between temporariness and inclusion-access to rights in the receiving country? Finally, the concluding chapter will summarise the key tendencies in the policy responses on national, European, Asian and international levels.

## 2. EUROPEAN AND INTERNATIONAL PERSPECTIVES AND STANDARDS ON TEMPORARY MIGRATION

Sergio Carrera, Katharina Eisele and Elspeth Guild<sup>1</sup>

### Introduction: Contextualising Temporary Migration

This state-of-the-art report aims to provide an overview on how the phenomenon of human mobility has been shaped, framed and defined as ‘temporary migration’ in European Union (EU) and international legal and policy instruments. The report seeks to create an inventory of existing EU and international standards and policy documents that attempt to give indications of the changing conceptualisations of temporary migration. The inventory assesses who qualifies as a temporary migrant in law and policy in European and international perspectives. The question is raised how time frames play a role for such an assessment seeing that certain instruments envisage a specific time-lapse for the state to confer inclusion, security of residence and related rights facilitating integration, in particular in view of labour migration, to mobile individuals. Moreover, how is temporariness framed in respect of human mobility and which role does it play in determining a social phenomenon involving cross-border mobility as temporary migration?

This research takes place in times of complex transnational processes often denominated as ‘globalisation’ in which the transnational mobility of people has taken new and unexpected dimensions with the emergence of so-called transnational social spaces. The transformative characteristics of people’s transnational mobility imply increased and more diverse border-crossing connections, a growing recognition of the possibilities and challenges of activities that transcend state boundaries and normative frames controlling mobility as temporary or permanent beyond individuals’ intentions and changing prospects; and the growing integration of economies, politics and social relations on a global scale.

What does “temporary” in the literal sense mean? The Oxford English Dictionary Online defines the term as “lasting for a limited time; existing or valid for a time (only); not permanent; transient; made to supply a passing need.” From this, one could conclude that temporary is defined as the opposite of permanent as literal interpretation. Yet, when bringing into the picture transnational social spaces characterizing cross-border human movements the answer to that question may not be as straight forward and clear cut divisions between what is temporary and what is permanent are far from obvious. As will be in more detail explained below, the relationship and interaction between temporary and permanent is vital for understanding of how temporary migration is framed in legal and policy terms both by supranational instruments and standards as well as by the nation-state.

When locating the discussion on what is temporary migration from an EU perspective a historical perspective becomes inevitable. Temporary migration in Europe cannot be discussed without taking into account the so-called ‘guest worker schemes’ that some European countries introduced in the 1950s and 1960s with the objective to attract foreign low-skilled workers. The economic revival after World War II required a reinforced workforce that would help satisfy the needs of growing industries. Yet, while the guest worker schemes were intended to provide cheap foreign manpower for a temporary period only, a lot of these same workers stayed in the receiving countries and settled there,

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<sup>1</sup> Sergio Carrera is a Senior Research Fellow and Head of the Justice and Home Affairs Programme at the Centre for European Policy Studies, Brussels. Katharina Eisele is a Researcher in the Justice and Home Affairs Section of the Centre for European Policy Studies, Brussels. Elspeth Guild is Jean Monnet Professor ad personam of European Migration Law at the Radboud University Nijmegen, the Netherlands, and Queen Mary, University of London. She is an Associate Senior Research Fellow at the Centre for European Policy Studies in Brussels and a partner at the London law firm Kingsley Napley.



thereby challenging the attributed temporariness to their status. Family reunification was certainly not encouraged by these same states under the guest worker schemes but became *de facto* reality. Human mobility processes are by nature complex and individuals' decisions to move or to stay do not take place in a socio-economic vacuum. Crucially, mobile people might envisage or intend a 'temporary stay' initially, but over time their minds may well change.

Why do states use temporary schemes to control human mobility in the first place? As was the case with guest workers regimes in Europe, such schemes allow states to swiftly satisfy the employment demands of companies or 'labour market needs' as defined by their governments. By granting temporary leave on a state's territory to non-nationals, states aim at retaining control over the individual's decision as to whether or not the right to stay may be extended. Next to controlling a foreigner's residence in the country, temporary permits allow states to limit certain rights in relation to work, such as change of employers, as well as some labour standards but also in relation to family reunion, social security and welfare (Bommers and Geddes, 2000) – areas that are at the heart of the national sovereignty and where states' have traditionally played a large degree of discretion. In other terms, temporary labour schemes permit states to justifiably discriminate against foreign workers by limiting access to certain key facilities.

Interestingly, supranational processes are however progressively challenging and profoundly affecting States' capacity to control human mobility as temporary migration. As it will be showed in this Report and the inventory, states' decisions to limit mobile non-nationals' socio-economic transitions are increasingly subject to supranational of European and international standards limiting their margin of manoeuvre at times of framing a phenomenon as temporary migration.

The EU constitutes a case in point. In labour migration terms, since its first steps in 1957 the EU was granted the objective to oblige participating EU Member States to abandon the control (temporary or permanent) of labour migration of nationals of the participating states. The EU has constituted itself as a 'de-securitizing project' concerning human mobility for employment-related purposes (Guild, 2010). Importantly, therefore, from an EU perspective one has to distinguish between the *free movement* of EU citizens (EU Member States' nationals) and the *migration* of third-country nationals (non-EU nationals). In EU terminology, and controversially, EU citizens enjoy 'freedom of movement' inside the EU's territory, meaning they can freely move and reside in a Member State other than their nationality. The term 'migration' is used exclusively in relation to third-country nationals who are subject to a set of common EU short-term visa and migration rules.

With the adoption of the Treaty of Amsterdam in 1999, the EU was transferred certain competences to adopt legislation regulating the legal status of individuals not holding the nationality of any EU Member State (i.e. Third Country Nationals in 'EU language'), which means that for migration law the EU and the Member States now share competences to legislative over entry and residence conditions, rights and socio-economic inclusion.<sup>2</sup> As it will be studied in this Report, and as a way of example, the EU Long-Term Residents' Directive, now ensures a more secure legal status for all third-country nationals on an EU-wide scale.<sup>3</sup> This long-term resident status limits the discretion of the Member States seeing that long-term residents enjoy quasi-equal treatment in a number of realms (Acosta Arcarazo, 2011). The EU specificity concerning the mobility of persons constitutes therefore an interesting 'model' as regards the regulation and de-regulation of cross-border human movements when examined from international perspectives.

This report investigates the state of play and the existence of similar attempts in the framing of mobility as temporary migration in international or cross-regional perspectives. A number of definitions related to temporary migration and other similar concepts also exist in international standards,

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<sup>2</sup> Title V TFEU is, however, not applicable to all EU Member States, as Denmark, Ireland and the UK enjoy a special position as regards this title.

<sup>3</sup> Ibid.

recommendations and policy (non-legally binding) reports. Different international organisations and consultative regional processes have come up with various definitional features and conceptual framings with various purposes, such as the facilitation of calculating international migration statistics, including the context of the UN and OECD, or to in- or exclude certain categories of migrant workers from the scope of international human rights and international labour standards conventions, such as those under the International Labour Organisation (ILO) which extend beyond any temporary framing of trans-frontier work. How do these supra-regional instruments and processes frame, shape and understand mobility as temporary migration?

This report provides an inventory of European and international standards covering the socio-economic transformative characteristics inherent to cross-border human mobility as ‘temporary migration’. The report starts by providing a short historical background and general contextualisation of temporary migration in Europe, and the particular experience and failures of the Guest Worker Schemes. The same section then moves into exposing the scholarly debate which has focused on the inherent policy failures and lessons learned from previous/past experiences in Europe at times of regulating mobility as temporary migration. The following section then moves into exposing the EU’s specificity concerning temporariness and cross-border human mobility, where the distinctions between free movement of persons and third country nationals migration appears to be a distinctive featuring component. The section also raises the question as regards how temporariness of migration schemes relates to socio-economic transformative components of cross-border human mobility, including inclusion in receiving societies. The final sections first examine a number of international frameworks and standards define, refer to and/or cover the phenomenon of temporary migration and, finally, conclude and highlight key findings emerging from the inventory and analysis carried out in the report.

## **European Perspectives and Standards: Historical Background and Context**

### **Temporary migration in Europe under the guest worker schemes**

Temporary migration in Europe has for the most part been migration for economic purposes in the past. The classical temporary labour migrants in Europe have been so-called guest workers recruited by Western European countries experiencing labour shortages in the 1950s and 1960s after the post-war economic boom. What are guest workers? Guest workers are immigrant workers who are provided with a residence and work permit for a limited period of time. Sometimes the work permit is bound to a specific occupation, or even a specific employer. Generally, no measures that would facilitate the immigrant’s integration into the host society, such as language courses or the support with housing, are foreseen; in the same vein, family reunification is not encouraged (Werner, 2001).

Throughout history many governments around the world have made use of temporary labour migration schemes to meet demands in the labour market. “The social history of industrialization is the history of labour migration: concentration of capital requires movement of labour. Temporary labour recruitment and contract labour have been significant for centuries, throughout the capitalist world [...].”(Castles, 1986: 761).

At the end of the 19<sup>th</sup> century and in the 20<sup>th</sup> century temporary workers, mostly of Polish descent, were recruited to come to Prussia to work on the fields to help farmer on a seasonal basis but also to work in coal mines and factories. The “fear of the other” led Minister President of Prussia Bismarck in 1885 warn his Minister for the Interior of a so-called “Polanization” of Prussia (*Überfremdungsgefahr* which means the danger of foreign infiltration/over-foreignisation) – which he considered worse than a lack of workforce in the agricultural sector (Hahamovitch, 2010: 74 and Herbert, 2001).

It has been pointed out that the first temporary worker programs were therefore products of this period of, on the one hand, growing intolerance toward immigrant workers, and, on the other, nation-states under construction (ibid). These aspects would play a crucial role for subsequent temporary schemes as highlighted below.

The cruellest and largest temporary forced labour scheme was run by Nazi-Germany to increase productivity for its machinery of war. This forced labour scheme based on racial ideology and flagrant discrimination exploited numerous foreigners in an unprecedented atrocious and humiliating way (Herbert, 2001; Castles and Kosack, 1973).

When speaking of the term “guest worker schemes” today one usually refers to the temporary labour recruitment programmes that Western European countries introduced after the World War II. In the face of war-destroyed cities and industries and the economic boom that would follow in the 1950s triggered by the American Marshall Plan such countries experienced a considerable lack of manpower.

The term ‘guest worker’ translated from the German word ‘*Gastarbeiter*’ makes clear that such immigrant workers were artificially framed as ‘guests’ of the state, not irregular migrants, but it also conveys their temporary status. “Guests sometimes overstay their welcome, after all, but, ultimately, they can be expected to leave.” (Hahamovitch, 2010: 70). Some critical voices have described the status of guest workers as slave-like because in some instances foreign workers were locked up, had to hand in their passports, and were subject to violence. Generally speaking, however, people have participated in guest worker programmes on a voluntary basis: the idea was to pursue (possibly dirty or dangerous) work for a few months or years in the “host” country, earn money and then return. Guest workers have also been compared to indentured servants who worked in the 19<sup>th</sup> and early 20<sup>th</sup> centuries in mines, on plantations or in the construction sector in territories occupied by colonial powers. Yet, indentured servants were usually free to remain or leave the territory once the contract ended, whereas the stay of guest workers was envisaged to be limited in time from the outset (Hahamovitch, 2010: 72).

What was behind the creation of temporary labour schemes? According to Hahamovitch behind these utilitarian migratory systems there was “the idea of creating an immigrant who could be made to leave was a state response to the growing hostility to the millions who moved, both bound and free.” Thus again, such temporary schemes for foreign worker allowed states to satisfy their labour needs while taking into account the sentiments of those who feared and condemned immigration – and in times of economic crises to easily get rid of them without too many constraints (Hahamovitch, 2010: 72-73). The state-led guest worker schemes provided a flexible tool for governments to bring mostly low-skilled worker into the country, while at the same time (supposedly) retaining control over the length of their stay.

All Western European countries that had growing industrial productions between 1945 and the early 1970 recruited immigrant workers for low-skilled labour. Some countries, such as the Netherlands, France and the UK, recruited workers from the former colonies and granted nationality rights to them, other states regularised such workers later on (Castles, 2006: 742). In the 1940s it was first the UK, France, Switzerland and Belgium that imported labour by using temporary schemes, Germany, the Netherlands and Austria would follow later (Castles, 2006: 742).

With a view to meet the needs of “labour-starved industries”, the British government carried out recruitment with the so-called European Voluntary Workers programme under strict conditions (Layton-Henry, 1985: 101-102). The size of the programme was rather small and the civil and labour market rights of such guest workers were severely restricted (Castles, 1986: 762). In France, the state-controlled *Office National de l’immigration* (ONI) was created in 1945 as an intermediary entity between employers and prospective migrant workers. Migrant workers originated from the former colonies, but also from Italy and Spain and later on in the 1960s from Portugal. The French govern-

ment was in need of workforce for its labour-intensive industries but also for the agricultural sector. However, from 1956 onwards, the system run by ONI was increasingly ignored as employers established direct contact with the immigrants who would enter the territory without legal authorisation (Verbunt, 1985).

In Germany, recruitment agreements were signed with Italy (1955), Spain (1960), Greece (1960), and Turkey (1961) with the objective to attract large numbers of immigrant workers from such countries. The so-called *Wirtschaftswunder* (“economic miracle”) led the demand for labour considerably increase in the agriculture and industry. Later on the Federal Republic of Germany concluded further recruitment agreements with Portugal (1964), Tunisia (1965) and Morocco (1963 and 1966) (Esser and Korte, 1985). The German (and Swiss) system was based on the idea of a “rotation principle”: the guest worker was admitted by the state to carry out work temporarily and it was expected that they would leave quickly - once they were not needed anymore by the employers (Pagenstecher, 1995). However, this assumption of return – which holds true for the other guest worker schemes across Europe – did not match with reality. A lot of the guest workers might have intended to go back to their countries of origin but the truth was that large numbers stayed, settled and brought the family into the country (Pagenstecher, 1995). It was rightly criticised that Germany, like other Western European states, was trying to import labour but not people (Castles, 2006: 742). As the Swiss novelist Max Frisch commented: “We were calling for manpower and people came.”<sup>4</sup> (Seiler, 1965). For long, the German authorities and politicians did accept that Germany was a *de facto* immigration country (Groenendijk, 1995: 97).

The guest worker systems had their limitations: Castles and Kosack have underlined how “in several countries, official recruitment systems had broken down by the 1960s, allowing unregulated entry and increased family reunion. Even in Germany, by 1969 only 44 percent of new foreign workers were officially recruited, with others applying at German consulates on the basis of individual job offers.” (Castles and Kosack, 1973: 41-42). The import of labour was suddenly stopped with the oil crisis of 1973 in all European countries following the recession and the rise in unemployment after the OPEC boycott. After 1974 the governments of Northern Member States first decided to regularise the irregular migrants present in their territories (Groenendijk, 1995).

## Policy failures and lessons learnt

European perspectives and claims on temporary migration have been subject to wide and extensive academic discussions. While there is not a commonly agreed definition of ‘temporary migration’ in the literature, authors like Hammar have acknowledged that terminology does profoundly influence the ways in which immigration policy is conceived and understood in each country. In his own words, “terms that should be instruments of description gradually become fixed concepts that limit flexibility and creativity.” (Hammar, 1985: 11). Indeed in immigration debates across Europe – and the guest workers schemes can be seen here as a prime example - the use of terminology and definitions is quite revealing and important at times of capturing and even imprisoning certain societal phenomena into the framing of ‘temporariness’.

Scholarly contributions such as those of Castles (Castles, 2004), Cornelius, Martin and Hollifield (Cornelius, Martin and Hollifield 1994), Bigo and Guild (Bigo and Guild, 2005) or Guild and Mantu (Guild and Mantu, 2010; Bigo, 2010) are only few examples showing the inherent ‘policy failure’, ‘policy gap’ or a ‘fallacy’ between the publicly stated goal and objectives of states temporary migration control policies and the actual outcomes which can be observed regarding the social phenomenon of cross-border human mobility for employment-related purposes. Other authors such as Czaika and

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4 “Man hat Arbeitskräfte gerufen, und es kamen Menschen.”, quote by Max Frisch in the preface to the book by Seiler, J. A. (1965), *Siamo italiani – Die Italiener. Gespräche mit italienischen Arbeitern in der Schweiz*, Zürich: EVZ.



de Haas, while still accepting the much disputed capacity of the state to regulate migration, have similarly referred to the concept of ‘efficacy gap’ which refers to situations when the implemented immigration laws do not achieve the intended effect on “the actual volume, timing, direction and composition of migration flows”, and which in turn make these policies inefficient in nature (Czaika and de Haas, 2013). This gap may become even larger and greater when bringing a supranational migration policy actor in the making as the EU.

Castles highlights the previously examined example of the German ‘guest-worker’ recruitment policy which was implemented in the country between 1955 and 1973: while the policy aimed officially at enforcing a temporary economic migratory system, it led in the long run to permanent settlement, family reunion and the emergence of diverse societies in Germany (Castles, 2004). The author emphasises that the guest worker schemes inevitably led to permanent migration and settlement at times of high level of economic and social stress, and without any foresight. It was the migrants themselves who had to “pay” by becoming unemployed and facing hardship (Castles, 1986: 764-765). Castles explains: “Migration policies may fail if they are based on a short-term view of the migratory process...it is necessary to analyse the migratory process as a long-term social process with its own dynamics”, as a ‘societal process’ which cannot be imprisoned into law in liberal democratic regimes (Castles, 2004). ‘Shorttermism’ (short-term perspectives) in policy making tends to be a commonly shared trend in this area. He conceptualises “policy failure” when a policy does not achieve its stated objectives, and the need to study their “unintended consequences”.

The phantom of the ‘guest worker model’ may be in fact coming back in different narrative shapes and policy framings which identify temporariness as a central component of EU immigration policy. Academics have warned that it is crucial to learn from such past experiences when formulating “new” policies focused on ‘temporary migration’ aimed at accommodating current challenges (Carrera, Guild and Eisele 2014).

## **The Evolving EU Legal and Policy Frameworks: The EU’s Specificity**

The EU legal framework stipulates different rules for EU citizens on the one hand, and third-country nationals on the other (Wiesbrock, 2010). These rules relate to the framing of ‘temporariness’ in various ways and manners which comprise what we call ‘the EU specificity’ on temporary cross-border human mobility.

As a general principle, EU citizens can freely move and reside in a Member State other than their nationality without any migration controls focused on ‘temporariness’. The basis for the free movement of EU citizens is substantiated by the principle of non-discrimination of the basis of nationality, which is enshrined in the Treaty and in the EU Charter of Fundamental Rights.<sup>5</sup> It is the so-called ‘Citizens’ Directive’ 2004/38/EC<sup>6</sup> that fleshes out the conditions under which free movement falls and is supposed to operate in practice. As stated above, the free movement of persons, one of the four fundamental freedoms of the EU, abolished migration framings of ‘temporariness’ from the very outset when the EU Treaties were designed. With the free movement rules EU and national policy makers aimed to achieve a deregulation and thereby to encourage EU workers to move cross-border without the need for visas, work and/or residence permits. Thus, by introducing supranational rules that provide for equal treatment putting EU workers on the same footing as a Member States’ national workers, the EU aimed to get rid of temporary schemes that as a general rule limit rights for foreign workers to settle and be socio-economically included in the receiving societies. Such EU free move-

<sup>5</sup> See Article 18 TFEU and Article 21(2) EU Charter of Fundamental Rights.

<sup>6</sup> Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

ment rules envisaged to enhanced protection against expulsion by state authorities, provide access to welfare, and limit the state discretion in restricting rights and freedoms. The EU's incursion in the regulation of mobility by non-EU nationals has led to the emergence of a supranational legal and policy framework where claims of temporariness are present. For third-country nationals a fragmented set of migration rules applies based on EU and national law. The section below examines in details the EU rules applicable to third-country nationals as regards their temporariness.

## Concepts of 'temporary migration' in EU law

### *The EU migration and asylum directives*

The term 'temporary migration' is not explicitly defined under any piece of EU legislation. As the inventory provided in Annex 1 demonstrates, there is however a whole variety of conceptual features and factors related to temporariness and time frames in various legal instruments composing EU migration law.

One could argue that it currently covers a wide range of human mobility experiences for periods of up to five years. This could be derived from the Council Directive 2003/109 on EU long-term resident status for third-country nationals: after five years of 'legal and continuous residence' in a Member State the stay of third-country nationals is considered as 'permanent'.<sup>7</sup> As is observed in Article 4(1) of, and recital 6 in the preamble to Council Directive 2003/109, it is the duration of the legal and continuous residence of five years which shows that the person concerned has put down roots in the country and therefore the long-term residence of that person.<sup>8</sup> Where does this five-year period come from? The explanatory memorandum to Council Directive 2003/109 gives some indication: "The status of long-term residents in the Member States is often evidenced by a residence permit that is either permanent or of unlimited validity or else by an establishment permit. The first criterion for the acquisition of such secure residence permits is the period of legal residence of the third-country nationals in the territory." This period of legal residence varied from two to fifteen years across the Member States, with eight providing for a five-year period.<sup>9</sup>

It is also important to note that Directive 2003/109 sets a minimum standard only, and that the Member States are free to adopt more favourable national residence permits of permanent or unlimited validity.<sup>10</sup> The Directive therefore sets a standard below which Member States cannot cross at times of negating permanent residence to third country nationals. Yet, they still hold the discretion to deliver national statuses granting security of residence under more favourable conditions as regards temporariness. According to the European Commission 2011 Report on the application of Directive 2003/109 (European Commission, 2011) there are at least 13 EU Member States which have used this possibility "including to the advantage of major investors or third-country nationals who have a special relationship with the Member State concerned, because they were born or resided for a long time on its territory, or married a national".<sup>11</sup> There is therefore still a multiplicity of legal statuses in what concerns permanent residence across the EU which are often in competition.

The scope of application of Council Directive 2003/109 has been later on extended to beneficiaries of international protection in 2011.<sup>12</sup> The Directive does, however, not apply to third-country nationals who reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by

<sup>7</sup> Article 4(1) of Council Directive 2003/109/EC.

<sup>8</sup> Case C-502/10 *Singh* [2012] Judgement of 18 October 2012, not yet reported, para. 46.

<sup>9</sup> European Commission, Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM(2001) 127, 13 March 2001, Brussels, p. 5.

<sup>10</sup> Article 13 of Council Directive 2003/109/EC.

<sup>11</sup> This is the case in the following EU Member States: BE, BG, CZ, DE, EL, ES, FI, FR, HU, NL, PL, SE, SI. See page 6 of the 2011 European Commission Report.

<sup>12</sup> Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited as set forth Article 3(2) (e) of the Directive. Put differently, the EU migration Directives consider students, au pairs, seasonal workers, service providers and intra-corporate transferees explicitly as “temporary migrants.”<sup>13</sup> This was confirmed by Court of Justice of the EU in the case of *Singh* in which it held that:

*Article 3(2) of that directive [Directive 2003/109] excludes from its scope residence of third-country nationals which [...] does not prima facie reflect any intention on the part of such nationals to settle on a long-term basis in the territory of the Member States.” The Court continues by emphasising that “thus, Article 3(2)(e) [...] excludes from the scope of that directive residence ‘on temporary grounds’. Such grounds imply residence by a third-country national in the Member State concerned which is not long term. To that effect, the directive gives several examples of residence linked to the exercise of an activity which is per se of a temporary nature, such as au pair work, seasonal work or the provision of cross-border services.”<sup>14</sup>*

In the *Singh* judgment the Court of Justice of the European Union (CJEU) clarified the scope of application of the Council Directive 2003/109, in particular the meaning of the terms ‘in terms where their residence permit has been formally limited.’<sup>15</sup> The case concerned an Indian national, Mr Singh, who was granted an ordinary fixed-period residence permit in the Netherlands to work as a spiritual leader. Over a period of more than six years his residence permit was extended twice. Mr Singh applied for a long-term residents’ permit, which was rejected. The case ended up before the Dutch Raad van State, which transferred it for a preliminary ruling to the Court of Justice in Luxembourg.

The Court first pointed out that Article 3(2)(e) of Council Directive 2003/109/EC covered two cases: first, if third-country nationals reside on temporary grounds, and second, if the residence permits of third-country nationals have been formally limited.<sup>16</sup>

The Court highlighted that the fact that a residence permit contains a formal restriction does not in itself give any indication as to whether that third-country national might settle on a long-term basis in the Member State, notwithstanding the existence of such a restriction; thus, a formally limited residence permit under national law, whose formal limitation does not prevent long-term residence, cannot be classified as formally limited residence permit within the meaning of Article 3(2)(e) of the latter Directive, as otherwise the objective pursued by the Directive – the integration of long-term residents – would be jeopardised, and it would be derived of its effectiveness.<sup>17</sup> What we are likely to see in the EU context is an effort to try to exclude immigrants from the scope of Council Directive 2003/109/EC on the basis that they come within Directive 2014/36 on seasonal workers instead and that the two are mutually exclusive.

One of the most paradigmatic pieces of EU legislation which works under strong assumptions of temporariness is the Directive 2014/36 on seasonal workers.<sup>18</sup> This instrument gives some indications on the challenges that the EU sees associated with the phenomenon of temporary migration: ensuring decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming perma-

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13 Recital 7 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; Recitals 43 and 46, 2nd paragraph of Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers; Recital 13 and Article 3(b) of European Commission, Proposal for a directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378, 13 July 2010, Brussels.

14 Case C-502/10 *Singh* [2012] Judgement of 18 October 2012, not yet reported, para. 48.

15 *Ibid.*

16 *Ibid.*, paras. 30-38.

17 *Ibid.*, paras. 50-51.

18 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

ment. Expulsion or return becomes therefore a *sine qua non* underlying EU understanding and framing of ‘temporariness’ in the scope of the Seasonal Workers Directive.<sup>19</sup>

Furthermore, Directive 2014/36 on seasonal workers specifically emphasises the vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment. It stipulates that there is a need to provide effective protection of the rights of third-country national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at any level or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.

However, the Directive also stresses that due to the temporary nature of the stay of seasonal workers and without prejudice to Regulation (EU) No 1231/2010, Member States should be able to exclude family benefits and unemployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits. This raises the issue as to the extent to which the EU Directive on seasonal employment will develop in practice as ‘the EU Directive on temporary employment’, as the temptation which it offers to employers is high at times of giving an interpretation of ‘seasonal employment’, and the EU standards will be very low (Groenendijk, 2014).

The EU now counts also with a special common status granted to those non-EU nationals falling within the category of ‘highly qualified workers’. The Council Directive 2009/50 (the ‘EU Blue Card Directive’)<sup>20</sup> refers to ‘temporary migration’ in relation to ethical recruitment. The preamble to the Directive specifies that “ethical recruitment policies and principles [...] should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries [...]”<sup>21</sup> Circular and temporary migration is here indicated as measures that could support ethical recruitment strategies. For Blue Card holders, and different to other categories of temporary workers such as ‘seasonal workers’, family reunification is not dependent on the requirement of having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.<sup>22</sup>

During the last 15 years, the EU has also developed a Common European Asylum System (CEAS). Temporariness is also present here. In this specific policy context the EU Treaties speak of “temporary protection”, which is defined as a procedure of exceptional character in the event of a massive inflow of displaced persons (Article 78 TFEU). Council Directive 2001/55/EC determines that the duration of temporary protection shall be one year, and may be extended automatically by six monthly periods for a maximum of one year.<sup>23</sup>

### *EU short-term visas and the Schengen Borders Code*

Visas are by nature authorisations that allow for stays on the territory of a state for a limited time

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19 Direct reference is made to the Return Directive: Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

20 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

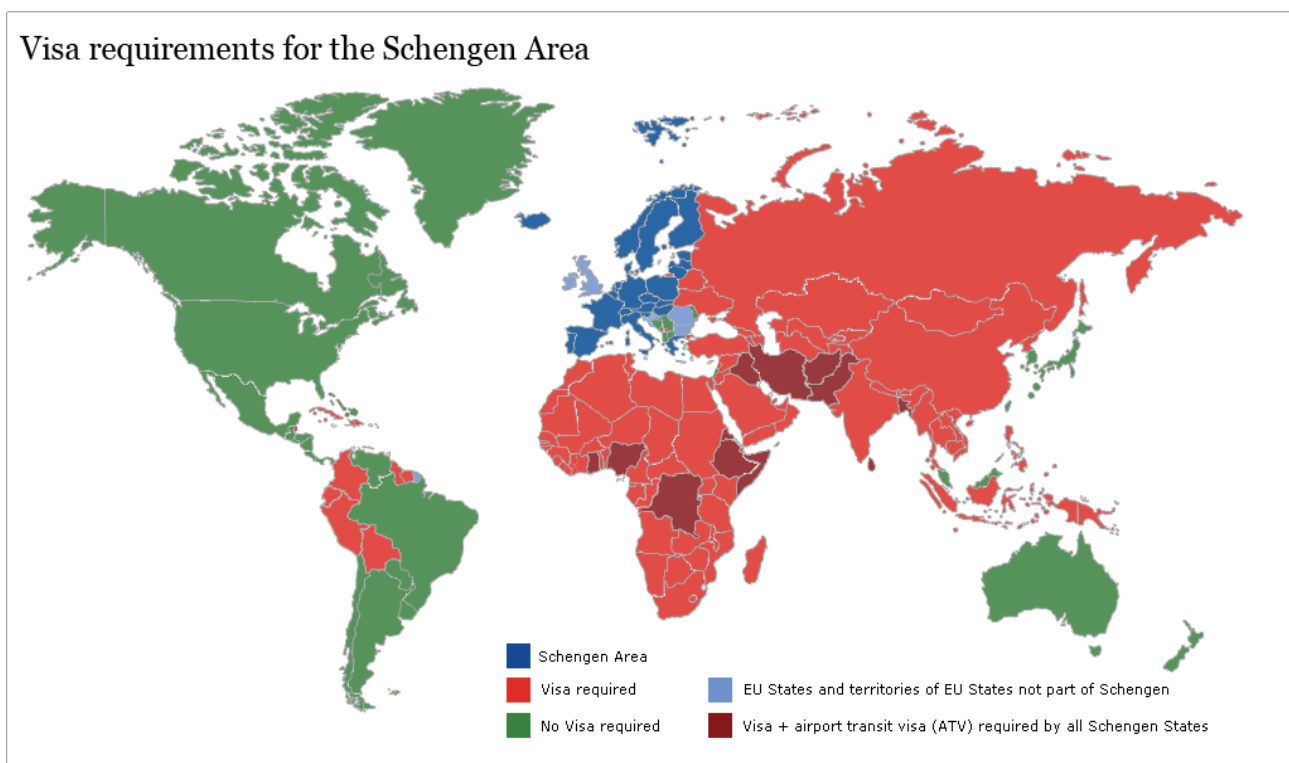
21 Recital 22 of Council Directive 2009/50/EC.

22 The same rule is proposed for intra-corporate transferees. Article 15(2) of Council Directive 2009/50/EC and European Commission, Proposal for a directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378, 13 July 2010, Brussels.

23 See Articles 2(a), 4(1) and 6(1) of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.



period. The EU has developed a common policy on short-term visas as part of the wider Schengen system. The procedures and conditions for issuing of Schengen visas are now outlined in the so-called EU Visa Code.<sup>24</sup> The common EU visa policy is anchored on a common list of countries whose nationals are required to hold visas when crossing the common external borders of EU's territory. This is stipulated in Council Regulation (EC) No 539/2001 which establishes those third-country nationals must be in possession of visa to enter the Schengen area (composed of 26 Schengen states) and those who are exempted from a visa requirement. Map 1 below illustrates the countries whose citizens are required to hold a visa when travelling to the Schengen area. EURA-NET country partners like China, India, Thailand and Philippines are examples of Asian countries which are part of the EU black list of countries where visa is required. By contrast, Brunei Darussalam, Hong Kong SAR, Japan, Macao SAR, Malaysia, South Korea, Singapore, and Taiwan are on the EU white list, which means that their nationals are exempt from the visa requirement.



**Figure 1** Visa requirements in Schengen area (Source: European Commission (retrievable at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm))

The relationship between Schengen visas and temporariness is a very special one. Under this Regulation authorised stays cover a time period of up to three months within a six-month period throughout the 26 EU Schengen Member States (see also Guild and Bigo, 2005).<sup>25</sup> In line with the foregoing the Schengen Borders Code sets out the entry conditions for third-country nationals for stays not exceeding three months per six-month period.<sup>26</sup>

Even if the applicable EU normative frameworks differ for European citizens (under the above mentioned EU Citizens' Directive 2004/38) and third-country nationals (under the Schengen rules and the Long-Term Residents' Directive), and as visually illustrated in Graph 1 below, it is striking

<sup>24</sup> Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July establishing a Community Code on Visas (Visa Code), [2009] OJ L 243/1 (as amended).

<sup>25</sup> Articles 1 and 2 of Council Regulation (EC) No 539/2001.

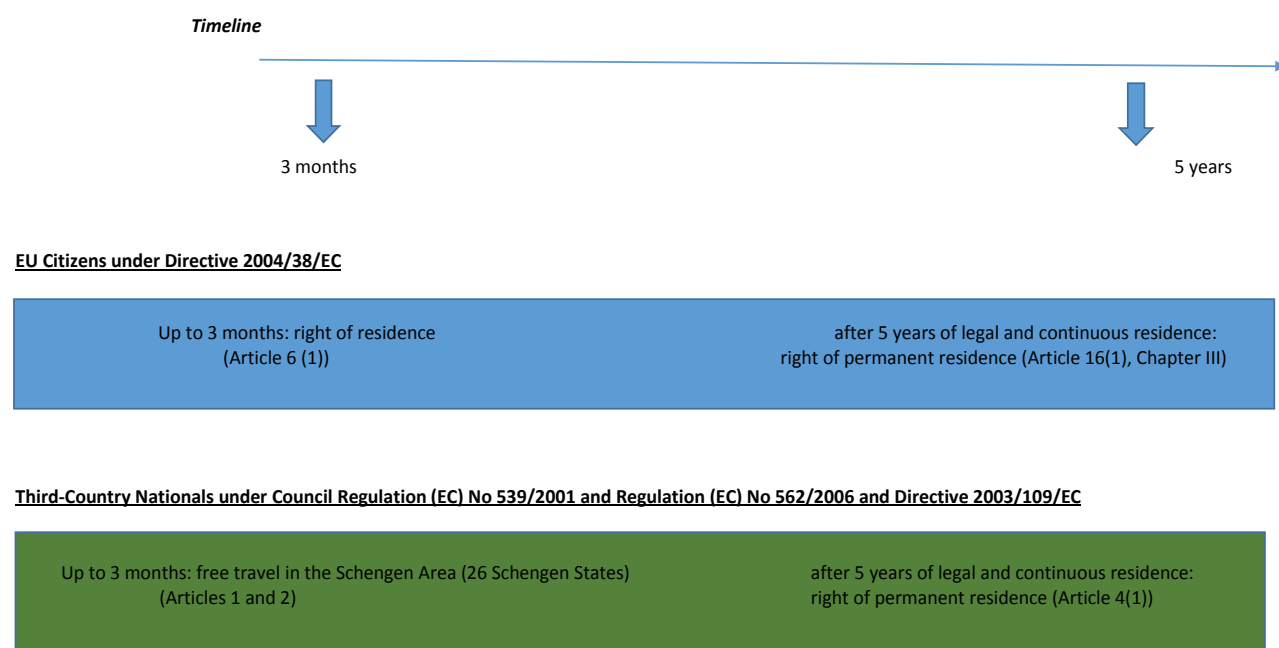
<sup>26</sup> See Article 5 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

that the time frames at play are the precisely same:

**First, up to three months:** EU citizens have the right of residence in another Member State without any conditions; third-country nationals who hold a Schengen visa may freely travel in the Schengen Area.

**Second, after five years:** EU citizens have the right of permanent residence in another Member State; third-country nationals can obtain long-term resident status.

**Third, period in between three months and five years:** EU citizens have the right of residence in another Member State if they comply with certain conditions; third-country nationals have right of residence either under one of the migration Directives or national law if they comply with certain conditions.



**Figure 2** Temporariness in EU standards (Source: Authors' Elaboration)

### *The specific case of Turkish nationals*

The relationship between the EU and Turkey is one deserving attention from the perspective of temporariness and human mobility. Under EU-Turkey association law, Turkish workers benefit from a temporal framework that allows for their gradual access to the labour market once they are legally admitted to a Member State. A Turkish worker duly registered as belonging to the labour force of a Member State is entitled, in that Member State, after one year's legal employment, to a renewed work permit, if a job is available; after three years of legal employment the worker is entitled to respond to another job opening in the same occupation with an employer of his choice subject to priority for Community workers; after four years of legal employment the worker enjoys free access to any paid employment of his choice.<sup>27</sup>

Put differently, the longer a Turkish worker is legally employed in a Member State, the more rights he acquires. According to settled case law, the aim of Article 6(1) is to progressively consolidate the

<sup>27</sup> Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association.

position of Turkish workers in the host Member State.<sup>28</sup> This example demonstrates how time and the duration of residence/employment (in this case one – two – and four years) play a fundamental role in very specific other EU legal frameworks to become legally integrated into a host Member State.

## Concepts of circular migration in EU policies: temporariness revisited

When brought within the context of the EU, the much-debated category of circular migration acquires particular connotations which cannot be divorced from the above-described European historical and normative perspectives concerning mobility as temporary migration.

It was a Franco-German initiative in 2006 that first called for promoting ‘circular migration’ in the EU context with the explicit aim to prevent and reduce irregular migration in the Union. From the start, the concept of circular migration was thus security-oriented and the focus which has prevailed relates to expulsion and return: circular migration – it was highlighted – could only succeed if return is ensured (Carrera and Hernández i Sagrera, 2009: 11). Circular migration was envisaged to be used within the scope of the mobility partnerships, which are political declarations between the EU, some Member States and a third country to (supposedly) better manage migration matters. Mobility partnerships are flexible instruments for Member States in that they exclude the jurisdiction of the Court of Justice and the European Parliament (Reslow, 2012).

The European Council reacted in late 2006 and emphasised the need for ways and means to be explored to facilitate circular and temporary migration.<sup>29</sup> Subsequently, in the Communication of 2007 entitled *Circular migration and mobility partnerships between the European Union and third countries*, the European Commission defined circular migration 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: 8-9).

Directive 2014/36/EU on seasonal workers refers to circular migration in its Preamble as follows:

*taking into account certain aspects of circular migration as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive.*<sup>30</sup>

Circular migration, the Commission explains in its 2007 Communication, also poses certain challenges:

*if not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective.*<sup>31</sup> The Communication highlights two main forms of circular migration as relevant in the EU context: (a) “Circular migration of third-country nationals settled in the EU” and (b) “Circular migration of persons residing in a third country.

The first category (a) “Circular migration of third-country nationals settled in the EU” gives people the opportunity to engage in an activity (business, professional, voluntary or other) in their country of origin while retaining their main residence in one of the Member States. This covers various groups, such as business persons working in the EU and wishing to start an economic activity in their country of origin (or in another third country); as well as doctors, professors or other professionals willing to support their country of origin by conducting part of their professional activity there (European Commission, 2007: 8-9).

<sup>28</sup> See Case C-230/03 *Sedef* [2006] ECR I-157, para. 34.

<sup>29</sup> European Council Conclusions of 14 and 15 December 2006, para. 24(b.)

<sup>30</sup> Recital 34 of Directive 2014/36/EU.

<sup>31</sup> *Ibid.*, p. 8.

The second category (b) “Circular migration of persons residing in a third country” is envisaged to creating opportunities for persons residing in a third country to come to the EU temporarily for work, study, training or a combination of these, on the condition that, at the end of the period for which they were granted entry, they must re-establish their main residence and their main activity in their country of origin. The Commission specifies that circularity can be enhanced by giving migrants the possibility, once they have returned, to retain some form of ‘privileged mobility’ to and from the Member States where they were formerly residing, for example in the form of simplified admission/re-entry procedures. This category covers a wide array of situations, spanning the whole spectrum of migrants, including:

- Third-country nationals wishing to work temporarily in the EU, for example in seasonal employment;
- Third-country nationals wishing to study or train in Europe before returning to their country;
- Third-country nationals who, after having completed their studies, wish to be employed in the EU (for example as trainees) to acquire professional experience which is difficult to obtain at home, before returning;
- Third-country researchers wishing to carry out a research project in the EU;
- Third-country nationals, who wish to take part in intercultural people-to-people exchanges and other activities in the field of culture, active citizenship, education and youth (such as, for example, training courses, seminars, events, study visits);
- Third-country nationals who wish to carry out an unremunerated voluntary service pursuing objectives of general interest in the EU (European Commission, 2007: 8-9).

Scholars have criticised the concept of circular migration in the EU context in particular in light of its origins focusing on the security of the Member States and that of the Union. While the policy discourse of EU and national policymakers has very much stressed that circular migration is aimed at enhancing legal migration opportunities, analyses proves otherwise. It has been pointed out that circular migration programmes stem from the 2005 EU Global Approach to Migration and Mobility (GAMM), which was introduced by the EU Heads of State and Government to address their security concerns in relation to migration in negotiation with third countries; the fight against irregular migration ranked high on the EU agenda.

Circular migration was from the outset non-economic concerns but provided for a scheme of ‘securitised temporariness’ (Cassarino, 2013). As Cassarino has argued, circular migration schemes must be understood as not only built “upon past practices designed to regulate the movement of international migrants (e.g. with temporary labour schemes); they also react against such inherited practices in a subtle manner by linking the adoption of temporary and circular migration programmes with new security-driven safeguards.” (Cassarino, 2013: 23). Moreover, the so-called ‘triple-win’ effect that circular migration was meant to entail (for the countries of origin and destination, as well as for the individual migrant) is very questionable due to the security-loaded agenda (Wiesbrock and Schneider, 2009). Those workers who might benefit from one of these (circular) labour migration initiatives and who do not voluntarily comply with the predetermined circular migration scheme (and overstay in an irregular status in the EU member state) will be penalised by expulsion from the EU. As we have said somewhere else

*Circular migration is a return to the public authorities’ illusion that migration can be controlled as a temporary phenomenon, and now even as a circular one for people to go back and forth from their respective countries of origin. The third-country workers will be expected ‘to move in circles’. In the negative phase, the circular or circulating migrants will be obliged to go back to their country of origin after the expiration of the temporary residence and work permit in the EU member state involved (Carrera and Hernández i Sagrera, 2009; see also Eisele and Wiesbrock, 2011).*

Finally, next to circular migration, there is also another form of ‘circularity’ in EU migration law: the possibility for long-term residents to go back to their country of origin (or another third country) without losing EU long-term residence status. Such absences may be periods of up to 12 consecutive months.<sup>32</sup> For EU Blue Card holders the period of absence may be up to 24 consecutive months.<sup>33</sup> The Seasonal Workers’ Directive provides for facilitated re-entry for former seasonal workers: Member States can for instance introduce an accelerated procedure and other priority measures.<sup>34</sup>

## Temporariness of migration schemes: a challenge to socio-economic inclusion and human rights’ protection

The key question arises how temporariness of migration schemes relates to socio-economic transformative components of cross-border human mobility, including inclusion in receiving societies. To recall, the guest worker schemes in Europe functioned on the very premise that migrant workers were considered as “guests” or pure economic units at the service of labour market demands and needs, welcomed for a limited period of time only and expected to leave again after meeting their utility purpose. Guest worker schemes did hence not provide for any kind of inclusionary measures (e.g. family reunification rules or security of residence) that would have facilitated the stay of the migrants in the receiving country – and, as a corollary, promoted their inclusion and participation in the receiving country.

But what impact does such temporariness have on mobile individuals when temporary schemes are directed at preventing their security of residence and inclusion? Cassarino has underscored that it is a well-known fact that ‘time’ impacts on migrants agency; workers experiences of migration, in its broadest sense: “Particularly, time impacts on the ability to benefit from economic and social rights, and to be protected from vulnerability.” (Cassarino, 2013: 34). In the same vein, Cholewinski underlines that “the emphasis on temporariness can be problematic from the perspective of ensuring the protection of the human rights of migrant workers, and their right to non-discrimination and equality of treatment in particular.” Rights of access to employment in terms of the ability to change employers, access to vocational training, freedom of association and collective bargaining, social protection, family reunification and security of residence are most likely to be affected adversely. (Cholewinski, 2014 and Cholewinski, 1997) He emphasises that the fundamental rights enshrined in international human rights and labour standards, such as those enshrined in ILO instruments (see Section 4 below) should in principle be accorded to all human beings and workers, including migrant workers and irrespective of their migratory status.” (Cholewinski, 2014). The author discusses this issue in relation to the ‘numbers vs. rights’ logic that implies that there is a trade-off: more openness of migration schemes is ‘traded’ for less rights of those migrants admitted (see Ruhs and Martin, 2008).

It is indeed quite striking to note that the ‘saving of integration costs’ is put forward as an “advantage”; it is as if some migration policies framed under the logic of ‘temporariness’ are not dealing with human beings who contribute substantially to the economy of a state, but rather as “units of labour” that should be as freely and cheaply available as possible. Likewise Wickramasekara warns:

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32 Article 9(1)(c) of Council Directive 2003/109/EC.

33 Article 16(4) of Council Directive 2009/50/EC.

34 Article 16 of Directive 2014/36/EU.



*...the implication for rights of migrant workers under such programmes [speaking of circular migration programmes] is a major concern – the short duration of contracts may mean that they may be denied most of the assistance needed in working and living in destination countries. One of the advantages claimed for CMPs [circular migration programmes] is that there are no integration costs given the temporary stays of circular migrants. This itself implies tacit support for xenophobic tendencies in destination countries. Frequent separations from the families at home also involve social costs. (Wickramasekara, 2011).*

## **International Perspectives and Standards: Shaping and Understanding Temporary Migration**

A number of international frameworks and standards (in particular those on the protection of migrant workers) define, refer to and/or cover the phenomenon of temporary migration. These chiefly include the UN, ILO and OECD standards and instruments. The inventory provided in Annex 2 offers a detailed overview of each and every of these instruments and their definitional framings related to ‘temporariness’ of cross-border human mobility. In particular, the ILO standards are rather inclusive in that they generally extend labour standards and equality of treatment even to ‘temporary’ categories of migrant workers.<sup>35</sup> However, there are gaps in national laws or regulations and international standards as regards ‘temporary migrants’ or individuals framed into time-bound activities, i.e. seasonal workers, project-tied workers, special-purpose workers, cross-border service providers, students and trainees who are permitted to work. In 1997, ILO has emphasised that special measures are needed to protect such persons since the time-bound nature of their move between countries incurs risks, deprivations and vulnerabilities (ILO, 1997).

It must be borne in mind that the nature of international normative perspectives and frameworks differs as they include conventions and treaties, but also policy documents, reports and recommendations, all these holding differing legal and policy value from the viewpoint of the way in which they limit or affect nation-states’ discretion at times of shaping human mobilities as temporary migration. Importantly, furthermore, policy documents and recommendations are non-binding documents whereas conventions and treaties are legally binding for the state parties which have ratified them. While, for example, ILO Convention No. 97, which ensures equality of treatment for migrant workers in certain respects has been ratified by many European countries, ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers has not been ratified by the majority of countries. The 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families has not attracted a lot of ratifications on – by comparison – a world-wide scale (Council of Europe, 1996: 33).

It has been pointed out that short-term employment is excluded from the scope of certain of these conventions. This is, for example, the case with the European Convention on the Legal Status of Migrant Workers of the Council of Europe<sup>36</sup> which does not apply to persons undergoing vocational training, seasonal employees or project workers (Council of Europe, 1996: 33 and Guild, 1999). That notwithstanding, Cholewinski has made clear that the question of ‘who qualifies’ as a migrant worker in Europe is given a broad interpretation by universal instruments concerned with the protection of the rights of migrant workers and their families. He stresses that while some instruments exclude

<sup>35</sup> See for example ILO Convention No. 97 (revised 1949) concerning Migration for Employment; ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers; ILO Recommendation No. 86 (revised 1949) concerning Migration for Employment; ILO Recommendation No. 151 concerning Migrant Workers (1975); ILO Convention No. 118 concerning the Equality of Treatment (Social Security) (1962); ILO Convention No. 157 concerning the Establishment of an International System for the Maintenance of Social Security Rights (1982); ILO Recommendation No. 167 concerning the Establishment of an International System for the maintenance of social security rights (1983).

<sup>36</sup> European Convention on the Legal Status of Migrant Workers CETS No.: 093 of 24 November 1977.

temporary migrants, these instruments oblige state parties to afford protection to *all* migrants on their territories regardless of ratification by the country from which these persons originate (Cholewinski, 1997).

## United Nations (UN)

While the UN does not explicitly define the term “temporary migration” it does provide definitions for short-term and long-term migration, and lists a number of categories of migrants whose stay is by definition temporary. Moreover and as synthetically outlined in Table 1 below, the 1998 UN Recommendations on Statistics of International Migration define international migrant as “any person who changes his or her country of usual residence.” The change of country of usual residence necessary to become an international migrant must involve a period of stay in the country of destination of at least a year. According to the UN glossary as set out in the 1998 UN Recommendations on Statistics of International Migration a short-term migrant is defined as

*a person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year, except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business or medical treatment. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.*<sup>37</sup>

By comparison, a ‘long-term migrant’ is today defined by the UN as “a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence.”<sup>38</sup> Importantly, this last UN definition has changed over time: in 1953, the UN first defined permanent immigrants as “non-residents (both nationals and aliens) arriving with the intention to remain for a period exceeding a year.”<sup>39</sup> The 1976 UN Recommendations on Statistics of International Migration regarded a migrant as “long-term” if his or her stay in the country was continuous for more than one year.<sup>40</sup>

This definition of long-term migration had been subject to criticism: first, it was emphasised that in times of fast and affordable travel mobile people, in particular “international migrants”, might not stay continuously for a period of more than one year in a specific country (if business and holiday travel interrupted the continuous stay). Second, the term “one year or more” excluded, if narrowly interpreted, a stay of migrants who were granted an authorisation to reside for one year only and who in fact stayed exactly one year. Such migrants would under a strict reading not be considered as “international migrants” under the UN definition. Finally, the full definition of “long-term immigrant”<sup>41</sup> also demanded information of the likely future presence of a person in a certain country as well as of previous periods of presence or absence of the country.<sup>42</sup>

While no comprehensive review of national practices had been carried out, a study on EU or EFTA Member States revealed that none of the latter countries applied the strict definition of “long-term

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37 1998 UN Recommendations on Statistics of International Migration, Glossary, Statistical Papers Series M, No. 58, Rev. 1, New York, p. 95.

38 Ibid.

39 UN 1953 International Migration Statistics, Statistical Papers, No. 20. Sales No. E.53.XIII.10.

40 See 1976 UN Recommendations on Statistics of International Migration, United Nations (1980a). *Recommendations on Statistics of International Migration*. Statistical Papers, No. 58. Sales No. E.79.XVII.18, para. 32 (a) (I) and table 1).

41 1976 UN Recommendations on Statistics of International Migration, United Nations (1980a). *Recommendations on Statistics of International Migration*. Statistical Papers, No. 58. Sales No. E.79.XVII.18, para. 32 (a) (I) and table 1); the full definition of a “long-term immigrant” is the following: *a person who has entered a country with the intention of remaining for more than one year and who either must never have been in that country continuously for more than one year or, having been in the country at least once continuously for more than one year, must have been away continuously for more than one year since the last stay of more than one year.*”

42 See 1998 UN Recommendations on Statistics of International Migration, Glossary, Statistical Papers Series M, No. 58, Rev. 1, New York, p. 95.

immigrant.”<sup>43</sup> The 1998 UN Recommendations on Statistics of International Migration moreover pointed out that “the 1976 recommendations had themselves acknowledged that the definitions of long-term immigrant and emigrant proposed were not intended to replace national definitions of these or similar terms provided in the laws and administrative regulations of individual countries.”<sup>44</sup>

Furthermore, the 1990 UN Migrant Workers Convention<sup>45</sup> does not provide definitions of temporary migration but of the following three categories that are all temporary: “seasonal worker”, “project-tied worker” and “specific-employment worker.”<sup>46</sup> This international convention counts at present with 47 states party, which include states in Asia such as Sri Lanka, Philippines, Indonesia or Cambodia, and a widely underrepresented membership of European States, with the sole exception of Turkey, Albania, Montenegro, Bosnia and Herzegovina and Serbia.<sup>47</sup> Finally, the UN glossary further indicates categories of migrants who remain temporarily in a country, including foreign tourists, foreign students and foreign trainees.<sup>48</sup>

## International Labour Organization (ILO)

ILO counts with a series of migration specific instruments.<sup>49</sup> ILO Convention No. 97<sup>50</sup> and ILO Convention No. 143<sup>51</sup> do not define temporary migration, but as the ILO stated in 2006: “All international labour standards apply to migrant workers”, whether permanent, temporary, or circular – and irrespective of status.” (ILO, 2006: 16 and Wickramasekara, 2011: 65). ILO Recommendation No. 86<sup>52</sup> contains an annex with a model bilateral agreement distinguishing between permanent and temporary migration without, however, providing for definitions of such terms. The participation of states having ratified ILO instruments extends beyond European countries and counts with the participation of Asian states. This is the case for instance in respect of ILO Convention No. 97, which includes as member countries from Asia the Philippines and Malaysia.<sup>53</sup> Similarly, Philippines has equally ratified the ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.<sup>54</sup>

The ILO Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration of 1997 (ILO, 1997) specifies that the term time-bound migrants is meant to cover “seasonal workers, project-tied workers, special purpose workers, cross-border service providers, students and trainees but no other categories.” The Guidelines (in Annex 1 of the ILO Report) state that “special measures are needed to protect such persons since the time-bound nature of their move between countries incurs risks, deprivations and vulnerabilities.”

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43 Ibid., para. 23.

44 Ibid., para. 28.

45 UN 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990).

46 See Article 2(2)(b),(f), and (g) of the 1990 UN Migrant Workers Convention.

47 For the state of signatories and ratifications of the Convention see [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en) Refer to the International Steering Committee for the Campaign for Ratification of the Migrants’ Rights Convention, *Guide on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 2009 (retrieved from [www.migrantsrights.org](http://www.migrantsrights.org)).

48 See 1998 UN Recommendations on Statistics of International Migration, Glossary, Statistical Papers Series M, No. 58, Rev. 1, New York, p. 94.

49 See <http://www.ilo.org/migrant/areas/international-standards-on-labour-migration-and-protection-of-migrant-workers-rights/lang--en/index.htm>

50 ILO Convention No. 97 (revised 1949) concerning Migration for Employment.

51 ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

52 ILO Recommendation No. 86 (revised 1949) concerning Migration for Employment.

53 For the current state of ratifications of ILO No. 97 Convention see [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242)

54 See [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312288](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288)



The 2010 ILO publication on ‘towards a rights-based approach’ to international labour migration lists temporary migration as “referring to admission of workers (sometimes referred to as ‘guest workers’) for a specified time period, either to fill year-round, seasonal or project-tied jobs, or as trainees and service providers under Mode 4 (Movement of Natural Persons) of the GATS.” (ILO, 2010: 24). The same publication describes circular migration as the phenomenon when migrant workers move regularly back and forth between two countries; “the concept is broad enough to take into account both temporary migration systems and diaspora movements between origin and destination countries.” (ILO, 2010: 53). Under the umbrella of the ILO’s decent work agenda, the term contract worker is defined as “workers admitted on the expectation that they will work for a limited period and return to their country of origin. The temporary migrant programmes of the 1950s to 1960s were of this type. In the past, these workers could extend their contracts, stay longer and became settled [...]” (ILO, 2008: 42).

## Council of Europe (CoE)

The European Convention on Human Rights (ECHR) applies in principle to all persons within the jurisdiction of the contracting parties – citizens and non-citizens alike – however, a closer look reveals that non-citizens are only covered by a restricted set of rights. The Members of the Council of Europe includes 47 Member States, covering EURA-NET country partners such as Ukraine and Turkey.<sup>55</sup> While the ECHR does not speak of temporary/permanent migration, the Strasbourg Court ruled in expulsion decisions within the scope of Article 8 ECHR on the right to respect for private and family life that the duration of a person’s stay in the country plays a key role.<sup>56</sup>

From its Article 19 it may be implied that the revised European Social Charter (ESC) defines ‘migrant worker’ (Cholewinski, 1997: 227) and includes temporary migrants. However, the ESC’s scope of application extends to foreigners only in so far as they are nationals of other parties lawfully resident or working regularly within the territory of another party.<sup>57</sup> The 1996 CoE report on “temporary migration for employment and training purposes” prepared by the European Committee on Migration categorised, because of problems of classification, economic migrants by the substance and form of their move (Council of Europe, 1996: 11). The Committee pointed out that

*a clear-cut distinction between temporary and permanent stay is often not possible because in the course of the migration and integration process a temporary work permit may be extended and a short-term stay may finally develop into a permanent one. Even migrants who originally intended to settle permanently may change their mind and leave. The major characteristic of temporary work is that it is limited in time and cannot be a preliminary step for a foreign worker to settle permanently in the host country. This implies:*

*- a temporary worker must always have a fixed-term contract of employment, specifying the authorized occupation, the geographical area in which the activity may be carried out and the employer. This means that foreign temporary workers may not freely change their employer, activity or area;*

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<sup>55</sup> <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=&CL=ENG>

<sup>56</sup> See for example *Boultif v. Switzerland*, Judgement of 2 August 2001, 33 EHRR 50, para. 48.

<sup>57</sup> See Paragraph 1 of the Appendix to the European Social Charter (revised) on its scope in terms of persons protected that reads “[W]ithout prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, *the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.”

- temporary workers must leave the country on expiry of their contract;
- the facilities for family reunion do not apply to them.<sup>58</sup>

## Organisation for Economic Co-operation and Development (OECD)

The OECD Glossary of Statistical Terms uses the UN definitions of short- and long-term migrants for the purpose of calculating statistics. The 1998 OECD Report on trends in international migration emphasises that the main distinction between temporary and permanent employment is that temporary work is not normally considered a preliminary step for foreign workers to settle permanently in the host country. The comparative report is based on eight case studies (Australia, Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States). “The amount of time these [temporary] workers are allowed to stay, for example, varies considerably depending on the category and country concerned. It generally ranges from three months to four years, and in some cases may be renewable. However, when workers are allowed to stay longer than several years, it is legitimate to ask whether the term ‘temporary’ is really appropriate to describe the situation. Some workers are also entitled to change their status.” (OECD, 1998: 185, 198).

The 2008 OECD International Migration Outlook on temporary migration identifies certain categories of migrants as temporary migrants, including international students, service providers, and seasonal workers, without specifying time frames. It is stated that data on temporary migration is almost exclusively derived from permits and that the number of categories tends to vary considerably across countries (OECD, 2008: 47).

## International Organisation for Migration (IOM)

IOM published a glossary in which it defines temporary (labour) migration as “migration of workers who enter a foreign country for a specified limited period of time before returning to the country of origin.” (IOM, 2011: 97)<sup>59</sup> A temporary migrant worker is defined as “skilled, semi-skilled or untrained workers who remain in the destination country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. Also called contract migrant workers.” Circular migration is defined as “the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination.” (IOM, 2011: 97, 91).<sup>60</sup>

## General Agreement on Trade in Service (GATS)

Under the GATS the term *temporary* is not defined, nor by the Annex Movement of Natural Persons. Instead, it varies according to the commitments inscribed by members. From these commitments it becomes apparent that members tend to grant access to their territory for service providers for periods between three months and three years with exceptions to five years.<sup>61</sup> While commitments should include the duration of stay, as stated in the Scheduling Guidelines, 48 schedules contain no such indication. Furthermore, several other schedules indicate the period of stay only for some of the mode 4 categories they include.

<sup>58</sup> Ibid., p. 13.

<sup>59</sup> IOM Glossary on Migration (2nd edition) No. 35, 2011, pp. 97.

<sup>60</sup> IOM Glossary on Migration (2nd edition) No. 35, 2011, pp. 97 and 91.

<sup>61</sup> WTO Council for Trade in Services Presence of Natural Persons (Mode 4), Background note by the Secretariat, 8 December 1998, S/C/W/75, par 3; WTO Council for Trade in Services Presence of Natural Persons (Mode 4), Background note by the Secretariat, 15 September 2009, S/C/W/301, par 97.

**Table 1** International migration statistics – Some statistical notions (Source: Own Authors elaboration)

The question of who is regarded as an “international migrant” and who not is vital for calculating migration statistics on a global scale. Problems arise if definitions different. It was International Labour Conference in 1922 and later the UN that prioritised this issue and analysed the different approaches of states. The latter organisations emphasised that a uniform method would help to globally record and compare data as explained in the area of international migration statistics as is specified in the 1998 UN Recommendations on Statistics of International Migration.

The UN defines an “international migrant” as “any person who changes his or her country of usual residence.” The change of country of usual residence necessary to become an international migrant must involve a period of stay in the country of destination of at least a year. Eurostat, the statistical office of the EU, takes this UN definition over.

The UN differentiates between of short- and long-term migrants - these statistical notions are taken over by the OECD:

*A short-term migrant* is defined as “a person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year, except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business or medical treatment. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.”

*A long-term migrant* is defined as “a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long- term emigrant and from that of the country of arrival, the person will be a long-term immigrant.”

## Conclusions and Key Findings

This Report provides an inventory on the various ways in which human mobility has been shaped, framed and defined as ‘temporary migration’ in European Union (EU) as well as international instruments and standards. The inventory has examined who qualifies as a temporary migrant in EU law and policy and who qualifies in the international contexts and experiences. The report has moreover critically discussed each of these notions and their implications for the transformative characteristics of cross-border human mobility and the socio-economic inclusion of mobile persons.

From the analysis it becomes clear that there is not a commonly agreed conceptual framework in European and international frameworks as regards the featuring components and substantive characteristics of the temporary mobilities. The progressive emergence of supranational legal and policy frameworks and standards however are increasingly limiting the discretion enjoyed by the nation-state at times of framing certain kinds of cross-border movements as temporary migration and limit the protection, security of residence, family life, labour standards and inclusion of these individuals in the receiving societies.

On the basis of the examination and inventory provided in this Report the following key findings can be particularly underlined:

- The classical temporary labour migration systems in Europe took the form of ‘guest worker schemes’ by which some European countries ‘imported’ low-skilled labour from abroad to serve utilitarian and selective policy rationales. While the guest worker schemes were intended to provide cheap foreign manpower for a temporary period only, many of these workers challenged the effectiveness of these migration policy schemes by staying in the receiving countries and settling there. Family reunification was not encouraged by states under the guest worker schemes but became *de facto* reality. Common features of temporary labour schemes permit states to considerably limit access to rights, security of residence and integration; this has major implications for non-discrimination, labour standards, family life, and private life. The scholarly literature on policy failures has clearly and succinctly underlined that it is absolutely central to take due account of ‘historical experiences’ and ‘lessons learned’ from previous policies at times of re-thinking policies aimed at the temporary framing of mobility as migration.
- A unique European specificity is a distinction driving EU law and policy instruments between the free movement of persons on the one hand, and migration law on the other. The free movement of persons allows EU citizens to freely move and reside in an EU Member State of their choice. By contrast, a different fragmented legal regime on migration has emerged during the last 15 years of European integration which applies exclusively to third-country nationals or non-EU nationals
- The EU free movement of persons aimed to abolish “temporariness” from the very beginning when the EU Treaties were designed. The deregulating rules on the free movement for persons were meant to encourage EU citizens to move to another EU country for the purpose of employment. As regards third country nationals, EU migration law does not expressly provide for a definition of “temporary migration”, one could argue that it currently covers a wide range of human mobility experiences for periods of up to five years. This finding could be derived from Council Directive 2003/109/EC on EU long-term resident status for third-country nationals: after five years of legal and continuous residence in a Member State the stay of third-country nationals is considered as “permanent.”<sup>62</sup> The EU Migration Directives regard students, au pairs, seasonal workers, and intra-corporate transferees explicitly as “temporary migrants.”<sup>63</sup> The EU is keen that temporary migration does not become permanent and has displayed an EU policy on return and expulsion for these individuals not to become ‘permanent’: Directive 2014/36 on seasonal workers sets out incentives and safeguards to prevent overstaying or temporary stay from becoming permanent (direct reference is made to Return Directive 2009/52). The same concern is expressed in view of EU policy framings regarding the contested concept of ‘circular migration’, where expulsion is also the sine qua non for its practical operability and value added.
- Although the EU legal framework sets forth different rules for EU citizens (under the Citizens’ Directive 2004/38) and third-country nationals (under the Schengen rules and the Long-Term Residents’ Directive), interestingly the framing of temporariness is the same to both groups;

<sup>62</sup> Article 4(1) of Council Directive 2003/109/EC.

<sup>63</sup> Recital 7 of Council Directive 2004/114/EC; Recitals 43 and 46, 2<sup>nd</sup> paragraph of Directive 2014/36/EU; Recital 13 and Article 3(b) of Proposal for a directive of the European Parliament and of the Council on Comparing conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378.

namely the time period up to three months; the time period between three months and five years, which one could argue covers to the EU's framing of what is temporary for the purposes of European migration law; and the time period after five years which corresponds with the EU's understanding of permanent residence (See Section 3.1.2 of this Report).

- The term “temporary migration” is normatively charged with a number of assumptions and methodological biases, e.g. temporary migration schemes allow governments to legally discriminate foreign workers and their families; temporary migration also (at least formally) excludes the phenomenon of irregular migration. In the light of this we raise the question as to whether it is still adequate to speak of temporary migration, or whether it would be actually more appropriate to use the terms “temporariness” and “(temporary) mobility” in the conceptual framework of EURA-NET on socio-economic transformative characteristics. Moreover, whose purposes does it serve to use ‘time’ as a defining factor for the normative framing of cross-border human mobility as ‘temporary migration’?
- On the international level no one single universal definition of temporary migration exists as the research on international standards, recommendations, reports and policy documents has revealed. However, different international and regional organisations have introduced a number of conceptual features and definitions of relating concepts for the purposes of calculating international migration statistics, or at times of ensuring that international labour standards apply to all migrant workers, independently of whether their mobility project can be labelled as temporary or permanent.
- A key message from ILO instruments is that these key labour standards cannot be dependent on time-bound definitions of migration. The ILO standards are inclusive in that a lot of the conventions and recommendations cover temporary migration. The 1997 ILO Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration specifies that the term time-bound migrants is meant to cover “seasonal workers, project-tied workers, special purpose workers, cross-border service providers, students and trainees but no other categories.” The 2010 ILO publication on a rights-based approach to labour migration lists temporary migration as “referring to admission of workers (sometimes referred to as ‘guest workers’) for a specified time period, either to fill year-round, seasonal or project-tied jobs, or as trainees and service providers under Mode 4 (Movement of Natural Persons) of the GATS.
- The international standards, recommendations, reports and policy documents scrutinised show that the main characteristic of temporary migration is that the stay is limited in time, meaning not permanent. Various categories of migrants are usually encapsulated under a “temporary” scheme; these often include categories such as seasonal workers, project-tied workers, specific-employment worker, contract workers, students, tourists, trainees, and service providers.
- The UN has defined an international migrant as “any person who changes his or her country of usual residence.” The change of country of usual residence necessary to become an international migrant must involve a period of stay in the country of destination of at least a year. This standard however presents similar methodological limitations at times of ascertaining the transformative characteristics of human mobilities and the impossibility of capturing people’s intentions into law and policy. The UN differentiates between short-term migration (between three months and a year) and long-term migration (longer than a year) – both, short- and long-term migration can be temporary in nature. The 1990 UN Migrant Workers Convention does not provide definitions

of temporary migration but of the following three categories that are all temporary: “seasonal worker”, “project-tied worker” and “specific-employment worker.”

- The question must be raised what authority the different definitions examined in the EU and international context have. The Report has also examined which actors or which states are bound by them. Strikingly, the 1990 UN Migrant Workers Convention has not been ratified by any EU Member State, where some states in Asia have ratified this convention. The EU legal framework applies exclusively to EU affairs, yet, it is clear that the EU has in recent years made major effort to collaborate with third countries in migration matter.
- As the European Committee on Migration of the CoE has highlighted, however, a clear-cut distinction between a temporary and permanent stay might be difficult or even impossible to make in practice. The Committee argued that in the course of the migration and integration process a temporary work permit may be extended and a short-term stay may finally develop into a permanent one: “Even migrants who originally intended to settle permanently may change their mind and leave.” The policy failures and lessons learned from the failure of Guest Workers and temporary migration schemes in Europe should be carefully crafted when thinking of future EU public policies as well as EU-Asia cooperation in this framework.



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### 3. ASIAN COUNTRIES' POLICIES ON TEMPORARY MIGRATION

Sakkarin Niyomsilpa, Maruja Asis and Sureeporn Punpuing

#### Introduction

The Asian continent encompasses countries and economies which are diverse in terms of their geography, demography, culture, political regimes, and economic development models. Although some regional cooperation arrangements have been created such as the *South Asian Association for Regional Cooperation (SAARC)*, which consists of eight countries in South Asia, and the *Association of Southeast Asian Nations (ASEAN)*, which consists of ten countries in Southeast Asia, these Asian regional cooperation frameworks lack supranational bodies such as what had been realised in the European Union, and thus have quite limited scope of cooperation. There is no agreement comparable to the Maastricht Treaty or the Treaty of Lisbon which surrender the national sovereignty of SAARC and ASEAN member states to their respective regional organisations.

With respect to the migration policy, there are, however, some initiatives among Asian countries to harmonise certain policies related to migration issues and problems, particularly those involving human trafficking and migrants' rights, such as the ASEAN Joint Declaration against Trafficking in Persons particularly women and children (2004) and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007). An important initiative at the wider Asian level is the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process), a regional consultative process that encourages regional convergence in policy related to trafficking issues and irregular migration<sup>1</sup>. Despite these regional cooperation frameworks, however, Asian countries still have different perspectives and policies concerning the regulation of inflows and outflows of migrants, border regimes, the treatment of migrants, and diaspora policies. Whereas some Asian states and territories such as Japan, South Korea and Taiwan Province of China serve mainly as the destinations of foreign migrants, many South and Southeast Asian states such as Bangladesh, Sri Lanka, Indonesia, Myanmar and Cambodia are the sending countries of migrant workers. Nevertheless, some countries like Thailand and Malaysia are both sending and receiving countries of migrants as large inflows and outflows of migrants could be observed. Therefore, Asian perspectives and policies on migration which include immigration and emigration policies are more influenced by the status of their countries in the international migration landscape.

On immigration policies, receiving states in the same sub-regions are more likely to share some similarities. In Southeast Asia, Malaysia, Singapore and Thailand are major destinations countries for migrants from neighbouring countries. These three countries have thus adopted the regularisation process of temporary migration of low-skilled and semi-skilled labour. Also, most countries in Southeast Asia have facilitated the temporary migration of skilled workers and professionals in an effort to encourage foreign direct investment from advanced economies. Singapore, for example, has implemented a three-tiered migration scheme for foreign workers including the immigration of professional foreign workers, the immigration of skilled workers and technicians, and the migration of unskilled and semi-skilled foreign workers. Malaysia, meanwhile, has allowed the employment of skilled and professional workers and also lower skill workers. But lower-skilled workers are permitted to work in only four sectors including plantation, construction, manufacturing and servic-

<sup>1</sup> The Bali Process, launched in 2002, is a voluntary and non-binding process with 48 members including the United Nations High Commissioner for Refugees (UNHCR), United Nations Office on Drugs and Crime (UNODC) and the International Organization for Migration (IOM). There are a further 27 observers to the process. The Regional Support Office of the Bali Process (RSO) has been established in Bangkok to facilitate the operationalisation of the Regional Cooperation Framework (RCF) to reduce irregular migration in the Asia and Pacific region. See <http://www.baliprocess.net/regional-support-office>

es. Thailand, on the one hand, allows companies with investment privileges to hire foreign experts with a flexible visa period. On the other hand, it has issued work permits for migrant workers from Myanmar, the Lao People's Democratic Republic (PDR) and Cambodia to work in many sectors in Thailand.

The destination countries in Northeast Asia, particularly Japan and South Korea, have also shared similar migration policies and priorities. Both countries consider themselves as homogeneous societies and have adopted restrictive migration policies for a long period of time despite acute labour shortages. Japan's migration policy is based on three fundamental tenets: the admission of foreign workers should be allowed only as a last resort; no admission policy for unskilled workers; and all foreigners should be allowed entry on a temporary basis. (Wongboonsin, 2003) South Korea traditionally had similar migration policies to that of Japan. However, in 2003, South Korea shifted its policy by passing a law to bring in migrant workers from selected Asian countries. Since then it has signed MOUs with 15 partner countries under its Employment Permit System (EPS)<sup>2</sup>. To date, Japan still maintains its restrictive migration policy of not legally admitting less-skilled workers. China is both the destination and origin countries of migrants. The country has also adopted a restrictive migration policy of foreign migrant workers, except for professionals and technology experts.

For South Asian countries, they have no official policy to import foreign workers. However, the entry permits of foreign nationals vary among South Asian countries due to socio-political considerations such as religious ties, kinship, and international relations. The South Asian sub-region hosts a large number of refugees and asylum seekers from neighbouring countries. Bangladesh, for example, hosts hundreds of thousands of Rohingya refugees from Myanmar. Many of them are allowed to work to earn their income. Policies of India have changed from time to time. Local governments in some countries such as India have played an important role in the immigration policy also (ibid).

Aside from labour migration issues, Asian countries have also developed other types of temporary migration policies and different visa categories to support social and economic development. For example, many Southeast Asian countries such as Singapore, Malaysia and Thailand have promoted international education programmes in their countries to bring in foreign students. Countries in Northeast Asia including China, Japan and South Korea have also developed policy strategies to attract foreign students. Some countries such as Japan allow foreign students to work for a certain number of workers while they are studying. Other types of temporary migration policies adopted by Asian countries include medical tourism policy in Singapore, Malaysia, Thailand, the Philippines and India, and retirement migration schemes in a number of Southeast Asian countries. While some countries such as Malaysia and the Philippines have offered long-term visas for foreign retirees, some other countries like Thailand and Indonesia would allow only one-year visa validity for them. For traditional sending countries with extensive diaspora communities like China, India and the Philippines, diaspora policies related to return migration have been developed. India and China offer a long-term multiple-entry visa for their diasporas whereas the Philippines allows dual citizenship for overseas Filipinos (Go, 2012).

For the sending countries of migrants in Asia, emigration policies range from the interventionist policy in some Indochinese states to the market-led migration patterns in India. Centrally-planned economies such as Myanmar and Vietnam have adopted a strong interventionist approach in labour export policies. Vietnam has concluded many bilateral agreements with European and East Asian states for labour contracts. Myanmar has worked out agreements with destination countries like Thailand and South Korea to pave the way for labour export (Wongboonsin, 2003). But for other sending countries in Southeast Asia, private recruitment agencies have important roles in securing

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<sup>2</sup> These countries are Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Myanmar, Mongolia, Nepal, Pakistan, Philippines, Thailand, Timor-Leste, Uzbekistan, Viet Nam, and Sri Lanka ([http://www.ilo.org/asia/areas/labour-migration/WCMS\\_226300/lang-en/index.htm](http://www.ilo.org/asia/areas/labour-migration/WCMS_226300/lang-en/index.htm))

work contracts for migrant workers. The Philippines has a comprehensive and active emigration policy that aims to promote overseas employment at all skill levels. Labour protection policies and various mechanisms have been developed to ensure proper protection of all stages of the migration process. Thailand, which serves as both a major receiving and sending state of migrant workers, has concluded bilateral agreements with countries of origin in Indochina and destination countries in Asia to regulate migration flows in and out of Thailand. Private recruitment agencies are also active in Thailand, except for labour export to South Korea and Israel where migration through state channels are designated. In Northeast Asia, the major sending country of labour is China. The Chinese government has attempted to regulate emigration by concluding bilateral agreements with destination countries. Beijing has also made a lot of efforts to reduce irregular migration and people smuggling out of China. For example, a daily quota system on emigration to Hong Kong was also set to reduce illegal emigration.

For South Asian countries, most governments, except India, have adopted labour export policy to gain remittances and reduce domestic unemployment. Bangladesh has promoted both skilled and unskilled labour export. Labour protection policy and institutional mechanisms are well in place. Sri Lanka has attempted to facilitate labour export by reducing travel restrictions and other measures. Pakistan has facilitated labour export by reducing state controls on emigration. Although India has no official policy to encourage labour export, it has introduced measures to regulate emigration to protect their nationals. For example, unskilled workers are required to obtain emigration clearance from the state before their departure. Also, recruitment agencies are tightly regulated for overseas employment contracts. Moreover, the Ministry of Overseas Indian Affairs (MOIA) has been established to look after Indian migrants and Indian diasporas and to facilitate their migration flows (ibid).

Apart from the labour export, Asian countries have also adopted policies and strategies to manage other types of temporary migration such as cultural exchanges, student migration, and marriage migration. The Philippines, for example, has bilateral agreements on cultural exchanges with some European countries to allow temporary stay for Filipino au pairs. Many Asian countries such as Taiwan, South Korea and China have encouraged overseas education for their students in science and technology areas to keep abreast with technological developments elsewhere. For example, more than 40,000 Chinese students went to study in Europe in 2008 (Tian & Hu, 2014). Although most Chinese students in Europe are self-financed, the Chinese government has provided many scholarship programmes to top students for overseas education. Many Chinese academics and researchers have also undertaken fellowship positions in European academic institutions, with support from the Chinese government. Marriage migration is also growing in importance in many Asian countries. Some Northeast Asian states and territories such as Japan, South Korea, Taiwan and Province of China have a lot of marriage migrants from the Philippines, Vietnam, Indonesia and Thailand. Also, many European countries such as Germany and the Netherlands have seen thousands of marriage migrants from the Philippines, Thailand and Indonesia. Some Asian countries have introduced measures to control dating agencies and protect their nationals from human trafficking scams. For instance, the Philippines prohibits the business of organising or facilitating the marriage of Filipino women and foreign men. Moreover, Filipinos leaving the country for marriage migration are required to attend the guidance and counselling session. Cambodia also issued a provisional ban on women leaving as brides following reports of abusive practices and exploitation.

## **Ratification of International Instruments**

Given the transnational nature of international migration, international instruments are vital tools in protecting and promoting the rights of international migrants – migrant workers, refugees and trafficked persons are specific types of cross-border migrants who are the focus of these instruments. Ta-

ble 2 presents international migration-related instruments, the number of states parties, and the Asian countries that have ratified these instruments.

As Table 2 indicates, the 2000 Trafficking Protocol and the 1951 Refugee Convention and its 1967 Protocol register high ratifications while the remaining instruments have been ratified by fewer countries. The record of ratification by Asian states follows the same pattern. The 1990 Migrant Workers Convention is of great relevance to the region because of the predominance of labour migration. To date, only 47 states have ratified it, including six in Asia, and none of the parties are destination countries.

**Table 2** International migration-related instruments, entry into force, total and Asian parties (Sources: ILO NORMLEX and United Nations Treaty Collections; websites were accessed on 26 August 2014)

| Instrument                                                                                                         | Entry into Force                 | Total Parties        | Asian Parties                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A. ILO Conventions</b>                                                                                          |                                  |                      |                                                                                                                                                                                                                                                                                                                                               |
| C097 – Migration for Employment Convention (Revised )                                                              | 22-Jan-52                        | 49                   | Armenia, Israel, Kyrgyzstan, Malaysia (Sabah), Philippines , Tajikistan (6)                                                                                                                                                                                                                                                                   |
| C143 – Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)                                       | 9-Dec-78                         | 23                   | Armenia, Philippines, Tajikistan (3)                                                                                                                                                                                                                                                                                                          |
| C181 - Private Employment Agencies Convention, 1997 (No. 181)                                                      | 10-May-00                        | 28                   | Israel, Japan (2)                                                                                                                                                                                                                                                                                                                             |
| C189 – Domestic Workers Convention, 2011 (No. 189)                                                                 | 5-Sep-13                         | 14                   | Philippines (1)                                                                                                                                                                                                                                                                                                                               |
| <b>B. UN Conventions</b>                                                                                           |                                  |                      |                                                                                                                                                                                                                                                                                                                                               |
| 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families | 1-Jul-03                         | 47; 37 (S)           | Azerbaijan, Indonesia, Kyrgyzstan, Philippines, Tajikistan, Timor Leste (6)                                                                                                                                                                                                                                                                   |
| 1957 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees        | 4/22/1954 ( C ); 10 Apr 1967 (P) | 145; 19 (S); 146 (P) | Armenia, Azerbaijan, Cambodia, China, Cyprus, Georgia*, Iran, Israel, Japan, Kazakhstan, Kyrgyzstan, Philippines, Republic of Korea, Tajikistan, Timor Leste, Yemen (16)                                                                                                                                                                      |
| 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children                 | 25-Dec-03                        | 161; 117 (S)         | Afghanistan, Armenia, Bahrain, Cambodia, China, Cyprus, Georgia, India, Indonesia, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao PDR, Lebanon, Malaysia, Myanmar, Philippines, Qatar, Saudi Arabia, Syrian Arab Republic, Tajikistan, Thailand, Timor Leste, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Vietnam (31) |

Notes: \*Georgia did not ratify the 1967 Protocol; S means signatories; C means Convention; P means Protocol Countries classified under Asia are based on the United Nations' classification of countries.

## International Migration and Regional Cooperation in Asia

### Regional consultative processes

International migration in Asia is largely intra-regional, hence it is not surprising that regional cooperation on international migration developed in the course of time. When labour migration commenced in the 1970s, governments in the region approached the issue from a very national framework. Two



decades later, in the 1990s, the governance of labour migration expanded to include regional cooperation. The divergent perspectives of origin, transit and destination countries, however, make the issue of international migration a contested one. In this complex environment, regional consultative processes (RCPs) emerged as a venue to promote discussions, the exchange of information, and encourage regional cooperation. The voluntary and non-binding nature of RCPs is both strength and a weakness – on the one hand, RCPs promote dialogue, but on the other hand, the agreements reached are largely recommendatory and are non-binding for the participants.

In Asia, five RCPs had been formed since the 1990s: the Manila Process (est. 1996), the Asian-Pacific Consultations on Refugees, Displaced Persons and Migrants or APC (est. 1996), the Bali Process (est. 2002), the Colombo Process (est. 2003), and the Abu Dhabi Dialogue (est. 2008). Of the five, the first two are no longer active. During their active years, the Manila Process had 16 members; the APC Process had 34; their members included countries in Oceania and the Pacific Islands. Irregular migration, trafficking and information sharing were taken up by both processes; the APC was distinctive in including refugees and displaced persons.<sup>3</sup> Regional-level initiatives help fill the protection deficit, considering the low ratification of multilateral instruments concerning labour migration. The three active RCPs are briefly described below:

- Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (<http://www.baliprocess.net/>)

The Bali Process originated from the regional ministerial conference co-organised by the governments of Australia and Indonesia, which was held in Bali, Indonesia on 26-28 February 2002. Since then, it has organised five regional ministerial conferences plus several senior officials meetings and workshops, with Australia and Indonesia serving as co-chairs. The 45 participating countries are mostly in Asia and Oceania.<sup>4</sup> In addition, there are 17 partner and observer states, 15 of which are European.<sup>5</sup> According to Douglas and Schloenhardt (2012), the Bali Process participants had more or less converged on the following issues: acknowledged the worsening problem of irregular migration, especially migrant smuggling by boat, in the Asia Pacific region, engaged in “collective denunciation” against smuggling and human trafficking, and supported voluntary commitment to international obligations while taking into account the national circumstances of the participating countries. The creation of the Regional Cooperation Framework (RCF) in 2011 and the subsequent establishment of the Regional Support Office (RSO) in Bangkok, Thailand in 2012 denote the fine-tuning of collaborative efforts to curb irregular movements in the region, including refugee issues. The RCF allows interested members to institute practical arrangements to collectively address irregular migration while the RSO is intended to be a hub for information sharing on refugee protection and international migration, capacity building, and to provide support on joint projects undertaken by Bali Process members.

- Colombo Process (<http://www.colomboprocess.org/>)

The Colombo Process started with the Ministerial Consultations for Asian Labour Sending Countries which were held in Colombo, Sri Lanka in 2003. The ten initial participating states – Bangladesh,

3 <https://www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region/manila-process.html> and <https://www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region/sacm.html>, accessed on 26 August 2014.

4 The Bali Process countries are: Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, DPR Korea, Fiji, France (New Caledonia), Hong Kong (SAR of China), India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kiribati, Lao PDR, Macau (SAR of China), Malaysia, Mongolia, Myanmar, Maldives, Nauru, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Timor Leste, Tonga, Turkey, United Arab Emirates, United States of America, Vanuatu, and Vietnam. With the exception of the United Arab Emirates and the United States of America, the participating countries in the Bali Process are in Asia and Oceania.

5 The 17 partner and observer states are: Austria, Belgium, Canada, Denmark, Finland, Germany, Italy, The Netherlands, Norway, Poland, Romania, Russian Federation, Spain, Sweden, Switzerland, and the United Kingdom.

China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam – agreed to cooperate for the effective management of overseas employment programmes and to have regular meetings for this purpose. Follow up meetings have been conducted in Manila, Bali and Dhaka in 2004, 2005 and 2011 respectively, to review and monitor the implementation of previous recommendations and identify needed actions.

Since 2002, the Colombo Process has opened up to welcome an additional member, Afghanistan, and to observer parties, which are destination countries – Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates. Italy is the lone observer party in this predominantly Asian group. The participation of destination countries as observers indicates the need to partner with them to enhance the management and governance of labour migration – the whole process certainly straddles origin and destination countries.

Eleven years later after the inaugural meeting of the Colombo Process, some accomplishments have been noted, including: data sharing and exchange of information on good practices, conduct of policy studies to improve specific aspects of labour migration (e.g., pre-departure orientation seminars, protection of workers, employment contracts), developing a training curriculum and implementation of training programmes for labour attaches, engaging with employment agencies (e.g., holding a workshop on ethical recruitment), and implementation of recommendations by the different countries.

In the interest of expanding employment opportunities for their nationals, two initiatives specifically involved the EU: pre-departure training packages for workers for EU destinations, and promoting collaboration between recruitment agencies in Asia and employers in the EU.

- Abu Dhabi Dialogue (<http://www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region/abu-dhabi-dialogue.html>)

Launched in 2008, the Abu Dhabi Dialogue can be regarded as a levelling up of the Colombo Process in promoting collaboration between origin and destination countries. The participation of some destination countries started as observers in the Colombo Process and the partnership has been firmed up in the Abu Dhabi Dialogue which includes all the 12 Colombo Process sending countries and seven destination countries in Asia as members (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen), and with Japan, the Republic of Korea and Singapore as observers.

The Abu Dhabi Dialogue focuses on action in four key areas: “Developing and sharing knowledge on labour market trends, skills profiles, workers and remittances policies and flows, and the relationship to development; building capacity for more effective matching of labour supply and demand; preventing illegal recruitment and promoting welfare and protection measures for contractual workers; and developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual work that fosters the mutual interest of countries of origin and destination.”

Five consultation and ministerial meetings have been held between 2012 and 2014. The International Organization for Migration served as secretariat since 2008 up until April 2012, after which it was agreed that the outgoing, current and incoming chair will assume secretariat responsibilities while the IOM became an observer and thematic expert.

## Association of Southeast Asian Nations (ASEAN)

The ASEAN was established as a regional organisation in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand (the term ASEAN-5 refers to these five founding members) to cooperate in economic, social, cultural, education and other fields and to promote peace and prosperity in the region. Five other countries joined the ASEAN in later years – Brunei Darussalam, Lao PDR, Myanmar, Vietnam and Cambodia. ASEAN’s ten member countries are characterised by immense diversity in economic, demographic, political and culture characteristics. One of the principles of the

organisation is non-interference in the domestic affairs of another, which, according to some observers renders the ASEAN ineffective in making a member accountable for wrongdoing, such as human rights violations.

International migration has posed some thorny issues in a sub-region comprising of origin, transit and destination countries. In this landscape, the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was considered a significant development by some because it recognises the contributions of migrant workers to the society and economy of sending and receiving countries, acknowledges the need to adopt comprehensive policies on migrant workers and the need to address cases of abuse against migrant workers, and lays out the obligations of receiving and sending states, and the commitments of ASEAN in the protection and promotion of the rights of migrant workers. However, since it is a declaration and thus non-binding, some sectors consider this as not having enough teeth in realising its objectives of protecting migrant workers. Another shortcoming of the Declaration is limiting the protection of the rights to legal migrant workers while excluding the large numbers of migrant workers in an irregular situation. The ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) was established in July 2007 to coordinate two key tasks, namely:

- “Ensuring the effective implementation of the commitments made under the Declaration; and
- Facilitating the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.”<sup>6</sup>

The much-awaited ASEAN instrument that will guide the implementation of migrant worker protection is still in the making. The fight against trafficking in persons gained region-wide support in the form of the 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children. Among others, the Declaration provides for the establishment of a regional focal network to prevent and combat trafficking in persons, especially women and children.

December 2015 will see the launch of the ASEAN Economic Community (AEC), an important milestone towards realising the long-term process of transforming this region of 660 million people “into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital” (Das et al., 2013). The AEC blueprint clearly specifies that the free movement of people is limited to skilled labour, thereby excluding the larger population of migrants in less skilled occupations. Towards this objective, mutual recognition agreements have been signed, which aim to harmonise the training and qualification requirements in the region. Seven professions were prioritised, namely: engineers, nurses, architects, surveyors, doctors, accountants, and dentists. The full realisation of the free movement of skilled labour will require hurdling major shortcomings inherent in the AEC, namely, many sectors are limited to nationals and limiting the AEC to skilled workers (Huelser and Heal, 2014). More cooperation in the following areas – extending the MRAs to more sectors, removing the nationality provisions in professions where MRAs have been negotiated, expanding labour market access to less skilled workers, and protecting the rights of irregular migrants – is key in reducing these shortcomings (Huelser and Heal, 2014).

## South Asian Association for Regional Cooperation (SAARC)<sup>7</sup>

In recent years SAARC has been increasingly viewed as a platform for achieving greater cooperation and reform in the management of migration. Established in 1985, SAARC member countries are Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka. To date,

<sup>6</sup> <http://www.asean.org/communities/asean-political-security-community/item/statement-of-the-establishment-of-the-asean-committee-on-the-implementation-of-the-asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers>, accessed on 11 August 2014.

<sup>7</sup> This section was prepared by Ms Jennifer Arais Hagan, Visiting Researcher, Scalabrini Migration Center.



SAARC cooperation in the area of migration has been limited to its Visa Exemption Sticker Scheme and, more indirectly, the SAARC Convention for Combating Trafficking in Women and Children for Prostitution (2002). Experts and organisations, such as the International Labour Organization and Human Rights Watch, have recently called on SAARC to take a more active role in regional migration governance.

Launched in 1992, SAARC's Visa Exemption Sticker Scheme is designed to facilitate people-to-people contact between member states. Through this scheme, twenty-four categories of people, including senior government officials, judges, journalists, businessmen, and athletes, are given visa-free entry to other SAARC member states. The implementation of the Visa Exemption Sticker Scheme is periodically reviewed by the Core Group of Immigration and Visa Experts of the member states, and is currently the subject of discussions for expansion. In August 2013, the Asian Development Bank and the SAARC Chamber of Commerce prepared a draft proposal for new visa exemption categories and a streamlined process for visa issuance, despite historical opposition to visa liberalisation from India and Pakistan. In January 2014, India proposed doubling the number of available visa exemptions for businessmen in an effort to promote economic integration.

Another area subject to discussion within SAARC is collective analysis and action among member states in labour migration governance, specifically, to protect their labour migrants in countries of destination. At the ILO-sponsored Intergovernmental Regional Seminar for Promoting Cooperation in Safe Migration and Decent Work in July 2013, SAARC member countries expressed recognition of common challenges in labour migration and the intent to explore areas for increased cooperation. The discussions of SAARC participation in regional labour migration governance culminated in the Dhaka Statement. According to the Dhaka Statement, further cooperation between SAARC and other participant countries would be guided by precedents set by the ASEAN's tripartite forum on labour migration and its 2007 Declaration on the Protection and Promotion of Rights of Migrant Workers. In addition, the participating countries cited as precedent for intergovernmental cooperation on labour migration the Southern African Development Community (SADC), the Economic Commission of West African States (ECOWAS), the Colombo Process, and the Abu Dhabi Dialogue. The Dhaka Statement also calls for greater regulation of recruitment and inter-regional dialogue with partners such as the European Union and the Gulf Cooperation Council (GCC).

Shortly after the publication of the Dhaka Statement, Human Rights Watch published an open letter to the SAARC Secretary General calling upon the organisation "to launch a regional protection initiative, so that member states can join forces to leverage their collective bargaining power and seek greater protections for their citizens in line with international labour and human rights standards." In particular, HRW urged SAARC to consider adopting a common set of minimum standards and a mechanism for monitoring these standards. Accompanying such standards should be regulations on recruitment, a collective push for labour reforms in GCC countries, and other actions in line with the ILO Multilateral Framework on Labour Migration.

## Asia-EU Dialogue

In relation to Europe, the Asia-EU Dialogue which promotes the exchange of ideas and strategies on facilitating managed and legal migration between Asia and the European Union (EU). The forum aims to enhance understanding of the key trends and issues, identify common policy concerns and promote actions which will facilitate safe and legal labour migration between the two regions and its impact on development.

The members consist of the 11 countries of the Colombo Process and the 27 EU member-countries. Participants in the Asia-EU Dialogue are mostly representatives of different government agencies involved in migration, specialised agencies and embassies and experts not connected with gov-

ernments.

Two dialogues on labour migration took place – the first was held in Brussels on 29-30 April 2008; the second one was on 8-9 February 2011.<sup>8</sup>

## The Immigration Policies of Asian Countries

The immigration policies of Asian countries concerning temporary migration tends to focus on seven categories of migrants including low-skilled labour, skilled migrants, contract workers, international students, medical tourists, foreign retirees/lifestyle migrants, and return migrants.

### Low-skilled labour

There have been increasing flows of low-skilled labour from South and Southeast Asia to other Asian countries and regions in the past few decades due to the wealth gap, their different demographic structures, and more relaxed migration policies in many destination countries. Furthermore, the Asian financial crisis in the late 1990s also triggered developing countries in Asia to increase labour exports and to work out bilateral agreements that would facilitate the movement of migrant workers. As more developed economies in Asia have faced labour shortages because of their ageing societies, immigration policies have been modified to accommodate the import of low-skilled labour from other Asian neighbours. Destination countries have thus developed temporary migration regimes for low-skilled migration, with many bilateral agreements in the form of Memoranda of Understandings (MOUs) being signed with countries of origin. For example, Thailand, Malaysia, Taiwan and South Korea have signed MOUs with other Asian neighbours to regulate the migration process and employment practice. Thailand signed MOUs with three neighbouring countries including Lao PDR, Cambodia and Myanmar to regulate labour imports. The Alien Employment Act of 1978 was amended in 2008 to allow the immigration of low-skilled migrants to work in the country on a temporary basis with a two-year work permit (Sciotino & Sureporn, 2009). Malaysia also signed an MOU with Bangladesh in 2013 for government-to-government recruitment process that excludes the role of private recruitment agencies. But the MOUs alone cannot stop the influx of irregular migrants to Thailand and Malaysia because of acute labour shortages, lax border controls, higher costs of regular migration channel, and law enforcement problems. Thailand has attempted to solve the problem of irregular migrants in the country by opening many rounds of registration of undocumented migrants with the issue of temporary work permits. Moreover, a national verification (NV) system of irregular migrants registered in Thailand is also introduced to pave the way for the legalised status of migrants with the subsequent issuing of passports and work permits. Malaysia chose an amnesty programme that allowed undocumented migrants to leave the country and then return with a legal recruitment channel. Moreover, a so-called '6P Programme' which includes measures for amnesty, registration, legalisation, supervision, enforcement, and deportation of migrants has been launched since 2011 (ADBI, 2014).

Some countries like Singapore and South Korea set a clear policy and system for temporary labour migration. A labour market survey would be conducted prior to the labour imports. Singapore is a major receiving country with roughly one million low-skilled and semi-skilled temporary migrant workers employed in the manufacturing, construction, and domestic services sectors. The Employment of Foreign Manpower Act (EFMA) regulates the employment of foreign workers. A labour market survey would be conducted to measure labour shortages and the job vacancy rates of different industries before the employment of migrant workers is allowed. South Korea has allowed the

<sup>8</sup> [http://www.colomboprocess.org/index.php?option=com\\_content&view=article&id=63&Itemid=30](http://www.colomboprocess.org/index.php?option=com_content&view=article&id=63&Itemid=30), accessed on 22 August 2014.

import of unskilled workers since 2004 with the implementation of the Employment Permit System (EPS) that extends the same protections and rights to foreign workers as provided to Korean workers (Chung, 2014). In South Korea, labour demand and supply would be determined on a regular basis before the quota for foreign workers is set. Economic growth forecasts and labour demand of SMEs would play an important role in the government's decision on labour imports (ADBI, 2014).

Most other East Asian countries including Japan and China do not have an explicit policy to import low-skilled labour from other countries. China itself has a large number of unemployed and underemployed people, and is a major labour sending country. Internal migration in China is a major migration phenomenon as around 200 million people became the floating people searching for jobs in other cities and provinces. Nevertheless, the booming economy of China and huge foreign investment influx into the country has led to large migration inflows in China's eastern provinces. Many less skilled foreigners are found to work illegally or overstay their tourist visa. These temporary migrants who are labeled as sanfei (three illegalities) population consist of those who work in China without work permits, those who work beyond the scope prescribed in the permits, and foreign students who work in violation of the regulations. These sanfei people would be subject to fines and other penalties for legal violation (Tian & Hu, 2014).

Although Japan has experienced labour shortages in manufacturing and service sectors for many decades, the country has adopted a very restrictive policy concerning the import of low skilled labour. But the Japanese authority has allowed migrant workers from other Asian countries to work in the entertainment industry since the 1970s. These migrants with entertainer visas are considered skilled workers, who are often recruited from the Philippines, Thailand, South Korea, and Taiwan, to work as hostesses in bars and restaurants. By 1991, the number of this type of migrants reached over 64,000 people. But the entry of foreign entertainers has declined since the early 2000s due to public criticism and measures to control human trafficking. Other groups of migrants allowed to migrate to Japan include the children and grandchildren of Japanese citizens who remained in Japan's former occupied territories, mostly from China, and some Indochinese refugees, who were granted temporary visas during the period of political conflicts during 1979-1999. Despite Japanese restrictive policy concerning labour imports, the strong demand for low skilled labour has led to irregular migration. By 1993, undocumented migrant population in Japan reached 300,000. In response, the Japanese government has introduced a new migration policy in the 1990s that opened the lid for temporary migration of low-skilled labour under the auspice of an industrial trainee programme (Chung, 2014). But irregular migration has still remained a major problem in Japan. Moreover, Japan has allowed *Nikkeijin* (Japanese descendent) or Children of Japanese Nationals born on or before the end of World War II to apply for long-term visas and work permits in Japan. The largest group is the 300,000 Brazilian *Nikkeijin*. Later, these *nikkeijin* have taken over Japan's 3K jobs, the ones that are kiken (dangerous), kitsui (tough) or kitanai (dirty).

## Skilled labour

Skilled migration plays an important role in the migration stream of Asian migrants. ADBI (2014) found that more than half of Asian migrants in the OECD during the mid-2000s was highly educated people, many of whom came from India, China, and the Philippines. Most of skilled Asian migrants head towards OECD countries, particularly North America, Western Europe, and Oceania. Many developing countries are also in greater need of skilled migrants and professionals as many countries are relying on foreign investment and technology while the supply of domestic workforce in science and technology areas is inadequate. The growing demand for foreign professionals and technicians on the one hand, and increasing number of foreign expatriates due to foreign direct investment inflows on the other, have led to an increasing flow of skilled migration in Asia. In addition, many Asian

states have adopted an immigration policy favourable to the migration of foreign skilled labour and professionals. The progress towards ageing society in many East Asian states has encouraged them to attract skilled migrants and health care providers. The proportions of working-age population in Japan and South Korea have been on the decline whereas those in China will follow suit in the coming decades.

Major countries in East Asia have introduced policy initiatives to attract skilled and highly skilled migrants. Japan has adopted such policy since 2010 and a points-based system was introduced in 2012 to give an access to permanent residence of qualified people. South Korea has introduced visa categories suitable for skilled migrants, but mostly attracting language teachers and chefs more than technology experts. The PRC has introduced a number of policy initiatives to attract skilled foreigners including the Recruitment Program of Global Experts (1000 Talent Plan) offering a subsidy to foreign experts and entrepreneurs (ibid). China also launched a Green Card programme in 2004 with the issuance of permanent residence permits to foreigners who have made remarkable contribution to the country. But China usually allows foreign migrants to take jobs that cannot be filled by local people. In effect, most of foreign migrants are formally employed in foreign companies and state-owned enterprises (Tian & Hu, 2014). Taiwan Province of China also offers favourable visa conditions for the recruitment of foreign skilled workers.

Many Southeast Asian states have also introduced visa conditions that would attract highly skilled migrants and foreign experts. Singapore is a main destination for skilled migrants from Asia and elsewhere because of its prosperity and attractive visa conditions. The Employment Pass (EP), for example, is the main type of skilled employees and company owners who work in Singapore. The EP requires a minimum salary of more than S\$3,300 and a degree holder from a reputable university. The Personalised Employment Pass (PEP) is another visa for well-paid professionals who want to work in Singapore. The S Pass is for mid-skilled employees with a technical diploma who earn a monthly salary of at least S\$2,200<sup>9</sup>. As Thailand is a regional center for international organisations and foreign companies, the country has attracted temporary migration of many skilled migrants and professionals. Although Thailand has no clear policy to attract the migration of skilled migrants in the same manner as Singapore, Bangkok has adopted visa regulations that would facilitate the migration of foreign managers and professionals. The Alien Employment Act of 1978 (amended in 2008) allows foreigners employed by companies, which was granted investment promotion privileges, a work permit with a flexible timeframe. The Investment Promotion Act 1977, amended in 1991 and 2001, empowers the Board of Investment to grant incentives, guarantees and protection. For non-tax incentives, foreign nationals are permitted to enter Thailand to study investment opportunities and to bring skilled workers and experts to work in promoted activities. In contrast, companies which are not under investment privileges are allowed to hire a foreign worker for every two million baht of registered capital, with a maximum of 10 million baht or five foreign workers only (IPSR, 2014). The Philippines also has a provision allowing foreign skilled workers to work in the country. At present, there are almost 200,000 aliens in the country including many businessmen and skilled migrants from China, South Korea and the US. The Immigration Act 1940 stipulates that non-immigrant visas include Pre-Arranged Employment Visa, temporary visitors, persons in transit, seamen, traders and investors, officials, students, refugees, retirees, and regularisation programmes for irregular migrants (Battistella & Asis, 2014). ASEAN countries also agreed recently to allow temporary movement of skilled workers across companies within ASEAN member states. The ASEAN Agreement on the Movement of Natural Persons was signed in 2012 covering the movement of executives and professionals such as business visits, contractual services, and intra-company transfers (ADB, 2014).

Moreover, the ASEAN countries are moving towards the free flow of skilled labour of ASEAN

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9 See <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fw/before-you-apply/Pages/overview.aspx>



nationals as indicated in the AEC blueprint. It is a major step toward governing temporary mobility in the region. ASEAN countries would work together to facilitate the issuance of visas and employment passes for eight ASEAN professions including engineers, architects, nurses, doctors, dentists, accountants, surveyors and the tourism industry (Chia, 2013). ASEAN is working on the Mutual Recognition Agreement (MRA) and the development of core competencies in these service sectors, scheduled to be completed by the end of 2015. MRAs for some sectors including engineers, architects, IT, health care, accounting and surveying have already been agreed and signed. However, there are concerns that the implementation of MRAs may be a problem as ASEAN countries still have different licensing requirements for these professions. However, there is an effort to create ASEAN skills requirement framework to harmonise labour skills standards, regulations and certification. In 2012, a multi-sectorial working group was established to design an ASEAN Qualification Reference Framework (AQRF). Moreover, ASEAN is also working with Australia and New Zealand on the mutual recognition of national qualification frameworks (NQFs) under the ASEAN-Australia-New Zealand FTA (AANZFTA) (ADBI, 2014).

## Contract migrant worker programme

Contract workers (guest workers) are migrant laborers recruited to work in a host state on a temporary basis. Contract migrant worker programmes have been employed since the late nineteenth century when rapid industrialisation in the West took place. These migrants were employed in factories and mines, farms, the construction of railroads, and dirty and difficult jobs. The aim of early guest worker schemes was to manage international migration to meet employers' demands for labour while minimising political and social impacts of migrants on nation-building. Contract workers played an important role in Europe's postwar economic reconstruction. But in the 1970s, European states began to scale down contract worker programmes amidst social integration concern (Stearns, 2008). Some European countries including Germany decided to terminate the program in the 1970s and 1980s. However, guest worker programmes have been adopted and employed in other regions including the US, Canada, Singapore, Taiwan, Japan and South Korea.

In some Asian countries, contract worker programmes are used as slide doors to meet labour demand and reduce irregular migration of low-skilled migrants without causing much impact on the homogeneous society. Taiwan Province of China is a popular place for guest workers. Taiwan introduced a formal guest worker programme that allowed the import of migrant workers from Thailand, the Philippines, Malaysia, Vietnam and Indonesia. The Employment Services Act of 1992 allows temporary contract workers from the designated countries to work in Taiwan's manufacturing, construction, and services sectors (Tierney, 2013). Taiwan later allowed foreign contract workers to stay in Taiwan up to six years at a time, after which they must return home. But they may apply again for work in Taiwan (Ji-Ping, 2012)<sup>10</sup>.

In Japan, there is a pressing demand for migrant workers as the working age population has been declining while more population are ageing. It was projected that Japanese population ages 15 to 64 would decline from 85 million in 2005 to 72 million in 2025. Therefore, much debate has been going on in Japan whether the country should open more room for labour migration to stabilise the workforce and keep the economy running<sup>11</sup>. Japan later introduced the Industrial and Technical Training Programme for Foreigners (ITTP) to serve as guest-worker programmes whereby foreign workers were granted one-year visas to acquire technical skills. These foreign trainees would receive small

10 Ji-Ping Lin. 2012. Tradition and Progress: Taiwan's Evolving Migration Reality. January 24, 2012. Migration Policy Institute. In the website: <http://www.migrationpolicy.org/article/tradition-and-progress-taiwans-evolving-migration-reality>

11 Martin, Philip. 2008. Another Miracle? Managing Labour Migration in Asia. United Nations Expert Group Meeting on International Migration and Development in Asia and the Pacific, UNESCAP Population Division, Department of Economic and Social Affairs, Bangkok, Thailand, 20-21 September 2008



allowance and are not well protected by labour laws. They are vulnerable to poor working conditions and are denied some basic labour rights such as unionising, collective bargaining and collective action<sup>12</sup>.

In South Korea, its homogeneous society and concern for ethnic composition led to the adoption of a similar migration policy to that of Japan in the 1980s and 1990s. Prior to the launch of the guest worker programme in the early 1990s, the Korean government was more lenient with irregular migration as labour demand soared. But undocumented migrants kept rising to more than 45,000 persons in 1991<sup>13</sup>. The technical training programme was then introduced to reduce the problem of irregular migration. Under the programme, the Korean government would issue a one-year visa to foreign workers to acquire technical skills. These workers were recruited to work in the 3-D jobs (dirty, difficult and dangerous) in many SMEs. But high brokerage fees, poor working conditions, and the prospect of better pay elsewhere led to runaways. The Korean government later decided to introduce the Employment Permit System (EPS) in 2003 to replace the trainee system. Under the EPS, employers with fewer than 300 workers who could not find local workers can hire foreign workers under government-to-government agreements. After three years of employment, foreign contract workers will have to leave South Korea for at least a month before returning for a final three-year stay<sup>14</sup>. The launch of EPS marked a different path of South Korean migration policy from that of Japan with regard to the import of low-skilled workers.

Both Japan and South Korea normally provide temporary status for migrants in their countries, regardless of the length of their residence in the country. Both states maintain descent-based citizenship policies closely linked with the ethno-cultural identity. It will be hard for immigrants and their children to acquire permanent residency status in these countries<sup>15</sup>. Local integration issues are a major obstacle for immigrants in Japan and South Korea.

## International student migration

International student migration is another type of temporary migration. Asia serves as both the origin and destination for international student migration. Students from China, India, South Korea, and Southeast Asian countries form a large group of foreign students in many American, European and Australian higher education institutions. Many countries have a clear policy to export education services and compete for international students. In absolute number, the US is the top destination country, hosting 25 percent of all international students in the OECD. Other major destinations include the UK (15%), France (10%) and Australia (9%). But some Asian countries such as Japan, South Korea, China, Singapore, Malaysia, Thailand and the Philippines are increasingly becoming major destination countries for international student migration. In the OECD, Japan and South Korea hosted 5 percent and 2 percent of international students respectively. China also served as the third largest destination for international student migration in 2011, with almost 300,000 international students. China is now the second most popular destination country of Asian students after the US. Singapore and Malaysia also hosted around 90,000 foreign students each in 2010<sup>16</sup>. Thailand is another emerging destination as the country has attracted many students from neighbouring countries and China. In 2011, there were 20,309 foreign students in 103 Thai higher education institutions compared to 11,021 in 2007. The top three sources of foreign students were China (8,444), Myanmar (1,481), and Laos (1,344) respectively<sup>17</sup>. In addition, at the end of 2012, there were 21,424 foreign students

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12 Chung (2014)

13 Ibid

14 Martin (2008)

15 ADBI (2014)

16 Ibid

17 Office of the Higher Education Commission. 2013. Foreign Students Enrolling in Thai Universities (in Thai). Bangkok: Office of the Higher Education Commission

enrolled in international schools in Thailand, according to the association of international schools in Thailand. The majority of them were Japanese, British, American, Indian and Korean<sup>18</sup>.

There are many perspectives related to the issue of international student migration. Some destination countries may consider international students as a source of labour migration. International students with a tertiary degree have a good chance of finding employment in the host country. There are concerns that the student channel can be used as a backdoor for labour migration. But sending countries may view that student mobility is an important element in a broader strategy to promote skills development and technology upgrade. From the macro-economic perspective, the international student market offers a good business opportunity for education export and foreign exchange earnings<sup>19</sup>.

Asian countries place high value on education and many countries have adopted policies and measures to attract international students. Japan launched an education plan in 2008 to attract 300,000 foreign students by 2020. The plan includes various programmes such as promotion activities, visa issuance and the globalisation of Japanese universities. Other initiatives include student exchange programmes, international credit transfers, the development of joint degree programmes, scholarships and housing support for foreign students, and support for job search after graduation. China also offers many incentives to attract post-graduate students and researchers from abroad. The 1000 Talent Plan was introduced to attract science and technology experts to China. The plan envisages a lump-sum subsidy of CNY1 million and a research subsidy between CNY3-5million on top of a regular salary. Another programme is Chang Jiang Scholars Programme, which provides financial incentives for foreign university professors to work in China. Also, the State Fund of Natural Sciences has created a National Science Fund for Outstanding Young Scholars that provides financial support for Chinese research projects<sup>20</sup>.

Thailand has announced a policy to promote the country as an international education hub. In 2011, Thai international higher education offered a total of 685 accredited international programmes at undergraduate and graduate levels including 251 Bachelor degree, 314 Master degree, 105 Doctorate degree and 11 Graduate Diploma degree programmes<sup>21</sup>. Various measures have been implemented to realise such policy including the quality assurance of Thai schools and higher education institutions, regional and bilateral cooperation with neighbouring countries for student exchanges, and Thai scholarship support for CLMV countries. In 2011, more than ten percent of all foreign students in Thai universities and colleges had received scholarships from Thai government agencies<sup>22</sup>. However, in terms of visa issuance, Thailand has not provided any special treatment for international students in Thailand. They will be offered *Non-Immigrant Visa "ED" (Education)* issued to applicants who wish to study, attend seminar, training session, or internship in Thailand. Holders of this type of visa are entitled to stay in Thailand for a maximum period of 90 days, after which an extension of stay with the Office of the Immigration Bureau is required for a period of one year from the date of first entry into Thailand<sup>23</sup>.

Some Asian countries may also view international students as potential labour supply and allow them to work during studies. International students in Japan are permitted to work for a maximum of 28 hours per week or 8 hours per day during the breaks. Taiwan allows students to work no more than 16 hours per week during their studies. Japan also allows international students to remain in the country up to one year after graduation to find jobs. South Korea has adopted a similar policy with varying job search durations depending on the level of study (ADB, 2014).

18 PrachachartThurakit, 11 February 2003

19 ADB (2014)

20 Ibid

21 See <http://studyinthailand.org/>

22 Office of the Higher Education Commission (2013: 10)

23 See <http://www.thaiembassy.org/hochiminh/en/services/2911/35219-Non-Immigrant-Visa-%22ED%22.html>

India is also a major destination for international education. In 2010, there were 630 foreign higher education institutions operating in the country. However, many of them were not well regulated by the government. In 2004, the government set up two academic committees under the aegis of the University Grants Commission to promote Indian higher education abroad. An Action Plan for the Internationalisation of Higher Education was also proposed in 2009. The government has a policy of internationalisation of Indian academic institutions by collaborating with developed countries to improve Indian academic staff and improve its international standards of teaching and research. However, India is not going as far as China in trying to recruit foreign academic staff to its higher academic institutions with good research funding and financial incentives. But the government has encouraged Indian institutions to enter into partnerships with foreign universities to offer joint degrees to students in India. Students could spend part of the four-year bachelor degree programme in India and the remaining period in foreign universities. But the success of such policy is very limited. On the issue of international student migration, India does not seem to have a clear policy and strategy to attract foreign students to India. Even major Indian higher education institutions still lack infrastructure and services to be provided to foreign students such as good hostels, trained staff and student advice services (Lavakare, 2013). Nevertheless, India has provided flexible immigration policy concerning the issuance of student visa. Foreign students accepted to recognised institutions in India will be issued multiple-entry student visas with the duration period depending on the degree programme. Spouse and dependent family members accompanying the applicant can also apply for an entry visa with the validity period coinciding with the period of the principal visa holder<sup>24</sup>.

## Medical tourism

Medical tourism promotion is another policy which serves to promote temporary mobility in many regions of the world. In Asia, medical tourism has been promoted by many Asian countries including Singapore, Malaysia, Thailand, India, the Philippines, Sri Lanka, and South Korea. Thailand is a major player in medical tourism in Asia as the country offers tourist attractions, travel convenience, state-of-the-art medical technology, and cheap cost of accommodation. It was estimated that Thailand has earned more than US\$ 11 billion over a five-year period from 2010 to 2014 from the medical tourism sector, with medical treatment alone accounting for US\$ 8 billion. The remaining balance goes to spa and wellness services and sales of products and supplies (ITC, 2014). Medical tourism in India also has experienced a rapid growth, with the number of medical tourists expected to reach half a million in 2015. Its United States-trained physicians, state-of-the-art technology in private hospitals, and low medical costs are major attractions. Malaysia is another popular destination for medical tourists, with around 350,000 medical tourists in 2011 (ibid). Its advantages include the cost-effective treatment, hospital facilities, skilled medical professionals, and English-speaking population. Singapore is one of the top medical care providers in Asia, with the highest number of J.C.I. accredited hospitals in Asia. The country plans to attract more than one million medical tourists per annum. The city state is a regional bio-medical hub, with a focus on highly sophisticated procedures like stem cell transplants, living donor liver transplants and advanced robotic surgery. Another successful sector in Singapore is its private dental sector, where foreigners account for 15 to 60 percent of patients in different clinics (Singh, 2009). The Philippines has introduced a policy to promote medical tourism in 2004 with the Philippine Medical Tourism Programme (PMTP), a public-private sector initiative. The Philippines treated 250,000 non-resident patients in 2006, the majority of whom were Filipino diasporas from other countries and the expatriate retirees residing in the country (ibid).

Asian countries have implemented various measures such as international marketing, visa facilitation, public-private partnership, and infrastructure improvements to support medical tourism. In

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24 See <http://www.immihelp.com/nri/indiavisa/student-visa-india.html>

India, the government provides special M-visas for patients and their companions that have longer durations of stay than ordinary tourist visas. The National Accreditation Board for Hospitals and Healthcare Providers (NABH) also does its own accreditation of hospitals to guarantee service quality. The overseas offices of India's Ministry of Tourism are tasked to market medical tourism. A public-private sector partnership (PPP) model has been created to improve health care infrastructure to provide efficient services (ITC, 2014). Singapore, a forerunner in medical tourism, has launched a multiagency government initiative—Singapore Medicine—a partnership of Ministry of Health, Economic Development Board, International Enterprise Singapore and Singapore Tourism Board to develop medical tourism in a manner conducive for the local consumers. The increasing number of foreign patients is essential for Singapore to attain the critical mass required for sustaining sophisticated facilities in Singapore and also to provide some cross subsidisation to local patients, creating a win-win situation (Singh, 2009). On the immigration policy, Singapore has allowed many nationals to enter the country without visa for a 30-day visit. Foreigners seeking medical treatment in Singapore can later apply for an extension of visa that would allow a one-time only extension for up to 89 days from the date of entry<sup>25</sup>. In Thailand, the Prime Minister's Special Committee was set up to promote medical tourism in collaboration with the Ministry of Public Health. Thailand Medical Tourism Cluster has later been established involving various public and private agencies, following the Singapore approach. At present, a second Strategic Plan (2012-2016) has been implemented with a focus on four main products, namely medical services, health promotion services, Thai traditional and alternative medicines, and herbal and health products. The Thai government also provides tax and investment incentives for private hospitals with 50 beds or more (IPSR, 2014). Foreign patients can apply for a non-immigrant visa for medical reasons, with the duration of 90 days, if they are receiving treatments from a licensed medical facility. Since early 2013, medical tourists from GCC countries have been allowed to enter Thailand for 90 days without visa.

Malaysia and the Philippines also have policies and strategies to promote medial tourism. But both countries have no specific visa category for medical reason. The Malaysian government had identified health tourism as a growth driver under the Eighth Malaysia Plan and established the National Committee for the Promotion of Health Tourism in the 1990s. In 2009, the Malaysian Healthcare Travel Council (MHTC) was set up to drive medical tourism. Also, a call center known as 'the MHTC Careline' was set up to provide services to international patients in various Asian cities. An important move was the removal of restrictions on the licensing of foreign specialists (ITC, 2014). For the Philippines, a late comer in medical tourism, the government has offered fiscal incentives such as tax holidays, subsidised loans and free import tariffs for medical equipment to drive the Philippine Medical Tourism Programme (PMTP) forward. The PMTP focuses on four major areas: medical and surgical care (hospitals and clinics), traditional and alternative healthcare, health and wellness (including spas) and international retirement/long-term care for foreigners. Medical tourism in the Philippines has attracted clients in the areas of health screening, cosmetic surgery and dental treatment (ibid).

## Lifestyle/retirement migration

Lifestyle or retirement migration is another type of immigration policy in many Asian countries which has drawn temporary mobility from Europe to Asia. Leading Asian countries which are major destinations for lifestyle migration include Singapore, Malaysia, Thailand and the Philippines. Although Singapore does not offer a specific retirement visa, many retirees choose to apply for business visas as Singapore issues such visas for foreigners looking to start their business in the island state. Known as the *EntrePass* scheme, this visa allows foreign nationals to have a long-term stay in Singa-

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25 See the website: <http://www.mymedholiday.com/country/singapore/article/180/singapore-visa-requirements-for-medical-tourists>



pore. There are several classes of EntrePass visa available, each with its own specific requirements and minimum investment level. Business visas are also issued to foreign nationals who are employed in Singapore. Many of them work in the finance or international business industry and teaching profession<sup>26</sup>. In addition, a visa with five-year duration will also be issued to foreign nationals who meet certain criteria including a minimum income of SGD\$7,500 (US\$6,000) per month and a purchase of property valued at least SGD\$500,000 (US\$400,000)<sup>27</sup>.

While Singapore attracts lifestyle migrants applying for business visa in the country, other South-east Asian countries have active policies to promote lifestyle migration with many incentives including the issuance of retirement visa. Malaysia offers very good incentives for foreign retirees. It has launched the “Malaysia My Second Home (MM2H)” programme to accommodate wealthy foreigners, with a 10-year multiple renewable visa to those who want to spend extended stay in the country. Qualified applicants must have a proof of income over 10,000 RM (US\$3,000) per month or to keep a deposit of a certain amount in a Malaysian bank for the duration of the visa. The amount of the deposit depends on the age of applicant. For the person younger than 50 years old, the deposit required is 300,000 RM (US\$100,000). If the person is 50 years old or more, a deposit of 150,000 RM (or US\$50,000) is required. Moreover, the MM2H programme also permits lifestyle migrants to import belongings, including automobile and duty-free. They are also allowed to work up to 20 hours per week. This is the only country in Southeast Asia which allows employment under the retirement migration scheme<sup>28</sup>.

Thailand is also a popular destination for lifestyle migration from Europe. The government introduced the retirement migration policy in 1988. It requires that an applicant must be at least 50 years old with a monthly income not less than 65,000 baht (US\$2,100) per month, or a deposit in the Thai bank with a minimum balance of 800,000 baht (US\$26,000). If qualified, foreign national will be issued a retirement visa with a year-long validity<sup>29</sup>. The income requirement in Thailand is suitable for many European pensioners and retirees with social security payments who want to live a comfortable life there. Thailand has thus attracted many senior citizens from Europe and Japan to major cities including Bangkok, Pattaya, Phuket, Chiang Mai and Hua Hin.

The Philippines has developed advanced retirement visa programmes called ‘the Special Resident Retiree’s Visa (SRRV)’ proposed by the Philippine Retirement Authority (PRA) to lure foreign retirees to the country. Ironically, the Philippines retirement visa requires an applicant with a minimum age of 35 years old only. But more importantly, the issuance of the SRRV to qualified PRA applicants entitles the holder to reside in the Philippines for an indefinite period with multiple-entry privileges as long as the required minimum deposit investment remains<sup>30</sup>. There are different categories of SRRV holders. The SRRV Smile programme requires a person to deposit US\$20,000 in an approved Philippine bank. A spouse or child accompanying the applicant will require an additional amount of US\$15,000 deposit. Other retirement visa programmes are also offered for senior citizens. The SRRV Classic, the most popular programme, is for those who are at least 50 years old. A pension of at least US\$800 per month if single (or US\$1,000 per month if married), or the time deposit of \$10,000 USD is required. The deposit under the SRRV Classic can be converted to investments such as buying a condominium. The SRRV Human Touch programme is offered to those who are in need of medical care. A pension of at least \$1,500 per month or a bank deposit of US\$10,000 is required. The SRRV Courtesy programme is designed for former Philippine citizens, who are at least 35 years

26 See the website: <http://www.retireinasia.com/visa-requirements-to-retire-in-singapore>

27 See the website: <http://www.holidayhometimes.com/owner-community/retiring-singapore-rules-incentives212013.html>

28 See ‘Legal Options for Retiring in the World’s Cheapest Retirement Havens’. In the website: <http://www.liveandinvestoverseas.com/read-2012-articles/long-term-and-retirement-visa-options-in-southeast-asia-mar-05-2012.html>

29 Lifestyle: 5 great places to retire in Asia, 17 June 2013, Travel Wire Asia. In the website: <http://asiancorrespondent.com/109304/5-great-places-to-retire-in-asia>

30 See the website: <http://www.philippineconsulatela.org/consular%20services/conserv-visa.htm#2f>



old. A required bank deposit is US\$ \$1,500. This programme is also offered to former foreign diplomats, age 50 and above, who served in the Philippines<sup>31</sup>.

Other countries in Southeast Asia also serve as destinations for some foreign retirees, but with a more limited number. Indonesia requires a proof of an income of at least US\$1,500 per month for a foreign national aged 55 or above. A retirement visa is valid for one year and can be extended yearly for a maximum stay of five years. But the Indonesian retirement visa is difficult to obtain due to strict rules that include the minimum value of home/condominium rentals and the required employment of a local maid<sup>32</sup>. For Indochinese countries of Lao PDR, Cambodia and Vietnam, they do not have an extended visa designed for foreign retirees. In practice, some foreign retirees who have a long stay in Cambodia and Lao PDR are those engaging in volunteer work with NGOs. Volunteer work even a few days per month would qualify them for a long-term visa. It is the same for an employment visa. Some retirees thus apply for a business or an employment visa in the two countries. For Vietnam, a long term stay would require a renewal of a tourist or business visa continually as it expires. A foreigner can apply for a business visa with a validity period of one month up to one year. The visa can be extended at least twice without having to leave the country, allowing a maximum of three consecutive years stay in Vietnam<sup>33</sup>.

## Diaspora policy and return migration

Many Asian countries with sizable diaspora communities such as the Philippines, China and India have developed diaspora policy in an effort to connect them with the motherland and to benefit from remittances and technology transfer. As migration is increasingly seen as playing a part in a country's development, Asian diasporas have been recognised as a major force in a country's development strategy. However, different policy frameworks could be observed in the cases of the China, India and the Philippines.

China has developed a pro-active policy approach in dealing with the Chinese diaspora. Beijing has a comprehensive policy aimed to protect, maintain, and enhance the relationships with overseas Chinese. It has developed mechanisms which include the Overseas Chinese Affairs Office (OCAO) and non-governmental organisations, particularly the All-China's Federation of Returned Overseas Chinese (ACFROC), to engage with overseas Chinese in an effort to benefit from their skills and financial resources (Tian & Hu, 2014). Since the reform era in the late 1970s, China has benefited greatly from trade and investment flows from overseas Chinese. As a matter of fact, overseas Chinese made up the majority of FDI capital in China. In recent years, China's diaspora policy has gone beyond attracting financial resources of overseas Chinese to uniting and engaging all overseas Chinese, particularly the new generation of migrants.

There have been measures to connect them with China through cultural, economic and political ties, in order to revitalise their ethnic awareness and cultural identity. China has also developed strategies to encourage temporary return of overseas Chinese and to create transnational networks between China, overseas Chinese and the host country. A slogan of serving the motherland (*weiguofuwu*) has also been used to replace the previous campaign of returning and serving the motherland (*huiguofuwu*) (ibid). For example, the Chinese government has encouraged the formation of the transnational scientific community between China and other countries via Chinese diasporas. As such, the Chinese government has organised commercial and technological fairs overseas to connect skilled overseas Chinese with the motherland. Moreover, the concept of 'temporary return' (*duanqi-huiguo*) was officially introduced in 1994 to encourage 'brain circulation' of overseas Chinese who

31 See the website: <http://retiringtothephilippines.com/guide/visas/philippines-retirement-visa/>

32 See the website: <http://www.retireinasia.com/visa-requirements-to-retire-in-indonesia/>

33 See 'Legal Options for Retiring in the World's Cheapest Retirement Havens'. In the website: <http://www.liveandinvestoverseas.com/read-2012-articles/long-term-and-retirement-visa-options-in-southeast-asia-mar-05-2012.html>

can be affiliated with both domestic and overseas organisations (ibid). Since the late 1990s, many programmes have been developed to attract diasporas with science and technology degrees to return to China or spend some time working and doing research in China such as the Yangtze River Scholar Plan, the Hundred Talents Programme by the Chinese Academy of Sciences, the Cross Century Talent programme by the Ministry of Education, and the One Thousand Talent Programme. Many incentives are provided to overseas scientists such as research funds, free housing, good salary, and other benefits for dependents (ADBI, 2014). Importantly, long-term multiple entry visas have been issued to overseas Chinese students and professionals since 2000. Shanghai and Beijing administrations have also issued multi-entry visas valid between 3-5 years to ethnic Chinese of foreign citizenship since 2001 (Tian & Hu, 2014).

India has also attracted many return migrants due to its booming economy and more developed infrastructure. It was reported that more than 100,000 Indians returned to their homeland in 2010. Indian companies engaging in strategic sectors such as IT, biotechnology, research and development, textiles and business process outsourcing (BPO) have boosted the demand for professionals and skilled Indians. For example, in 2012, Indian firms planned to hire as many as 35,000 return migrants (Giordano & Terranova, 2012). However, the increasing number of return migration in India was seen as driven more by the market demand than government policy and initiatives. The Indian government has not developed a proactive strategy to attract the return of Indian expatriates in the same manner as China. Rather, the Indian diaspora policy is directed towards securing remittances and investments from overseas Indians (ibid).

There are, however, other policy initiatives introduced by the Indian government to connect and enhance relations with Indian diasporas. India established the Ministry of Overseas Indian Affairs (MOIA) in 2004 to deal with PIOs (Persons of Indian Origin) and NRIs (Non-Resident Indians), including the facilitation of return migration. MOIA aims to facilitate remittance and investment flows and to connect overseas Indians with the country of origin. The Diaspora Service Division of the MOIA also runs a Scholarship Programme for Diaspora Children (SPDC) for undergraduate courses in several disciplines. India also organises the yearly celebration of an Indian Expatriate Day (*Bharatrya Pravasi Divas*) and the granting of *Pravasi Bharatrya Samman* Awards to outstanding NRIs and PIOs (Wiesbrock, 2006). A Foreign Exchange Management Act was enacted in 2000 to facilitate the flows of foreign currency and business setup by Indians abroad. India also set up an 'Indian Investment Centre' (ICC) in 2007 as a non-profit trust in partnership with the Confederation of Indian Industry to attract investments from overseas Indians (ibid).

Concerning the issue of return migration, India has attempted to resolve the issue of the portability of social security benefits to facilitate the return of overseas Indians. Bilateral social security agreements with many European countries have been signed. The first such agreement was signed with Belgium in 2006, to be followed by agreements with the Netherlands and Germany. Negotiations with other European countries are also underway. Although India does not allow dual citizenship, the government introduced an Overseas Indian Citizenship (OCI) card scheme in 2005. The OCI scheme allows PIOs, who are citizens of another country, to acquire certificates similar to Indian passports but with a different colour. OCI holders are eligible to multiple-entry visa for life. Moreover, OCI card holders enjoy extensive rights equal to Indian citizens in many areas except voting, the right to hold political positions, and the acquisition of agricultural or plantation properties (ibid).

The Philippines has a policy to support the reintegration of return migrants, with a focus on Philippine migrant workers. The Migrant Workers and Overseas Filipinos Act of 1995 is the main legislation dealing with overseas Filipinos, particularly in promoting the protection of the overseas-based population. This law also includes support measures for returning migrants. The Overseas Workers Welfare Administration (OWWA) provides social services and protection of overseas worker members and their families. For returning migrants, they would be supported by the reintegration pro-

gramme that includes both psychosocial and economic needs. The psychosocial component consists of family counselling and stress debriefing. The economic component focuses on income-generating projects, skills training and credit lending. In 2006, some 198 livelihood projects were approved with a combined loan of 34,102 million pesos (Go, 2012). Also, the Groceria Project is designed to improve the livelihood of overseas workers and their families through the establishment of cooperative grocery stores nationwide. At the end of 2008, the project had contributed to the set-up of 496 grocery stores across the Philippines (ibid). Reintegration preparedness activities such as skill trainings are also provided. The Philippines also set up OFW Flexi-Fund, a provident fund that provides retirement protection for overseas workers. The National Reintegration Center for Overseas Filipino Workers (NRCO) was established in 2007 as a “one-stop centre” for all reintegration services for workers, their families and communities. The NRCO has three programmes including personal reintegration, economic reintegration and community reintegration. Moreover, the Dual Citizenship Retention and Reacquisition Act of 2003 was passed to promote the return of overseas Filipinos. This legislation permits Filipinos who re-acquire their citizenship to own land and other properties and engage in business activities. The Overseas Absentee Voting Act (2003 amended in 2013) also gives political rights to Filipino return migrants. (Battistella & Asis, 2014.)

## **Emigration Policy of Asian Countries**

Asia’s mix of origin, transit and destination countries make for a complex picture of policies concerning international migration. With respect to emigration policies, the most elaborate concern those dealing with the labour migration, particularly the deployment of workers in less skilled occupations. In general, most countries in the region adhere to Article 13 of the Universal Declaration of Human Rights which provides for freedom of movement: “Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and return to his country.”

There were times when the right to leave one’s country was curtailed or was imposed for certain groups. Prior to the reforms in the People’s Republic of China in 1978, the freedom to travel overseas was restricted; the restrictions were increasingly struck down in the post-reform years. In fact, China has emerged as a major source country of international tourists and international students. Similarly, other countries in the region which were previously under socialist rule (Vietnam, Cambodia, and Lao PDR) or the military junta (Myanmar) did not freely allow their citizens to travel abroad. The introduction of reforms in the former socialist countries or the return to civilian rule in the case of Myanmar in 2011 eased the restrictions on travel overseas. During the period of restricted travel, some international migration took place, but under special circumstances. Vietnam sent scholars to study in the former Soviet Union. Also, it sent workers to Eastern Europe, particularly the former East Germany as part of the labour migration programme under the Soviet bloc. Migration from Myanmar, Cambodia and the Lao PDR to Thailand was predominantly unauthorised migration and was a mixed movement, i.e., partially economically driven and partially politically-driven. As the hub of these movements, Thailand was overwhelmed by the presence of migrants in an unauthorised situation. Although it established policies to regulate the admission of migrants, irregular migrants were already in the country. The proximity of these countries to Thailand (Myanmar and Thailand, for example, share a land border of around 1,800 kilometers) facilitated the cross-border movement of peoples in this part of Southeast Asia. Although Thailand and its neighbors have signed an agreement to regulate labour migration, unauthorised migration continues for various reasons, including the higher cost and complicated bureaucracy required by legal migration, social networks that have been established, the preference of employers to hire unauthorised migrants, and corruption. Cambodia and Myanmar have recently explored destinations for their nationals outside of Thailand. For both countries, the other destinations are mostly in other countries in East and Southeast Asia.

## Emigration policies on labour migration

Before the 1970s, emigration to seek employment opportunities was undertaken mostly by individuals, i.e., individuals sought overseas employment on their own initiative. From the 1970s, the state started to take an active part in the organisation of labour migration with the opening of plentiful job opportunities in the oil-rich Gulf region. Among the Asian countries that responded to the demand for workers in the Gulf region were South Korea, the Philippines, Thailand, Bangladesh, Pakistan and India. Of this group, South Korea became a destination country of migrant workers by the 1990s. Thailand's economic growth in the 1990s also contributed to stop further labour migration to the Gulf region (another reason was a diplomatic row with the government of Saudi Arabia), although it pursued labour migration to East Asian destinations. By the 1980s, Indonesia and Sri Lanka also participated in labour migration to the Middle East; a few more countries followed the same path, namely, Vietnam, Cambodia, Lao PDR and Nepal.

Policies on labour migration among origin countries share common features. They all started with the intention to keep labour migration temporary. But as mentioned above, except for South Korea, the rest of the origin countries did not stop sending migrant workers overseas. (On the other side, the destination countries did not stop recruiting migrant workers either). Among the origin countries, the Philippines developed the most comprehensive policies and institutions to govern labour migration, and has become a reference point for other sending countries. Thus, the Philippine example is cited here as an illustrative case. Initially, labour migration policies were oriented to finding labour markets overseas; later, these were supplemented by promoting the protection of migrant workers. Both policies became the template of labour migration policies of origin countries, although the former tends to override the latter when push comes to shove. Worker protection policies are critical because labour migration is filled with risks and vulnerabilities at all phases, i.e., from pre-departure to on-site conditions, and upon the migrant worker's return to the home country. To date, the majority of workers on the move in Asia are in less skilled occupations, a reality which is a cause for concern because of potential irregular practices against workers. Countries which have had a longer history of deploying migrant workers aim to send more skilled workers in the future, believing that skilled and professional workers are better protected than less skilled workers.

The participation of women in labour migration, particularly their concentration in domestic work and entertainment, both unprotected sectors, raises many concerns about worker protection.<sup>34</sup> The Philippines, Indonesia and Sri Lanka are distinctive in terms of the large share of women in their migrant worker populations (*see* Oishi, 2005). Concerns over the risks and vulnerabilities women will face abroad inclined some countries of origin to restrict women's migration. Pakistan only allows labour migration for women who are at least 35 years old. India bans the migration of female domestic workers to Kuwait, and for the other Middle East and North African destinations, those leaving for domestic work must be at least 30 years old; exceptions are made on a case-to-case basis. Bangladesh had an on-off ban on female migration, until it finally lifted the ban in 2007 (Asia-Pacific RCM Thematic Working Group on International Migration including Human Trafficking, n.d.). Nepal also imposed a ban on female migration to the Middle East in 1998, lifted it in 2010, re-imposed the ban in 2012 to women under 30 years old, and is considering lifting the ban. Reports of abuses committed against workers have also resulted in the decision of origin countries to ban further deployment of women migrant workers until after agreements with receiving countries to improve workers' conditions are secured. The Philippines, Indonesia and Sri Lanka have used this approach to protect women

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34 The ILO Domestic Workers Convention (C189) was only adopted in 2011 and came into force on 5 September 2013. Thus far, the Philippines is the only country in Asia which has ratified the convention.



migrants.<sup>35</sup> The countries of destination which have been affected by bans include Japan, Singapore, Malaysia, and several countries in the Middle East (Kuwait, Saudi Arabia, Syria, and Lebanon). Civil society organisations (CSOs) promoting the protection of migrant workers are also active in campaigning against the ban on female migration, even if the intention of governments is to protect women. CSOs argue that imposing the ban is not the correct approach as it will only drive women to seek irregular channels and expose them to greater risk. They also argue that the ban is discriminatory to women and restricts their right to seek gainful work.<sup>36</sup> To protect women migrant workers, other approaches are needed, such as effective regulation of recruitment agencies, providing women migrants with enforceable contracts, and ensuring that embassies and consulates provide support and services to migrant workers (Human Rights Watch, 2012).

In connection with pre-departure protection, policies center on the licensing and regulation of private recruitment agencies, the processing and documentation of workers' contracts, and information programmes. In addition to the punitive measures against erring recruitment agencies, positive approaches, such as giving awards and recognition to exemplary recruitment agencies have been pioneered by the Philippines. Other origin countries, such as Sri Lanka, Pakistan and Vietnam, have also introduced some kind of an award system as part of the governance of recruitment agencies (Asis and Go, 2014). To ensure that migrant workers have basic protection, the Philippines introduced the standard employment contract which is reviewed by the Philippine Overseas Employment Administration. An important intervention at the pre-departure stage is information programmes aimed at migrant worker education and empowerment. The pre-departure orientation seminar (PDOS) for the purpose of providing departing migrant workers with basic information about working and living overseas – terms of the contract, cultural background of the destination country, contact details of the embassy, and so forth. In the Philippines, the information programmes have expanded to include the pre-employment orientation seminars or PEOS (to protect prospective migrants from illegal recruitment and to help them make an informed decision about migrating for employment) and the post-arrival orientation seminars or PAOS (to reinforce the learning process upon arrival in the destination country). While PDOS is mandatory, PEOS and PAOS are not. PDOS has been replicated in various countries. An assessment of the PDOS as implemented in the Philippines, Indonesia and Nepal found aspects which need improvement; among others, cooperation between countries of origin and countries of destination in PDOS and other information programmes was also highlighted (Asis and Agunias, 2012).

While migrant workers are in the destination countries, the embassies and consulates of sending governments are the main conduit of programmes and services to support their nationals. The Philippine model of deploying labour attaches and welfare officers and establishing a Migrant Workers and Overseas Filipinos Resources in countries where there are many Filipino workers have been adopted by other sending countries. Bilateral agreements have been sought by origin countries, but for the most part, the decision to forge these agreements rests on countries of destination. The latter tends to be reluctant in signing bilateral agreements because other sending countries might also ask for the same arrangements. Most bilateral agreements are in the form of memorandum of understanding or memorandum of agreement. Their contributions to the protection of the rights of migrant workers may be limited since the content of most agreements is access to labour markets on the part of sending countries and access to workers on the part of receiving countries.

Since return is a built-in feature of temporary labour migration, the return of migrant workers to

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35 This is the same reasoning that motivated the Philippines to impose a ban on the migration of au pairs to Europe in 1998; the ban was lifted in 2010, initially for three countries (Switzerland, Norway and Denmark) and later for all of Europe when conditions and safeguards were set in place. The Philippines seems to be the only country in Asia which participates in au pair migration.

36 Although bans are frequently imposed in connection with female migration, more general bans have been issued in times of war, conflict or where conditions are deemed dangerous. For example, the Philippine government bans the deployment of Filipino workers to Afghanistan because of the peace and order conditions in the said country.



their home countries is expected. However, although the contract is usually for two years, migrant workers and employers alike renew the contract; otherwise, migrant workers may seek a new employer or new destination. In other words, the expected return may not happen after the end of a contract, but may lead to extended employment overseas, or whenever possible, to move on other destinations which offer a pathway for long-term residence or citizenship. Across countries of origin, including the Philippines, return migration policies and programmes tend to be the weakest link in their otherwise comprehensive package of programmes to migrant workers and their families. A challenge for many origin countries is the unscheduled return of migrant workers, including those who are returning home under distressed conditions. These emergency returns may be occasioned by the unscheduled termination of the work contract, distressing conditions in the destination countries, or economic or political crisis which disrupted the employment of migrant workers. The unscheduled return of large numbers of migrant workers poses a challenge to the capacity of origin countries to meet the emergency needs of workers and their long-term objectives of seeking employment. In general, countries in the origin are still searching for the viable and effective reintegration programmes that will not only arrest the revolving-door phenomenon that labour migration has become, but also to realise the knowledge and technology transfer (and investments) promised by temporary labour migration.

## Policies on other types of emigration

### *Student migration*

Asia is fast becoming a major source region of international students, with China, India and Korea as the top three source countries. According to the Organisation for Economic Co-operation and Development, based on 2009 data, about 40 percent of the 2.5 million international students in OECD countries are from Asia. In recent years, some countries in Asia have attracted international students – Hong Kong, Singapore and Malaysia are emerging as hubs for international students within and outside the region. China is attracting a significant number of international students – more than 260,000 foreign students were enrolled in institutions throughout the country, mostly in language and culture programmes – and the government aims to attract 500,000 foreign students by 2020 (West, 2014; see also Collins, 2013). These developments are worth watching because they contribute to an already vital intra-regional migration flows in Asia. The movement of international students often refers to tertiary level students. Interestingly, a significant part of student migration in Asia involves the movement of below tertiary students, a development associated with the rising affluence of families in the region and investment in studies abroad is part of providing a better future for the young. China and Korea are among countries in the region where the migration of young students has been noted (e.g., Shin, 2013). Chinese students, for example, come to Singapore for secondary education and also to prepare them for further studies in other countries. These students are often accompanied by their mothers (who become known as “study mothers”).

In recent decades, studies abroad are mostly self-funded, and as such, students are free to make decisions on whether or not to return to their home countries. In the past, many international students from Asia were funded by scholarships, which may require them to return and “pay” in terms of rendering service to institutions in the home country. This strategy was not always successful. Instead of returning home, some repaid the money spent for their studies; some rendered the required number of years of service, after which they returned overseas to further their careers. There are concerns that student migration may lead to brain drain, especially because destination countries are also eyeing student migrants as a potential pool of highly skilled and professional migrants whose integration would be facilitated by their familiarity to the host country. Unlike temporary labour migration, data on student migration are not collected by many countries in Asia; also, support programmes, such as pre-departure orientation seminars, are not extended to student migrants. Student migration presents

an area that Asian countries need to explore further. Among others, it would be useful to collect data on student migration and develop policies, programmes and services that would respond to their needs and promote the potentials for brain gain from this type of migration.

### *Marriage migration*

Until about the 1990s, international migration in Asia was mostly about the migration of workers. From the 1990s, marriage migration became a visible issue as men from the more developed countries in Asia – Japan, Taiwan, South Korea and Singapore – were marrying women from developing countries in the region (the Philippines, Indonesia, Vietnam and Cambodia are among the countries of origin). International marriage between Asian women and men from Western countries is also taking place, but the numbers involved in marriage migration in Asia and the discussions it generates in origin and destination countries alike have invited significant research and policy attention in the region. The participation of commercial brokers and intermediaries in marriage migration sows unease about human trafficking and violence against women.

The Philippines has enacted the 1990 Anti-Mail Order Bride Law (Republic Act 6955) which prohibits the business of organising or facilitating the marriage of Filipino women and foreign men. Amendments to the law have been proposed to keep pace with developments in information and communications technology (ICT). Filipino nationals leaving the country to marry foreign nationals are required to attend the guidance and counseling session offered by the Commission on Filipinos Overseas; these sessions are intended to help participants “make informed decisions and prepare them for the realities of cross-cultural marriages.”<sup>37</sup> Cambodia, which recently emerged as a source country of brides for Korean men, issued a provisional ban in 2008 and 2010 on women leaving as brides following reports of women being sold by matchmakers. Cooperation between origin countries and destination countries has also become evident. Among the destination countries, South Korea has been quite active in discussing with governments and other stakeholders in origin countries to curb the abusive and exploitative aspects of marriage migration.

## **Conclusion**

Temporary migration is the major type of migration across Asia, with labour migration as the most prominent and the largest in terms of number. Other major types of temporary migrants include contract workers, student migrants, medical tourists, retirement migrants, return migrants and marriage migrants, and asylum seekers. Because Asian countries are at different levels of economic development and they have different migration statuses, Asian migration policies are diverse. It is more practical to look at Asian migration policies based on the pattern of migration flows, whether they are sending or receiving states or both, in the Asian migration landscape. Although the sending states may have similar interests and are more likely to adopt labour export policy, their policy orientation and strategies could be different. Whereas, state-led policy and interventionist programmes could be observed in some states such as Vietnam and Myanmar, many other sending countries allow private recruitment agencies to participate in the labour migration process. NGOs in some countries such as the Philippines and Thailand have been active in labour policy discourses and in providing social services to migrants. Many bilateral agreements have also been signed between Asian countries exporting labour and destination countries in Asia and elsewhere to regulate emigration flows. For destination countries, Asian countries have adopted different views and policies concerning different groups of immigrants. Whereas many countries in East Asia have legalised the employment of low-skilled workers to reduce labour shortages, some others may allow legal employment of only skilled

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37 [http://www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=2341:what-is-cfo-guidance-and-counseling-program&-catid=110:frequently-asked-questions&Itemid=858](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=2341:what-is-cfo-guidance-and-counseling-program&-catid=110:frequently-asked-questions&Itemid=858)

workers and professionals. However, there is a tendency that Asian countries will become more flexible in the future regarding the admission of foreign workers. For example, South Korea has signed bilateral agreements with other Asian countries to recruit low-skilled and semi-skilled workers as demanded by SMEs. Other migration policies have also been introduced in recent years in many South and Southeast Asian countries to promote temporary migration such as medical tourism, retirement migration, international student migration, and return migration. The migration policies mentioned in this report could have implications for the migration flows and patterns of flows between Asia and Europe in the future.

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## 4. AN INVENTORY OF NATIONAL POLICIES AND PRACTICES

### 4.1 TEMPORARY MIGRATION IN CHINA

Tian Fangmeng and Hu Xiaojiang

#### Introduction – a Revived Modern Silk Road

##### Historical review

##### *A long migration history*

Personnel exchange between China and Europe can be dated back to two thousand years ago, when the Silk Road was connected across the Eurasian continent as a series of commercial and cultural transmission routes. A maritime “Silk Road” was also paralleled with it and linked port cities along the coasts from the Red Sea to the South China Sea (Vadime, 2001). Merchants, pilgrims, soldiers, and adventurers moved back and forth across the two routes linking East Asian and the Mediterranean Sea during various periods of time (Chanda, 2007). Among them a few legendary figures like Marco Polo were so influential that their depiction of the Far East inspired Christopher Columbus to take a voyage toward China (Landström, 1967).

Chinese migrants to Europe first appeared in European literature in the late sixteenth century. Some Chinese believers of Catholics, who were converted by Jesuits in China, visited Europe afterwards (Li, 2002: 59-61). China was forced to open its doors to the Western world the First Opium War (1839–41). Some European communities, mainly governed by Britons or French, were established in several treaty ports afterwards (Bickers, 2011).

It was not until the middle nineteenth century that ethnic Chinese migrated as merchants, students, seamen and contract labourers to European countries in significant numbers. They introduced cultures, languages and goods of the late Qing China to Europeans and gradually established sizeable communities (Pieke, 1998: 3-9; Latham and Wu, 2013).

Chinese migration to Europe reached a height before and during the First World War. Some 550 thousand Chinese moved to the Soviet Union from Shandong, Hebei and Northeast Chinese provinces between 1906 and 1910, and hundreds of thousands of Chinese workers migrated to Europe in the decade between 1901 and 1910 (Zhu, 1994: 233). Many of these early immigrants settled in northern Europe – in Germany, the Netherlands and the UK. Around 140 thousand Chinese labourers were recruited to work for Britain and France during their Great War against Germany, and the majority of them returned to China later (Xu, 2011), while some moved to other countries like Spain (Nieto, 2003: 218).

Around 1920s, some Chinese intellectuals launched an overseas study programme named “work-study group”, which sponsored many Chinese students to France and Germany, including famous communist leaders Deng Xiaoping and Zhou Enlai. Over six hundred Chinese youths studied and worked in France between 1919 and 1921 (Ye, 2001: 9). However, the Great Depression led to a high level of return migration of overseas Chinese from Europe a decade later. In the year of 1931 alone, 280 thousand Chinese went back home (Shen, 2010: 30), some of whom were actually expelled by the increasingly restrictive immigration policy of the host country (Li, 2002: 289).

After the establishment of the People’s Republic of China in 1949, the communist government nearly isolated itself from the Western European countries and maintained some connections with the East Europe for the ideological struggle in the Cold War. Over 200 thousand foreigners stayed in

China in 1949, most of whom “either chose to leave China voluntarily, or else were expelled, imprisoned, or executed as foreign or Guomindang spies, imperialist exploiters, or Christian missionaries” (Pieke, 2012: 4).

Emigration from China was strictly controlled, particularly in the period of the “Cultural Revolution (1966–1976)” (Skeldon, 1996). Only a few Chinese students stayed in the Soviet Union and Eastern Europe. As a snap shot, there were only 13.7 thousand Chinese immigrants in Europe in 1956, with several hundred in most countries (Zhu, 1994: 271). Even migration flow to the Soviet Union and eastern European countries was very limited, as the Soviet government sealed its borders after the 1920s (Nyíri, 2003: 241).

Meanwhile, thousands of Chinese from Hong Kong, Taiwan, and South East Asia migrated to the UK and other European countries after the Second World War, which constituted the next large wave of Chinese migration to Europe. It lasted for three decades from the 1960s, and peaked in the 1970s in the wake of the Vietnam War. Most migrants worked in the catering and laundry industries during this period (Skeldon, 1992). Table 3 provides a detailed statistical picture of overseas Chinese in Europe.

**Table 3** Distribution of overseas Chinese in major European Countries (1955 - 1997)

| Country             | 1955  | 1965  | 1975   | 1985   | 1995    |
|---------------------|-------|-------|--------|--------|---------|
| UK                  | 3000  | 45000 | 120000 | 230000 | 250000  |
| France              | 2000  | 6000  | 90000  | 210000 | 200000  |
| Netherland          | 2000  | 2353  | 30000  | 60000  | 120000  |
| Germany             | 500   | 1200  | 8000   | 30000  | 100000  |
| Belgium             | 99    | 565   | 2000   | 11400  | 20000   |
| Italy               | 330   | 700   | 1000   | 5000   | 60000   |
| Spain               | 132   | 336   | 2000   | 5000   | 21000   |
| Austria             | 30    |       | 1000   | 12000  | 12000   |
| Portugal            | 120   | 176   | 300    | 6800   | 4700    |
| Denmark             | 900   |       | 1000   | 3753   | 6500    |
| Luxembourg          | 1     | 10    | 20     | 200    | 100     |
| Switzerland         | 30    | 120   | 1500   | 6000   | 7500    |
| Greece              | 2     | 16    | 10     | 130    | 300     |
| Ireland             |       |       |        |        | 10000   |
| Sweden              |       | 2347  | 1000   | 9000   | 12000   |
| Norway              |       |       | 500    | 1000   | 2000    |
| Finland             |       |       |        |        | 1000    |
| Poland              |       |       |        |        | 1500    |
| Czech               |       |       |        |        | 10000   |
| Hungary             |       |       |        |        | 20000   |
| Former Soviet Union |       |       |        |        | 200000  |
| Total               | 11491 | 56476 | 258330 | 584283 | 1058600 |

### *Chinese migration to Europe in China's reform era*

Thanks to Deng Xiaoping's economic reform and 'open door' policies in the end of the 1970s, China gradually relaxed the country's emigration policy, and shifted from a total ban on non-officially approved emigration to less restriction that allowed international trips (Pieke, 2002). The Chinese government issued “Entry and Exit Law” in 1985, which claims to protect the legal right of emigration of its citizens. The new international migration regime triggered a continuous migration tide from China to Europe, which is ongoing till today.

At the start of the 1980s, the number of Chinese migrants in Europe was not very high. The Chi-

nese population in Spain was not less than one thousand. Chinese migration gradually increased after the first amnesty in the country in 1986 (Nieto, 2003: 219). Thanks to the prosperity of tourism in the 1980s, the Chinese catering industry boomed and more Chinese arrived by family integration process. A majority of Chinese new migrants in Europe came from coastal regions, particularly some counties in Zhejiang and Fujian. For example, many of them were attracted by the migration networks established by previous Chinese residents from Qingtian and Wenzhou in Zhejiang Province.

According to the statistics of European Union, 180 thousand Chinese were recorded as residents in the fifteen member countries around 2000 (Fu, 2009: 64). The population was mainly composed of new comers from China, because the statistical calibre did not include those from Hong Kong and Taiwan and the number of old immigrants was small. One source estimated the scale of net migration from China to Europe and found that Chinese population in Europe soared from 250 thousand in 1975 to 1.05 million in 1995, indicating at least 500 thousand Chinese mainlanders moved to Europe (Fu, 2009: 64). This overall trend is confirmed by the growth pattern in individual countries. For example, the Chinese population increased 64 times in Germany between 1978 and 2001, whereas the total foreign population was less than doubled during the same period (Giese, 2003: 157).

China experienced a continuous rapid growth of international flows in commodity, investment, technology and information with the European Union in the 1990s. Chinese incoming migration to Europe has also been increasing with these international trends, which has resulted in the diversification of Chinese in Europe in terms of geography, occupation and economic, cultural, and educational background. The new migrants from mainland China is generally viewed as different from previous cohorts. They originated from different communities and displayed a variety of skills (Wang and Zhuang, 2010: 51-61). Consequently, it has also transformed the characteristics of many Chinese communities in Europe, such as their size, structure, organization, economic activity, linguistic feature and relations with hometowns in China (Latham and Wu, 2013).

The number of foreigners in China also grew substantially in the reform era. According to the United Nations, China's foreign population was 245,700 in 1960, 376,400 in 1990 and 590,300 in 2005 (Pieke, 2012: 6). They are mainly composed of three groups: foreign students from both the developing countries and the developed world, expatriate merchants, diplomats, and journalists, and foreign experts working for higher institutions or other agencies affiliated with the Chinese government.

## **Characteristics of Migration Flows Between China and Europe**

According to the global distribution of Chinese overseas population, Europe represents only less than 5 per cent of the total in 2007. However, the growth rate of Chinese migration to Europe has been the second highest over the past three decades. The number of Chinese migrants increased dramatically from 600 thousand in 1980 to 2.15 million in 2007, indicating an increase of 3.5 times. According to a recent estimation, the total overseas Chinese population in Europe has reached more than 2.5 million in 2012, of which more than 2.3 million or 86 per cent live in EU countries.

The number of Chinese overseas students increased even faster than the overall migrants in Europe since the start of the new millennium. Between 2000 and 2010, the total number of Chinese students going to the EU multiplied approximately six times. More than 42,600 Chinese students moved to study in EU countries in 2008 alone, with the UK receiving 65 per cent of the total, followed by France (10 per cent) and Germany (9 per cent). China's economic growth will continue to increase Chinese student migration to Europe in the short run, while growth will eventually slow due to shifts within China's demographics.

Possibly related to the student flows, Chinese labour migration to some European countries is highly selected, as nearly half of Chinese workers were highly educated in some receiving countries

like Germany (47.1 per cent), Ireland (49.9 per cent) and Sweden (48.7 per cent). Nowadays, service export (guoji laowu shuchu) is another form of temporary skilled labour migration from China to Europe, which means that Chinese workers are employed in a foreign labour market, either organised or independently. There were over 35 thousand workers in Europe at the end of 2010. Over half of those in Europe concentrated in Russia (16.6 thousand), while a few thousands also stayed in the UK, Germany, Spain, and Netherland. Chinese skilled migrants are also hired by native firms with investment in Europe, or follow the expansion of their overseas market as expatriates.

Since international trade and mutual investment between China and Europe have reached an all-time high, Chinese ethnic economies in the EU countries have adjusted accordingly and local migrant entrepreneurs have attempted to exploit new opportunities brought by China economic achievement. As a consequence, Chinese businessmen in Europe have joined some new economic sectors in the past two decades. Another group of business migrants follow larger strategic investments made by Chinese big corporations, which attempts to get access to European technology, markets and talents.

On the other end of the labour force, lowly skilled migrants from China specialise in certain industries in major regions of Europe. The catering service continues to dominate in Western and Central Europe. The main economic activities lie in the importation, wholesale and retail of Chinese goods in Eastern Europe. Following local tastes and fashions, Chinese migrants in Southern Europe are more likely to be hired in small workshops and join the production line of leather goods, garments or other products. In terms of their source regions in China, those from Zhejiang and Fujian have dominated the migration flows to Europe at low skill level in the contemporary era, while a new wave from Northeast China has also joined them.

A large amount of Chinese nationals still face poor living conditions, and they may seek highly paid opportunities abroad by irregular migration. It is estimated that the proportion of irregular migration in the overall human flow from China to Europe has been increasing, and 260 thousand irregular migrants live in the UK, Italy, and France, which account for half of new arrivals from mainland China. Irregular migration to the EU from China is particularly severe in the southern European countries, partly due to the de facto acceptance of unauthorised migrant workers and many job opportunities in the informal economy. As another important institutional factor, amnesties for undocumented migrants in these countries also attracted a large number of Chinese who wait for obtaining formal residence permit.

In addition, requests for asylum become a possible channel for Chinese migrants to acquire formal residence permits in their host countries. The migration tide by the refugee channel reached a high point in 2000, when China was listed among the top ten origin countries in terms of asylum seekers in Germany. France and the UK are the two European countries which received the greatest number of requests for asylum from Chinese nationals in 2012. Only a small number of Chinese asylum seekers are likely to be political dissidents and ethnic minorities, so there is growing concern that a large number of requests from Chinese nationals are unfounded.

The migration pattern China and other countries is never a one-way process. In the past few years, immigration to China has become much more diverse and numerous. It is reported that the total number of foreign residents reached nearly 594 thousand according to the 2010 population census. The absolute majority (79.5%) of foreigners in China are aged between 15 and 64 and are active economically with high skill selectivity. Two thirds of those over the age of six have received higher education, and 11.6 per cent of them are master degree holders. In addition, foreign residents are highly concentrated in several large cities, such as Beijing, Shanghai, and Guangzhou. South Korea, the United States, and Japan are the three largest source countries, which contributed over 40 per cent of all foreign population in China in 2010. Only two European countries, France and Germany, ranked among the top ten source countries in terms of migrant population.

Foreign migrants came to China mainly for study or employment. Following the trend of inter-



nationalization of higher education, Chinese universities have become competitive in the lucrative international student market, and actively developed their programmes for training foreign students in China in the past decade. With regard to nature of these programmes, the share of degree students increased from 26.9 per cent in 2001 to 35.8 per cent in 2008, and then grew to 40.7 per cent in 2011. The remaining majority of students studied in non-degree programmes. Most non-degree students attend language training programmes in China and major in Chinese.

It is noticeable that the number of European students in China rose from 4,305 in 1997 to 26,339 in 2007, with its share also increasing from 9.9 per cent to 13.5% per cent. The rapid growth of foreign students was partially pushed by policy change in China. The state relaxed its policy of higher education, and allowed domestic universities to enrol international students autonomously in 2000. China also provided an increasing amount of scholarship to foreign students.

As another migrant group, about 217 thousand foreigners held a work permits issued by the ministry in 2008. Their occupations range from high-level managers and experts of large projects to common clerks hired by Chinese employers. Foreign talents are not only brought by market force, but also invited by the state. China constantly invites scholars from developed countries for advancing its scientific and technological development.

Many foreign labours with low skills turn to undocumented migrants, if they overstay in China without renewing their temporary visas or work permits. Some Chinese individuals or companies employ these migrants working in the black economy in China, who are named as “three illegalities” (Sanfei) - illegal entry, residence, and work. Lack of social integration is another policy issue, similar to the case in many European countries.

As China’s southern gate, Hong Kong has a long history of foreign presence, and we also introduced the demographic profile of local foreign residents. Hong Kong’s foreign population increased from 370 thousand in 2001 to 475 thousand in 2011. British nationals constitute the third largest migrant group after Indonesian and Filipinos over the past decade, and they represented 0.5 per cent of the total population in Hong Kong in 2011. No other European country sends enough migrants to be ranked as one of the top ten sending countries.

It is striking that foreigners from different countries are highly gendered for several countries. Migrants from the developed world are slightly balanced to males, while those from the developing world are predominantly female, most who take the jobs of maid service in Hong Kong. Foreign residents from several countries also show high selectivity. For example, the proportion of British nationals who ever attended degree course was as high as 46.8 per cent. The occupational distributions of different nationals are largely consistent with their educational structures.

## **The Current State of Research**

Literature on international migration issues are distributed across disciplines, languages, and regions. It is difficult to give a comprehensive review here, so we merely mention certain important works and the research profile instead.

Historical studies on China’s international migration might be the most significant contributions in the past two decades. Ge (1997) is a five-volume migration history and covers China’s internal and external migration for four thousand years between prehistory times and 1940’s. It identified and analysed the cause, process, and consequence of Chinese population movement in different times, as well as summarizing certain laws from the historical cases. Zhu (1994) is a monograph on China’s overseas migration. It uses the “push-pull” theory to explain outmigration from China from a demographic perspective, and discusses the characteristics of international migration in different eras in the Chinese history. Particularly important for this project, Li (2002) published her broad study on the history of overseas Chinese in Europe. It attempts to analyse the development of Chinese migrants

from a multidisciplinary perspective.

A large body of literature on the Chinese diaspora has emerged in recent years. According to one estimate, there were 510 research articles on overseas Chinese, among which 352 were published in China, and 158 were outside China, particularly in Taiwan, Malaysia, and Singapore. In terms of the number of publication, Jinan University, Xiamen University, and Huaqiao University were ranked the top three in China, and University of California, Los Angeles, Hong Kong University, and The University of Texas at Austin belonged to the top three outside China (Chen and Zhu, 2013:85).

One major focus of the literature on overseas Chinese is the new generation of Chinese migrants. Some studies have identified the concept of the “new migrants”, and analysed its composition, characteristics, origin, and migration mechanism (Zhang, 2001; Huang, Bao, and Liu, 1998; Zhu, 2001; Wu and Zhou, 2001). Others explored the demographic profiles (Zhao, 2001), social integration (Wang, 2003), and irregular status (Lin, 2002) of the new migrants in North America and Europe.

With respect to on Chinese migration to Europe, the literature can be divided into three areas (Wu and Latham, 2014): studies on migration flows and working conditions of less skilled Chinese migrants (Pieke et al., 2004; Gao, 2010; Pai, 2008; Wu and Liu, 2013); those on Chinese student migration and circulation (Shen, 2009; GHK, 2011) and those exploring the history and contemporary situation of Chinese diaspora (Benton and Pieke, 1998; Benton and Gomez, 2008).

The majority of the literature on Chinese migration issues focus on government policies and statistics. Only in recent years has the legal study on China’s migration laws started to become active. Liu Guofu, a professor at Beijing Institute of Technology, contributed mostly to this new area. His series of works (Liu, 2006, 2009, 2011) laid the foundation of China’s legal research on international migration. However, there is still a considerable research gap between China and the developed world. We expect new efforts by scholars in the migration study field for integrating existing knowledge and exploring new frontier.

## **China’s Legal System Targeting Foreign Population**

### **Legal framework and visa system**

China started to face policy issues related to foreign migration after it took the open-door policy in the late 1970s. It is reported that more than 400 statutes were issued for comprehensive governance of exit and entry mainly through the Ministry of Public Security between 1986 and 2001 (Liu, 2009:6). However, for the past three decades, management of foreigners in China is mainly based on one law and one regulation -- the Law on Control of the Entry and Exit of Aliens of 1985 and a detailed explanation of 1986, which are the only legal text for visa management; and the Rules for the Administration of Employment of Foreigners in China of 1996, which regulates foreign labour employment in China. There are other specific regulations and rules at national and local level.

Another statute, the Regulations on Examination and Approval of Permanent Residence of Aliens in China of 2004, functions as China’s immigration law. It was designed for attracting foreign skilled workers of high domestic demand. It also intends to facilitate foreign investment in China. Foreign citizens who meet certain criteria are eligible for applying permanent residence in China and granted the Certificate of Permanent Residence of Aliens. The three specified migration categories by the regulations are skilled migration, business migration, and family migration.

The Exit and Entry Administration Law of the People’s Republic of China, the newest law of all, was promulgated in June 2012 and come into force on July 1, 2013. It replaced two previous laws: the Law of the People’s Republic of China on the Entry and Exit Administration of Foreigners and the Law of the People’s Republic of China on the Entry and Exit Administration of Chinese Citizens. The new law is applicable to the administration of exit and entry of both Chinese citizens and foreign-

ers; it also covers stay and residence of foreigners in China, as well as border inspection of transport vehicles.

In addition to the new law, the Regulations of the People's Republic of China on Administration of the Entry and Exit of Foreigners were promulgated and became effective from September 1, 2013. These Regulations are formulated in accordance with the Exit and Entry Administration Law, in order to regulate "the issuance of visas and provision of services to foreigners who stay in China.

According to Article 16 of the Exit and Entry Administration Law, there are four categories of visas issued by the Chinese government: diplomatic visa, courtesy visa, official visa, and ordinary visa. Diplomatic or official visas are issued to foreigners who enter China for diplomatic or official reasons, while courtesy visas are issued to those who are given courtesy due to their special status. Different types of ordinary visa are issued to foreign citizens who enter China for work, study, family visit, travel, business activities, and talent introduction.

According to Article 6 of the Regulations on Administration of the Entry and Exit of Foreigners, ordinary visas are divided into the following categories and are marked with corresponding letters in the Chinese phonetic alphabet (pinyin).

- The C visa is issued to crewmembers performing duties on board an international train, aircraft or vessel, and the accompanying family members of vessel crewmembers, and vehicle drivers engaged in international transportation services;
- The D visa is issued to persons who come to China for permanent residence;
- The F visa is issued to persons who come to China for exchanges, visits, study tours or other relevant activities;
- The G visa is issued to persons who transit through China;
- The J1 visa is issued to resident foreign journalists of permanent offices of foreign news agencies in China; the J2 visa is for foreign journalists who come to China for short-term news coverage;
- The L visa is issued to persons who come to China for travel; persons who come to China for group travel can be issued Group L visas;
- The M visa is issued to persons who come to China for commercial trade activities;
- The Q1 visa is issued to family members of Chinese citizens and family members of foreigners with permanent residence status in China who apply for residence in China for family reunion, as well as for persons who apply for residence in China for fosterage or other purposes; the Q2 visa is for relatives of Chinese citizens living in China, or relatives of foreigners with permanent residence status in China, who apply for a short-term visit;
- The R visa is issued to foreigners of high talent who are needed, or specialists who are urgently needed, by the State;
- The S1 visa is issued to the spouses, parents, children under the age of 18 or parents-in-law of foreigners residing in China for work, study or other purposes who apply for a long-term visit to China, as well as for persons who need to reside in China for other personal matters; the S2 visa is for family members of foreigners staying or residing in China for work, study or other purposes who apply for a short-term visit to China, as well as for persons who need to stay in China for other personal matters;
- The X1 visa is issued to persons who apply for long-term study in China; the X2 visa is for persons who apply for short-term study in China; and
- The Z visa is issued to persons who apply for work in China.

The Chinese visa system mainly serve the management of temporary migration of foreigners, as only

the D visa is applicable to those applying for permanent residence. It is noticeable that the issuance of China's "green card" is highly selective. Article 47 of the law of 2013 states that "foreigners who have made remarkable contribution to China's economic and social development or meet other conditions for permanent residence in China may obtain permanent residence status upon application approved by the Ministry of Public Security".

The department of human resources and social security and those in charge of foreign experts' affairs under the State Council are responsible for formulating and regularly adjusting the guidance for foreigners working in China. Since China launched its "Green Card" programme in 2004, there are less than six thousand foreigners who have acquired the permanent residence permit (Pang, 2014: 90).

In addition, two remaining policy areas should be mentioned here. First, like many countries, China provides protection for international refugees. A foreign citizen's right to seek asylum is recognised in accordance with Article 32 (2) of the Constitution of 1982, which prescribes that "the People's Republic of China may grant asylum to foreigners who request it for political reasons." China is a signatory member country of the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967 in 1982. However, no detailed application procedure exists for asylum seeking in China (Liu, 2009:20).

Second, China has set rules for managing the booming businesses of a migration intermediary service market. Industrial regulations enacted by the government includes the industry Provisions for the Administration of Overseas Employment Intermediary Agencies of 1992, Regulations for the Administration of Travel Agencies of 1996, and Regulations for the Administration of Intermediary Agencies for Self-Funded Study Abroad of 1999. (Liu, 2009: 8).

## Visa waiver policy

According to Article 22 of the Regulations on Administration of the Entry and Exit of Foreigners, foreigners are exempt from applying for a visas under one of the following conditions: (1) so exempted based on the visa exemption agreements signed by the Chinese government with the governments of other countries; (2) hold valid foreigners' residence permits; (3) hold connected passenger tickets and are in transit to a third country or region by an international aircraft, ship or train via China, will stay for not more than 24 hours in China without leaving the port of entry, or will stay in the specific zones approved by the State Council within the prescribed time limit; or (4) other circumstances stipulated by the State Council in which visas may be exempted.

Most foreign tourists to China are required to apply a visa. However, the Chinese government allows citizens of some countries to travel to the Mainland China for tourism or business for up to 15 or 30 days without a visa, including citizens from Bahamas, Japan, Mauritius, and Singapore. It also waives visa requirement for citizens from 51 countries for a 72 hour visit in China if they transit through designated airports, and visit only the city of the airport.

China has also adopted visa waiver schemes for foreigners travelling to certain areas. For example, a foreign national can visit 10 designed cities in the Pearl River Delta, if he joins a tour group organised by a travel agency based in Hong Kong or Macao. The maximum stay is six days or less, but can be extended to 21 days for citizens of Germany, South Korea and Russia. For another example, nationals from some countries can visit Hainan Province, a southern island, without a visa if they stay for nor more than 15 days and they belong to a tour group organised by an officially approved travel agency based in Hainan.

## Management system

The administrative system in charge of foreign migration has been evolved from the one established in the 1980s without fundamental change. The Ministry of Public Security and the Ministry of Foreign Affairs play a major role in daily operation. The Ministry of Public Security is the primary policymaker on issues of exit and entry control, while the Ministry of Foreign Affairs manages international personnel flows to China by coordinating and monitoring Chinese embassies and consulates around the world.

Others government branches also have supplementary functions, and management responsibilities are scattered across them, such as the Ministry of Education, the Ministry of Commerce, the Ministry of Human Resources and Social Security, the State Administration for Industry and Commerce, and National Tourism Administration. These branches do not often work co-ordinately, since each of them is in charge of a particular group of foreigners (e.g. diplomats, workers, businessmen, and students) (Pieke, 2012: 19). For example, the Ministry of Education established an administrative system special for foreign students in China.

In terms of visa management, the scope and measures for issuing diplomatic, courtesy and official visas are stipulated by the Ministry of Foreign Affairs, while the types of ordinary visa and relevant issuance are stipulated by the State Council. China's embassies and consulates abroad are responsible for issuance of entry visas to foreigners. Exit/entry border inspection authorities are responsible for carrying out exit/entry border inspection. Local public security branches at or above the county level and their exit/entry administrations are responsible for the administration of the stay and residence of foreigners.

Due to lack of a single centralised system, the social control of foreign migrants in China has many problems in respect to communication mechanism, administrative cooperation, and crisis management. For example, the process of management is divided into three areas - visa issue, identity check, and internal control. They belong to the policy sphere of the Ministry of Foreign Affairs, the Ministry of Public Security, and local police forces, respectively. Information collected in one system is not transferred to another. For addressing these issues, the law of 2013 clearly states that:

*In the administration of exit/entry affairs, the Ministry of Public Security and the Ministry of Foreign Affairs shall strengthen communication and cooperation, cooperate closely with relevant departments under the State Council, and exercise functions and powers and bear liabilities within the scope of their respective responsibilities in accordance with the law.*

Article 3 allows the Ministry of Public Security in conjunction with the relevant departments of the State Council to establish an information platform on the services and administration in respect of the entry and exit of foreigners. The law also stipulates that the governments of provinces, autonomous regions, and municipalities, when necessary, may “establish mechanisms for coordinating the services and administration in respect of the entry and exit of foreigners, in order to increase exchange of information and facilitate coordination and cooperation, and provide services and administration within their respective administrative regions”.

Although China's management of foreign population is not well organised and coordinated, it is still attempts to keep tight surveillance of foreign residents in China. According to Article 39 of the Exit and Entry Administration Law, hotels accommodating foreigners are required to submit their registration information to the local public security organs. For foreigners who stay in domiciles other than hotels, they or their hosts are required to go through the registration process with local public security organs. In addition, foreign citizens are not allowed to enter Tibet unless they obtain a Tibet Travel Permit, which is issued by the Tibet Tourism Bureau.



## Work permission and employment

Foreign employment in China is temporary by nature in most cases. The Exit and Entry Administrative Law stipulates that the validity period of a foreigner's work-type residence permit is between 90 days at the minimum and five years at the maximum. The validity period of a non-work-type residence permit is similar except that the minimum duration is 180 days. Only local public security branches at or above the city with districts have the very right to approve foreign workers residence permits for employment. They are also required to obtain work permits in accordance with relevant regulations.

Like many host countries, China's regulation on the employment of foreigners restricts foreigners to take job vacancies that cannot be filled by Chinese citizens. No firms or individuals are allowed to employ foreigners without work permits or work-type residence permits, so available employers only include foreign or state-owned enterprises in most cases. Formal employees in these enterprises, who are mainly composed of skilled professionals, are required to join the local social security programme according to a new regulation enacted in 2011 (Forbes News, 2011).

By contrast, many less skilled foreigners overstay or work illegally without proper documents in China, who are labelled as the *sanfei* (three illegalities) population. According to Article 43 of the Exit and Entry Administrative Law, foreigners who take the following actions are viewed as illegal employment:

- Work in China without obtaining work permits or work-type residence permits in accordance with relevant regulations;
- Work in China beyond the scope prescribed in the work permits; or
- Foreign students work in violation of the regulations on the administration of foreign students working to support their study in China and work beyond the prescribed scope of jobs or prescribed time limit.

As a headache of local policemen, the three illegalities often associate with more serious problems, such as terrorism and transnational organised crimes. To deal with these problems, expulsion is a simple and effective policy response for the host country. In 2006 alone, the Ministry of Public Security handled 36,000 *sanfei* cases and repatriated 9,560 foreigners (Pieke, 2012: 17-18).

The problem of irregular migrants has been worsened by some institutional loopholes. For example, foreign employment is managed by the Ministry of Human Resources and Social Security, while its violation is punished by the Ministry of Public Security. This separation causes the problems of inconsistency, incoordination, and mismanagement.

A foreign citizen who overstays the end date of his/her authorised stay in China without going through extension formalities is subject to fines and other penalties for legal violation. According to Article 78, foreigners who reside in China illegally would be given a warning, and they would be imposed with a fine of RMB 500 yuan per day, with a cap of RMB 10,000 yuan in total, or be detained for not less than five days but not more than 15 days where circumstances are serious.

Article 80 stipulates that foreigners who work in China illegally are fined between RMB 5,000 and RMB 20,000 yuan; where circumstances are serious, they would be detained for between five days and fifteen days and bear the same range of fine. Persons who introduce jobs to ineligible foreigners would be fined RMB 5,000 yuan for each job illegally introduced to one foreigner, with a cap of not more than RMB 50,000 yuan in total. Individuals or entities that employ foreigners illegally would be fined RMB 10,000 yuan for each illegally employed foreigner, with a cap of RMB 100,000 yuan in total.

## Visa regimes in Hong Kong, Macao, and Taiwan

China's Exit and Entry Administrative Law defines exit as "leaving the Chinese mainland for other countries or regions, for the Hong Kong Special Administrative Region or the Macao Special Administrative Region, or for Taiwan Region", and entry refers to "entering the Chinese mainland from other countries or regions, from the Hong Kong Special Administrative Region or the Macao Special Administrative Region, or from Taiwan Region". Here the three geographic regions deserve more explanation.

For historical reasons, Hong Kong and Macao are "Special Administrative Regions" of China, and Taiwan is an autonomous province without direct rule by the Chinese government in Beijing. The three regions have their independent immigration and visa systems. For example, the Immigration Department in Hong Kong is in charge of border control of population movement in and out of Hong Kong, and the documentation of local foreign residents. The local government has all along adopted a liberal visa policy, and citizens of about 170 countries and territories are allowed to visit to Hong Kong without a visa for a period ranging between 7 days and six months (HKISD, 2013a:1). Non-Chinese citizens even have the right of abode in Hong Kong if they obtain permanent identity cards.

Chinese citizens need to apply for exit/entry permits if they travel to Hong Kong, Macao, or Taiwan. Residents from Hong Kong and Macau who hold a Hong Kong or Macau passport also need to apply for a Home Return Permit to travel in Mainland China. In order to visit Mainland China, Taiwan residents should apply for a Taiwanese Compatriot Pass and a visa endorsement, which is different from the normal visa held by foreigners.

Residents of Hong Kong, Macao or Taiwan who are not Chinese citizens are required to apply a visa to visit the Mainland China. For non-Chinese citizens in these areas, they can not apply for a resident visa for mainland China based on their status as a local permanent resident. If a non-Chinese citizen holds Hong Kong Permanent Resident Card, he may apply for a 3-year multi-entry visa. In most cases the length of stay for each individual trip is one month.

## Diaspora and Returnee Policies

Chinese diaspora is one of the largest overseas community in the world. Although a majority of them are natural or naturalised foreign citizens, they are viewed as a group with tight ethnic and cultural connections with China, and the Chinese government attempts to engage and even attract those with skills or wealth to contribute to domestic economic development. Hence here we briefly introduce China's diaspora and returnee policies.

### Diaspora policy

The Chinese official terminology uses two demographic concepts to refer to overseas Chinese – *Huaqiao* and *Huaren*. *Huaqiao* means Chinese citizens living abroad, and *huaren* denotes foreign nationals of Chinese origin or descent. The vast majority of overseas Chinese are composed of *huaren*, such as ethnic Chinese in Southeast Asia or North America. However, both of them are often called as "overseas Chinese compatriots (*haiwaitonbao*)" without distinguishing their citizenship in China's policy discourse, signifying that both groups are covered within the scope of China's diaspora policies.

For engagement with the overseas Chinese, the Chinese government confines related activities as a special area of policy affairs (*qiaowu*), which includes a comprehensive endeavour that aims to protect, maintain, and enhance the relationships with and interests of overseas Chinese. A number of governmental and non-governmental administrative branches serve *qiaowu* work in China, and the

major organ is the Overseas Chinese Affairs Office (OCAO, *qiaoban* in Chinese).

Besides OCAO, the All-China's Federation of Returned Overseas Chinese (ACFROC) (*qiaolian*) functions as a non-governmental organization organizing Chinese citizens with overseas experiences. It aims to activate those connecting with overseas Chinese, such as returnees and their family members, to engage overseas Chinese absorbing skilled manpower and financial resources from China's diaspora (Barabantseva, 2005:4-5).

During the reform era, the Chinese government has implicitly sought the contributions of overseas Chinese to its modernization mission. China provided favourable conditions to foreign investments from overseas Chinese. Some rules and regulations were issued by the central government to promote foreign direct investments in mainland China in the early 1990's, whose outcome was the dominant position of overseas Chinese capital. Many foreign firms are actually established by ethnic Chinese of foreign citizenship.

In recent years, China's policy activities targeting overseas Chinese have expanded from rehabilitating the status of overseas Chinese and utilizing their financial and commercial resources to uniting and engaging all overseas Chinese, particularly the new generation of migrants. *Qiaowu* work focuses on pushing overseas Chinese to connect with China by cultural, economic or political ties, in order to revitalise their ethnic awareness, and promote cultural interest. For example, the OCAO set up a programme fostering the interaction between the older ethnic Chinese and the newly arrived immigrants, as well as enhancing the ties between Chinese communities in various countries/regions around the world (Xiang Biao, 2003).

The Chinese government also adopted flexible strategies to mobilise its diaspora by encouraging temporary return and developing transnational networks under the policy slogan "Serve the motherland (*weiguo fuwu*)", instead of a previous one "return and serve the motherland (*huiguo fuwu*)", which indicates that physical return is not a necessary component in the new policy consideration. The term "Serve the motherland" was first articulated officially in a document issued by five ministries in 2001 (Xiang, 2005: 11). The transnational scientific community between China and other countries is one effective area of such policy practices.

The OCAO and China's embassies/consulates frequently promote the websites of research associations organised by overseas Chinese and related commercial and technological fairs in the host country or in mainland China. Some typical examples of such associations include Chinese American Biochemical Association in the United States and several others in Western European countries (Jonkers, 2008:17). The fundamental policy objective is to enhance the connection between skilled migrant professionals and China.

The conception of "temporary return" (*duanqi huiguo*) was probably first introduced into official documents by the Ministry of Personnel in 1994 (Xiang, 2005:11). To be specific, the government advocates overseas Chinese researchers' contribution by a "dumb bell" model, which indicates a Chinese scientist can be affiliated with both a domestic institution and one abroad, thus realizing the so called "brain circulation".

For example, the National Science Foundation Council (NSFC) set up a base programme in the early 1990s, which invited researchers abroad to work in a Chinese lab for a short period in a year. The Spring-bud programme as launched by the Ministry of Education in 1996 to promote temporary return of overseas Chinese scientists for teaching or research activities in China. It attracted a large numbers of targeted scientists - over eight thousand researchers have been sponsored by this programme (Jonkers, 2008: 15).

## Returnee policy

The phenomena of “brain drain” have become a national concern in China in the 1980’s. Facing a low return rate, the government began to reach out to skilled overseas Chinese in science and technological fields and launched several talent programmes in the 1990’s as a policy response.

As one common practice, both national governmental departments and regional governments have been actively building high-tech industrial parks to nurture high-tech enterprises funded by skilled returnees in mainland China. The local authorities often provide a favourable regulatory environment for the high-tech firms with overseas background. Some of these high-tech parks only incubate returnees’ enterprises. It is reported that over 110 high-tech parks for returnees have been established since the late 1980s, where over 6000 enterprises are located and employ over 15,000 returnees (Jonkers, 2008:15).

In the scientific research sector, China launched several programmes targeting overseas Chinese scientists from the late 1990s, such as the Yangtze River Scholar Plan sponsored by a Hong Kong tycoon, the Hundred Talents Programme by the Chinese Academy of Sciences, the Cross Century Talent programme by the Ministry of Education, and the One Thousand Talent Programme (Xiang, 2003; Tian, 2013). Chinese universities also competed with each other to attract overseas scientists, and provided them with favourable conditions, including suitable working platform, large research funds, free housing, high salary, and other benefits for their dependents. These programmes have attracted a large number of overseas Chinese scientists to return and work in China. Despite some satisfactory cases, such as the One Hundred Talents Program at CAS (Liu and Zhi, 2010), a few studies indicate that these programmes only achieved limited success in bringing back scientists with higher qualifications (Tian, 2013).

Meanwhile, China also changed its visa policy and residence management system to facilitate returnees’ transnational mobility. The Ministry of Foreign Affairs announced “Long-term Multiple Entry Visas” to overseas Chinese students and professionals to assist the returnees’ re-entry in 2000. The Bureau of Public Security in Shanghai also issued multi-entry visas valid between three and five years to enable ethnic Chinese of foreign citizenship to enter China in 2001. The Beijing municipal government also followed suit (Barabantseva, 2005:14).

For enhancing the city’s international competitiveness, Hong Kong also imitated other countries and launched the Quality Migrant Admission Scheme and the Capital Investment Entrant Scheme, in order to attract overseas talents and investors. The Quality Migrant Admission Scheme was adopted in 2006, which allows talented people to apply to enter and settle in Hong Kong without first securing a job offer. There were 2,392 application approved by the end of 2012. The Capital Investment Entrant Scheme facilitates the entry of people who bring a minimum investment of 10 million US dollars in Hong Kong without commercial operation. Nearly 17 thousand applicants had been approved under the scheme by the end of 2012, who have invested a total of \$129.8 billion (HKISD, 2013b: 350).

## Conclusion

Personnel exchange between China and Europe can be dated back to two thousand years ago. However, it was not until the middle nineteenth century that ethnic Chinese migrated as merchants, students, seamen and contract labours to European countries in significant numbers. There were also many European officials, missionaries, and businessmen visited China from then on.

After a tight control period of exit and entry, foreign travellers and migrants appeared in China again in the end of the 1970s. The number of foreigners in China also grew substantially in the reform era. They are mainly composed of the following groups: foreign students, expatriate merchants, diplomats, and journalists, and foreign experts.

This report mainly introduces the policy and visa system related to temporary migration in China. The Exit and Entry Administration Law of the People's Republic of China has come into force in 2013. The Regulations of the People's Republic of China on Administration of the Entry and Exit of Foreigners were promulgated and became effective in accordance with the Exit and Entry Administration Law from late of the year. According to the two legal documents, China's visa system mainly serves the management of temporary migration of foreigners, and foreign migration to China is temporary by nature in most cases.

Although China has been relaxing its control on persons crossing its border, the current Exit and Entry Administrative Law stipulates that the validity period of a foreigner's work-type residence permit is between 90 days at the minimum and five years at the maximum. The Regulations on Examination and Approval of Permanent Residence of Aliens in China of 2004, functions as China's immigration law. Nonetheless, it was designed for attracting highly skilled foreign experts and facilitating foreign investment in China. Only a few people were admitted by this programme.

China has to deal with a permanent foreign presence in the near future, since ethnic communities of foreigners based on common nationality and culture have been growing rapidly. China, like other immigration countries, will have to permanently integrate these communities, coordinate ethnic and race relations, and secure nationality and political rights.

Besides the issue of permanent residence, the current regulatory framework is neither integrated nor updated. China is still short of a comprehensive legal system to tackle issues related to the entry, residence, and employment of foreigners. For example, China provides protection for international refugees, but no detailed application procedure exists for asylum seeking in China. A more applicable system should follow accepted international practices and cover important themes like assimilation, immigration and citizenship, which would help a sound governance of both temporary and permanent residence of foreigners.

The administrative system in charge of foreign migration also has some urgent problems of management. The Ministry of Public Security and the Ministry of Foreign Affairs play a major role in daily operation of management. The Ministry of Public Security is the primary policymaker on issues of exit and entry control, while the Ministry of Foreign Affairs manages international personnel flows to China. Other government branches also have supplementary functions, and management responsibilities are distributed across them. Due to lack of a single centralised system, the social control of foreign migrants in China is not efficient and effective in respect to communication mechanism, administrative cooperation, and crisis management. It is necessary to develop an integrated information platform on the services and administration

Like many host countries, many less skilled foreigners overstay or work illegally without proper documents in China. The problem of irregular migrants has been worsened by some institutional loopholes. For example, foreign employment is managed by the Ministry of Human Resources and Social Security, while its violation is punished by the Ministry of Public Security. This separation causes the problems of inconsistency, incoordination, and mismanagement.

In addition, this report also introduces China's diaspora and returnee policies. A number of governmental and non-governmental administrative branches are in charge of overseas Chinese affairs, and the major organs include the Overseas Chinese Affairs Office and the All-China's Federation of Returned Overseas Chinese (ACFROC). In recent years, China's policy activities targeting overseas Chinese have expanded from rehabilitating the status of overseas Chinese and utilizing their financial and commercial resources to uniting and engaging all overseas Chinese, particularly the new generation of migrants.

With regard to China's returnee policies, one common practice is building high-tech industrial parks to nurture high-tech enterprises funded by skilled returnees in mainland China. In the scientific research sector, China launched several programmes targeting overseas Chinese scientists from



the late 1990s. The government also changed its visa policy and residence management system to facilitate returnees' transnational mobility. China's experience reveals that national strategies can be successful in luring skilled nationals back home to some extent.

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## 4.2 TEMPORARY MIGRATION IN FINLAND

Mari Korpela, Pekka Rantanen, Jaakko Hyytiä, Pirkko Pitkänen and Mika Raunio

### Introduction

Historically, Finland has not received many migrants; those who migrated to Finland were usually from Sweden or Russia, the two countries that ruled Finland in different eras. During the decades after the World War II, Finland was a rather closed nation and not particularly welcoming towards foreigners. The cold climate and a language that is viewed as difficult have also caused Finland not to be a particularly attractive destination for migrants. The few migrants that did come were either spouses of Finnish citizens or working in very particular fields, for example as musicians (see Matyska, 2014). Labour shortages were mainly filled with domestic folk who moved to urban areas from the countryside. During these years, Finland did not really have an immigration policy, as the numbers of immigrants were so small. Since the 1990s, Finland has started to receive increasing numbers of migrants. In particular, international mobility to and from Finland has increased after the country joined the European Union in 1995 and the Schengen Agreement in 1996. Being an EU member state has obviously also affected Finnish policies and legislation.

It has been estimated that in 2030, the death rate of Finns will be higher than the birth rate. Because the Finnish population is aging, Finland needs immigrant labour force. The Finnish immigration policy has, however, been very strict and the numbers of immigrants have remained much lower than in many other European countries (Tervo & Halonen, 2012: 42). The population of Finland is approximately 5,5 million. In 2014, there are about 245 000 people in Finland whose mother tongue is other than Finnish, Swedish or Sami<sup>1</sup>. In 2010, 29 500 foreigners moved to Finland, about 50% of them originating from EU countries. During the same year, 12 650 Finns moved abroad, most of them to EU countries. (Tammilehto et al., 2012: 10) Therefore, nowadays, the inbound migration to Finland is higher than the outbound migration away from Finland. In other words, the trend for the past ten years has been a gradually growing positive net-migration to Finland (Tervo & Halonen, 2012: 43).

Immigration to Finland has changed in the new millennium so that there has been a shift from humanitarian and family-based migration to labour migration (Björklund et al., 2008: 3). There are increasing numbers of foreigners working in Finland. Their exact numbers remain unknown but it has been estimated that there would be even over 100 000 foreigners working in Finland, half of them being in Finland permanently and the other half on temporary bases (Björklund et al., 2008: 4). There are also increasing numbers of people who work in Finland but live somewhere else, typically in Estonia. Indeed, a significant number of the foreigners who move to Finland in order to work, sojourn in the country only temporarily. Finland can thus be characterised as a transit country of migration nowadays. Policies have, however, been rather slow to acknowledge this aspect. Moreover, policies seem never able to cover all variations of real-life temporary migrations.

The Finnish immigration policy is very strict and selective; skilled labour migrants are welcome whereas others are viewed with suspicion. The northern location of the country and its somewhat difficult language pose challenges to efforts trying to attract skilled foreigners. The emphasis in policy documents is on permanent migration but in practice, many people who could potentially stay in Finland permanently end up being temporary migrants. Recent policies have acknowledged temporary migration but this has not yet led to many practical measures. In particular, temporary labour migration has been addressed on policy level as a means to fill in labour shortages in specific fields.

The public discourse has not been very welcoming towards foreigners in Finland. In the recent years, a populist “True Finns” party has rapidly become popular and critical views towards immigra-

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<sup>1</sup> The three official languages of Finland are Finnish, Swedish and Sami.

tion have been very visible in state politics and media. At the same time, traffic on Finland's borders, especially at the eastern border, is constantly increasing. "The Finnish Border Guard estimates that the traffic at the eastern border will grow to 1.5–2 times the current volume by the end of the decade, to approximately 20 million border crossers" (EMN, 2012a: 155). Russians come to Finland above all as shopping tourists, but also in order to visit family and friends and for business purposes. In addition, increasing numbers of Russians have bought second homes in Finland and they come to the country in order to spend vacations on those properties.

Finnish people have migrated away from Finland during different historical periods. There have been significant flows of outbound migration, especially to North America and Sweden. In the new millennium, Finland has experienced a new kind of outbound migration, that is, the temporary emigration of highly educated Finns working for example in the ICT industry (Björklund et al., 2008: 13). For most of these career expatriates, the migration is temporary as they eventually return to Finland. Most Finns moving abroad go to EU countries but there are also increasing numbers of Finnish career expatriates in Asia. It is also becoming increasingly popular for retired Finns to spend the winter months in Spain (Björklund et al., 2008: 13; Könnilä 2014) or Thailand (Heikkilä, 2012:13),

In this report, we discuss the state-of-the-art knowledge on temporary migration in Finland and we review the existing policies. We discuss policies in terms of the different types of temporary migration: labour migration, educational migration, humanitarian migration, irregular migration and family-based migration. We show that in the Finnish context, policies regarding labour migration focus above all on attracting skilled labour force to fields where there is labour shortage. In addition, there have been attempts to regulate the seasonal migration of berry-pickers. In terms of educational migration, policies emphasise attracting international students and it is hoped that after graduation, many of them would stay in Finland permanently as labour force. Policies regarding humanitarian migration have focused on control. Family-based migration has caught very little attention in policies. In the end of the report, we describe the Finnish public discussion on these themes.

## **The Current State of Research**

There is rather much research being done on immigrants in Finland. In fact, the amount of studies conducted on migration has multiplied in the past decade. There are several researchers in universities studying migration-related phenomena. In addition, the Institute of Migration (predominantly funded by the Finnish Ministry of Education and Culture) is very active in publishing migration-related texts. The Family Federation of Finland (Väestöliitto) and the National Institute for Health and Welfare (THL) produce research on migrants in Finland too. Moreover, the Finnish section of the European Migration Network is very active in producing information related to migration. The Centre for International Mobility (CIMO) produces much information on student mobility to and from Finland. In fact, the only group of temporary migrants of which there is extensive statistical information is students, thanks to the fact that CIMO is so active in the field and its research teams compile data from different sources into convenient yearly reviews and other publications

Most research conducted on migration in Finland, however, focuses on permanent migration and issues of integration and there is very little research done on temporary migration. Similarly, the migration policy focuses heavily on permanent immigration and integration. Temporary migrants have recently become acknowledged in policy documents. Yet, knowledge on actual existing practices of temporary migration is limited and the implementation of the goals stated in policy texts has been slow and at times based on short-term project funding, which does not necessarily have lasting effects.

## Inventory of National Policies and Practices

Until 1980s, Finland did not really have any immigration policy since there were very few migrants coming to the country. The first immigration policy programme was established by the Finnish government in 1997. Today, the Finnish migration policy can be characterised as a policy of national interests and security in which permanent settlement is preceded by a period of temporary residence.

In order to stay in Finland for more than three months, a foreign citizen needs a residence permit. An exception is a long-term visa that can be issued when a person has proven continuous reasons to stay in Finland regularly, for example based on business purposes. There are three types of residence permits to Finland: temporary (up to one year), continuous (extended for the maximum of four years at a time) and permanent. The first residence permit is always fixed-term<sup>2</sup>, typically for one year and later, a continuous and eventually a permanent residence permit can be issued if the grounds of residence still exist. The fixed-term permit is usually issued for a year unless it is specifically applied for a shorter period. The continuous residence permit can be changed into a permanent one if one has stayed in Finland for four years. Since January 2012, Finland has used biometric features in residence permits (EMN, 2012a:124). Residence permits are issued for the following reasons: employment or business, studies, family reasons, remigration and asylum. One problem in the Finnish immigration policy is that the residence permit procedures are complicated and slow (EMN, 2012a: 135).

Students are given only temporary, one-year-long, residence permits, which are renewable if their studies progress well and they have enough financial resources to live in Finland. If a person wants to migrate to Finland in order to work there, s/he needs a residence permit based on employment or a residence permit for a self-employed person. A person can apply for a work permit only when s/he has a job waiting, and s/he is allowed to come to work to Finland only after the Employment and Economic Development office has made an assessment decision on the application considering whether there would be unemployed Finnish people able to do the job. The labour unions in Finland are very reluctant to abandon this practice. A work permit is not needed for harvesting work but in that case, one is allowed to stay in Finland for 90 days at the maximum (Aliens Act 301/2004, Section 79).

### *Definitions and social security*

There is no clear definition for temporary migration in the Finnish policy texts and it has been acknowledged that such a definition would be needed. In practice, anyone residing in Finland for less than a year is considered temporary. Interestingly, all first residence permits are for one year. As a consequence, even those whose intention is to stay in the country permanently, are defined as temporary in the beginning. Students are always considered to be residing in Finland temporarily and those in need of protection are by definition seen as temporary. In addition, there are those who come to work in Finland on temporary basis. It should be noted that even if a person is defined to reside in Finland temporarily based on the duration of residence permit or visa, s/he might have a municipality of residence in Finland: these systems function separately.

A clear definition of who is considered temporary and who is not is particularly important in terms of defining who is entitled to which kind of social security benefits in Finland. The social security authorities do have some measures but there is a constant debate on whether they are correct, clear and just. The Finnish social security system has indeed encountered new challenges resulting from the increasing temporary migration since the system has not been well prepared for this phenomenon (Tammilehto & Koskinen, 2008: 6) and the system has been rather slow to react to changing circumstances. Foreigners are in different positions in terms of social security depending on whether they are EU citizens or not and depending on the length of their intended stay or the length of their

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<sup>2</sup> From the migrant's point of view, the fixed-term residence permit appears to be temporary as it needs to be renewed.

employment contract. Usually, a migrant is included in the Finnish social security system only if her/his stay in Finland is considered permanent; for example, foreign students are not entitled to the social security or public health care in Finland. An increasing number of temporary residents thus means an increasing number of people who reside in Finland but who are not included in the social security system. The Ministry of Social Affairs and Health recently published a report investigating the challenges of social security and temporary migration within EU, focusing in particular on the fact that in Finland, rights to social security are defined in terms of living in the country whereas in many other EU states, the country in which one works is crucial. (The Ministry of Social Affairs and Health, 2014). The report focused merely on intra-European migration.

### *The governmental migration policies*

It took some time before the Finnish state reacted to the increase in the numbers of arriving immigrants. The first official migration policy programme was accepted in 1997. *Governmental Programme on Immigration and Asylum (1997)* focused on long-term migration to Finland, in particular on the integration of humanitarian migrants and return migrants as there were 20,000 Ingrian Finns who moved to Finland from Russia in the 1990s<sup>3</sup>. The concept of ‘temporariness’ was not defined but temporariness was addressed when discussing temporary residence permits and the issue of temporary protection of humanitarian migrants. When discussing work permits ‘fixed-term migration’, seasonal work, experts and interns are mentioned with specific emphasis on regional cooperation with neighbouring countries. The section on integration of foreign arrivals into the Finnish society defines ‘basic principles’ on integration/domestication of immigrants.

The governmental migration policy programme was renewed in 2006. Similarly to the previous programme, *Government’s Immigration Policy Programme (2006)* (still operative) focuses merely on immigration instead of discussing transborder migration in broader terms. Differences also appear. Compared to its predecessor, the recent programme is much longer and profound including more details on temporary migration and the variation of used categories was richer. For example, seasonal workers, fixed-term workers, posted workers and entrepreneurs are mentioned as groups related to ‘temporary residence permit’. Labour migration and international recruitment are mentioned as relevant parts of economic policy but the document does not pay specific attention to temporary migration. Although the concept of ‘temporariness’ is not explicitly defined in the document, the distinction between temporary and permanent residence may be concluded from the way permanent residence has been understood: the concept of ‘permanent residence’ refers to a resident permit that is issued for at least one year. Temporariness of residence permits is often explicated in connection to temporary mobility. Moreover, challenges related to statistics, posted workers and taxation, short-term contracts and social security are recognised, as well as the international competition for highly skilled workers.

In 2013, *Future of Migration 2020 Strategy* was adopted in the form of a government resolution, in order to lay down guidelines for the Finnish migration policy over the long term. The aim of the strategy is to pave the way for a more active and forward-looking migration policy in Finland. According to the strategy, immigration, including short-term migration to Finland is more frequent than before and labour migration, in particular, should be promoted: “Immigration of temporary and permanent capable work force needs to be promoted, especially in developing estimation of work force needs and readiness for allocated recruiting abroad” (Government Resolution on the Future of Migration 2020 Strategy, 2013: 13).

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<sup>3</sup> The president of Finland stated in 1990 that the Ingrians who have roots in Finland can be considered return migrants. Consequently, over 20 000 Ingrians moved to Finland in the following years even when their ties to Finland may have been very weak and they may not have been able to speak Finnish. Finland was attractive to them above all because of the better economic situation and better working opportunities in Finland compared to Russia. Later, Finland tightened the language requirements and in 2011, the Finnish parliament ended this return migration.

‘Temporariness’ is mentioned in the document only twice. First, the term ‘short term’ is used mainly related to immigration but in the text the term denotes also to unspecified emigration. Second, the term ‘temporary migration’ is used when discussing the need to promote both temporary and permanent in-migration of work force. Temporary labour migration is mostly discussed as a problem due to the lack of available knowledge (e.g. statistics, work conditions) and due to the uncontrolled use of posted workers, such as leased labour and employees of sub-contractors as a constantly growing phenomenon. According to the strategy, permanent and temporary immigration of skilled professionals will be supported by developing foresight practices and targeted recruitments from abroad, but actual measures of promotion of labour migration are not presented in detail. The availability of suitable labour force in Finland will be a threshold for foreign recruiting. Further, the strategy recognises the importance of foreign key personnel for foreign investments. The strategy is based on the following three principles: (1) Finland is an open and safe country; (2) Everyone can find a role to play; and (3) Diversity is a part of everyday life. In the following, the principles are discussed in details:

- 1. Finland is an open and safe society.** International recruitment is seen as an explicit issue in developing immigration to Finland which suffers from the ageing population. The strategy states that immigration will help Finland to answer to the challenges caused by Finland’s dependency ratio problem and by the fact that, at the same time, competing for workers between countries will increase. In order to succeed in this competition, Finland must be able to effectively attract skilled workers who will stay in the country on long-term basis. Thus, the explicit aim is that skilled migration to Finland would be permanent in nature. In parallel with promoting openness, the strategy draws attention to the importance of managing migration and ensuring safety. It is stated that besides opportunities, migration present challenges, such as illegal migration and phenomena associated with social exclusion and human trafficking.
- 2. Everyone can find a role to play.** The aim of the Finnish migration policy is to ensure that foreign arrivals are able to make use of their skills in various ways and to participate in the further development of Finnish society. The strategy highlights that family and skill in local language are of great importance for successful integration. It is stated that, with regard to the future, it is necessary to increase teaching of Finnish and/or Swedish as well as other education and training organised as part of labour policy. Thus, the opportunities to study Finnish and/or Swedish while in employment must be developed further.
- 3. Diversity is part of everyday life.** The migration strategy states that the principles of the inviolability of human dignity, the freedom and rights of the individual and the promotion of justice in society are at the fundamental values which serve as a foundation for the acceptance of diversity in Finland. Thus, discrimination in different areas of life, such as employment, must be monitored systematically. It is also mentioned that politicians, the media, public authorities and civil society organisations play a vital role in influencing public debate about migration and people’s impressions of migration.

In 2014, an action programme was released by the Ministry of the Interior in support of the *Future of Migration 2020 Strategy* (2013). In particular, the action programme set out measures required to monitor the implementation of the strategy and to meet the goals set.

## Labour migration

### *Policy*

Like in many other advanced economies, also in Finland, the key force putting the labour immigration on the political agenda is the worsening dependence ratio, and during the economic growth occasional labour shortages in certain lines of businesses. This development has been visible in the



governmental immigration policy programmes. Labour-based immigration policy in Finland was rather un-developed, or almost non-existing until 2006, when the governmental immigration policy programme widely introduced a work-based immigration policy as a relevant part of the economic policy. Already the government programme of 2003 clearly stated that immigration policy reform steering the labour migration would be needed due to the worsening dependency ratio and labour shortage (Hallitusohjelma, 2003: 22.) To some extent it can be claimed, that the governmental immigration policy programme from 2006 was more oriented to support labour immigration, and mobility of highly skilled employees, than the resolution from 2013. However, it should be noticed that unlike many advanced economies, Finland has not developed national policies in order to attract highly qualified third-country nationals, but these views belong to the overarching strategy on migration. There are general statements like “Finland must be able to effectively attract competent people to its workforce”, but not specific policy measures or budget to do so. (EMN, 2013: 5.)

In addition to policy documents, there have been thematic development programmes including close to one hundred European Social Fund (ESF) based projects (approx. funding ranging from 1 to 3 M€) in Finland since 2007. Such projects aim to implement the goals of the policy programme according to the varying regional demands by developing international recruiting practices as well as settlement and training services for immigrants and employers. Programmes were designed in-line with the statements of the Governmental immigration policy programme from 2006 on. The process also prepared local authorities to cope with the requirements of the new law about integration and domestication of immigrants (amended 2011). The law sets new responsibilities to local governments (municipalities) related to services that ease the integration of labour based immigrants. Due to very different economic and immigrant profiles of the regions, the projects are usually regional, and the aim has been to develop immigration and integration services for regional labour markets. Municipalities are key actors in the provision of public services in Finland, and typically, ESF projects have participants from those groups that are the users and/or providers of the services (immigration associations, development agencies, adult education institutions and employers). In addition to municipalities, regional adult education centres (owned by the municipalities of the region) that have duties in both fields, immigration training and providing services for employers in the region, have been very active in project development, which emphasises the regional nature of the projects, and consequently, the development of related services.

The fifteen Regional Centres for Economic Development, Transport and the Environment (ELY-centres) are responsible for the regional implementation and development tasks which the central government assigns to them. Defining regional guidelines is based on the Aliens Act. First, there are nation-wide guidelines (the most recent accepted in October 2012) and then, the regional centres outline guidelines concerning the general conditions for the use of foreign labour. These are updated every six months. These guidelines are based on regional evaluation of labour market needs. This is to ensure that decisions on residence permits for foreign workers are assessed at regional level. It is common that an ELY-centre has an immigration committee where employment and development experts disseminate local information on labour market situation from a wide variety of sources, and both labour and employer unions are integrated into the process (Tervo & Halonen, 2012: 88-91). Regional guidelines, then, can state whether there are specific areas of work where local work force is scarce. If such lines of work exist, there is no need for needs-based assessment in the process of employing foreign workers. For example, a regional guideline may state that “When handling residence permits for employees it can be assumed that [local] work force is not available, unless it is clear in specific case”. The latest *Work permit guidelines of ELY-centre of Uusimaa* (19.12.2013) state that there is lack of local workers in following lines of work: chefs and cooks (excluding pizza and kebab chefs and other fast-food workers), domestic servants and nannies, agricultural workers, cleaners and health care experts. The regional guidelines can also state areas of work to which local Employment

and economy offices do not as a default support residence permit applications. For example, Pirkanmaa ELY-centre (6.11.2013) states that residence permit applications for higher education work in social sciences and humanities, office work and media related work are generally not supported. Åland Island is an exception, as the legislation does not mention that it should produce regional guidelines, and Åland is not included into any of the ELY-centres. In Åland, national-level guidelines are applied when civil servants consider particular applications. All the guidelines can include both permanent and temporary work, for example seasonal based service work and agricultural work.

Other aspects are considered as well. Suitability of the foreign worker is evaluated, wage level is scrutinised for it to meet the income level for maintaining livelihood while in Finland. In addition, there are lists of area specific requirements and rules that apply. The ELY-centre can also assess particular employers that intend or have previously employed foreign workers. The governmental nationwide guidelines on foreign workers, regional guidelines and the Aliens Act regulations together form the basis for the framework for employing immigrant labour who need to have a residence permit of the employee. The guidelines stress that employers should first try to employ available regional work force but that there are fluctuations of the labour markets that exists both regionally and depending on the economic situation at the time. Therefore, attracting foreign workers is dependent on changing spatial aspects which can produce temporariness for the foreign work force as regional needs change over time. The shortage of labour that varies regionally affects the possibilities of foreign workers' employment and as a result means that such labour markets are flexible, which in turn produces temporariness. The current economic crisis has had an effect of lowering the use of foreign labour, as there have been rising numbers of unemployed people regionally. This in turn can have effects on regional guidelines for the areas of work that are deemed not to have a need for need-based assessment procedure.

The application process was significantly shortened during the 2000s as a part of the development of immigration services, but remains complex, which slows part of the processes (Tervo & Halonen, 2012; 110). However, in many cases, labour related permits will be announced within couple of weeks and in the case of highly skilled even within a few days. These are clear improvements to the earlier situation where these processes could take much longer. Temporary immigration, or emigration, has, however, rarely been included in the goals of these projects, especially in the context of Asian countries.

Since the "registration of temporary labour is inadequate, it is not possible to produce comprehensive statistics" that would enable, for instance, estimating the impact of temporary workers on the Finnish labour market. The lack of comprehensive information also weakens the opportunities of administrators to assess the effectiveness of policy measures. (EMN, 2012a: 135; Tervo & Halonen, 2012: 106-110). Recent intra-governmental report suggests practical improvements especially to collect information on temporary migration (Tutka-työryhmän loppuraportti, 2014).

#### *Residence permit based and visa based temporary labour migration*

Residence permit for an employed person (Aliens Act, 2004: 70-78§) is the most significant permit category for working in Finland, applied to temporary and permanent work. There are several other residence permit categories that make working possible, such as experts and scientific researchers (over 500 people annually) and in smaller numbers interns, other work (including work for religious and non-profit associations and artists), athletes and coaches, entrepreneurs and self-employed persons, au pairs and EU-blue card holders (ranging from 8 to 250 people in 2013). Another significant phenomenon is seasonal workers who apply for a Schengen visa (up to 90 days) to do specified seasonal work without a residence permit (Ulkoasianministeriön kausityöohjeet, 2014), often related to agricultural and horticultural work and forest berry industries. In the case of *seasonal work without*

*a residence permit* an invitation from a Finnish company or/and a work contract as well as a proof of sufficient financial means for living during the stay is needed in order to apply for a Schengen visa. Using temporary agency workers is forbidden because the Finnish government has evaluated the risk of exploitation of workers high.

Both *the residence permit for an employed person* and the *residence permit for a self-employed person* require a partial decision made by regional employment authorities who evaluate the need of foreign workers in the Finnish labour markets, or the quality of the business plan and the means of the applicant's subsistence during the stay. The first permit is always temporary. The duration of the work contract affects the length of the residence permit: with a fixed-term contract, a person cannot get a permanent residence permit. Work carried out with a Schengen visa is always limited to three months, in other words, it is temporary. Visa regulations and *residence permits for an employed person* divide seasonal workers to specific groups (Aliens Act, 2004). Considering the *residence permit for an employed person*, the Aliens Act (2004) defines that "temporary residence permits are issued to persons residing abroad for working on temporary basis". Third-country nationals (outside Schengen area) need usually a residence permit to be able to work in Finland. Regulations, however, are country specific (Ministry for Foreign Affairs of Finland, 2014). The Aliens Act defines further specific instances when working is possible without a *residence permit for an employed person* (for example, fur farm work or expert work), then a visa is sufficient, yet necessary. For other temporary work, a residence permit is required and the duration of temporary work is based on the work contract. The residence permit for au pairs is particular in the sense that there is an age limit (17-30 years) and it is not renewable but valid only for one year; one can be an au pair only once.

#### *Seasonal workers and "shorting" experts arriving with visa only*

Temporary work migration to Finland lasting for less than three months from non-Schengen countries can require only a visa, not necessarily a residence permit. Two major groups eligible for this may be simplified as *seasonal workers<sup>4</sup> in agriculture* and *experts with specific skills* (see Table 4). It should be noticed that international assignments of experts have become shorter from 2000 on and often take a few weeks rather than six months and are consequently called as "*shorters*". (Tahvanainen, 2005).

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<sup>4</sup> Seasonal work is a form of temporary employment linked to specific periods of the year and sectors: for example, in agriculture (fruit pickers) or the tourist industry and services (cleaners, etc. in holiday resorts).

**Table 4** Documents required from the first time applicants outside of EU/EEA

| Documents                                                                | Independent workers or posted-workers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Visa only (Embassy)                                                      | e.g. occupations including researcher under hosting agreement, interpreter, a teacher, a specialist, sports coaches or referee, working on the basis of an invitation or a contract; or job is to pick berries or fruits or to gather special plants or vegetables or fur farming maximum 90 days. Or sailor who work on a ship listed in the Register of Merchant Vessels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Residence permit (Immigration Service)                                   | e.g. a specialist, a researcher, an employee for a religious or non-profit association, an athlete, or sports judge, a traineeship or a transfer within a company for no longer than a year, a person who has completed a degree or qualification in Finland, work in the top or middle management for a company, a visiting teacher, lecturer, instructor, consult, or research worker, and the duration of your job is no longer than one year, work in the field of science, culture, or arts (does not apply to musicians playing in restaurants), work in an international organisation or in a position related to official co-operation between states, mass media, or tasks that involve preparation of a company's location in Finland, acquisition of orders, supervision of the delivery of orders, and employer does not have an office in Finland, tasks that are part of the delivery contract for an individual machine or device at has been imported to or is to be exported from Finland, as long as the job takes no longer than six months |
| Residence permit for an employed person (Employment and Economic office) | All the other categories requiring the partial decision from the employment authorities, in addition to decision from immigrant services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

### *Posted workers*

Regulations concerning residence permits and residence permits of employees are applied to posted-workers when they arrive from outside of EU/EEA. The term of a posted worker refers to those who work ordinarily in another state than Finland, or whom the employer in another state sends for work in Finland for a limited period when providing services beyond the boundaries of the states. Many policy and evaluation reports have been published on posted workers in Finland; especially related to frauds in the use of posted-workers in construction industry (e.g. Alvesalo & Hakamo, 2009; Eskola & Alvesalo 2010; Herzen-Oosi, Harju, Haaken & Aro, 2009; Hirvonen, Lith & Walden, 2010; Lith 2009; Hirvonen, 2012a; Hirvonen, 2012b). These reports illustrate the need to create policies and regulations in order to control the new phenomenon, especially in order to secure the tax-flow and fair competition in labour markets. Policy changes have aimed to improve the situation of posted-workers and currently they do not significantly differ from independent workers in terms of labour regulations (EMN, 2012a: 88-89). In terms of the Finnish social security system, workers posted from some other country than an EU/EEA country (or Switzerland, USA, Canada, Australia and Israel) are treated similarly to any other persons moving to Finland for the purpose of employment.

### *Workers, entrepreneurs and experts arriving with residence permits*

All those who arrive from outside of EU/EEA countries to work in Finland for more than 90 days have to apply for a residence permit or residence permit of an employee as well as those who work less than 90 days, but do not belong to specific categories of seasonal workers or experts in science, technology, culture or sports. Those who belong to special categories (listed in table 4) do not need a residence permit *of an employee*, but only a residence permit. All the other applicants who do not belong to these categories, have to apply for a residence permit *of an employee* that includes an evaluation done by the officials of Ministry of Employment and Economy, i.e. there is a *need assessment done for all applicants* outside of the categories discussed above.

The application process for employees and entrepreneurs (self-employed) is slightly different. An employee may apply for a permit if she or he has a job in Finland, and an entrepreneur has to attach a business plan to the application. In both cases, the application has to be done abroad in a Finnish

embassy before arrival in Finland. Applicants also have to wait abroad as long as they receive a decision. Both permits require a partial decision made by employment authorities (Local and regional joint affiliates of ministries) who evaluate the need in the Finnish labour market, or quality of the business plan. In addition, immigration authorities (The Finnish Immigration Service) check the other criteria for the immigration and make the final decision. If the decision is positive, they will receive a first permit that is *always temporary* (one year), and needs to be renewed at the local police station before it expires.

At the practical level, and at the level of local policy, there are also new kinds of relations emerging between the entrepreneurs and temporary mobility patterns. In policy papers, entrepreneurship has been mentioned as an opportunity for immigrants, and even some related development projects have been conducted. Similarly, recently there have been several policy papers that focus on the internationalization of Finnish entrepreneurs with policy measures supporting the internationalization of growth firms and start-ups that indirectly enhance the (temporary) mobility of individuals as well. For example the Vigo Accelerator Programme was launched by the Ministry of Employment and the Economy in 2009 to address perceived gaps in the Finnish system supporting the high-growth firms and ventures and to revitalise and internationalise the Finnish venture capital sector. (e.g. Autio et al 2013.) These latter policy measures rather relate to industrial and exporting policies, as well as innovation policy, than migration policy, but are relevant for outflows of Finnish experts and entrepreneurs (e.g. Raunio & Kautonen, 2014)

Finland is also promoting businesses abroad by state-led programmes. In other words, not only MNCs (multinational corporations) build trans-national channels between Asia and Finland, but also, and maybe even more so, other semi-public business and innovation related actors. These activities have been supported by government policies and the business and innovation related agencies (e.g. TEKES, FinPro, Sitra)<sup>5</sup> from 2007 on with global spread of *FinNode*<sup>6</sup> network in co-operation with the Ministry of Foreign Affairs, and later on with the prime minister led *Team-Finland* network<sup>7</sup> (Raunio et al., 2013; Team-Finland strategy, 2013.) In many locations, for example in Shanghai and New Delhi, the representatives of the Finnish embassy, particularly ambassadors, have acquired a leading official role in the business promotion network.

Finnish immigration policy has developed considerably during the past decade. Governmental immigration programmes are continuous, and they have been followed by more concrete immigration action proposals, which include a number of specified programmes and may result in new legislation measures. These activities are also evaluated. The economic downturn has had the effect of lowering overall immigration, but in some specific cases, the numbers have increased. For example, in 2013 the number of residence permits for experts rose while others declined (EMN, 2014c: 12). Labour migration policy in Finland is needs based, and the most important policy measure is the needs-based assessment, which regulates and limits potential immigration to Finland. Permanent immigration and integration measures get much more attention in policy planning than temporary mobility, and temporary work can even be excluded from Finnish policy definition of work migration (Tervo & Halonen, 2012: 107).

## Researchers and academics

Foreign researchers and academics (along with international students) are part of the grand scheme of internationalizing the Finnish higher education sector, a hardy perennial of the Ministry of Education

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<sup>5</sup> Tekes: Finnish Funding Agency for Innovation; Sitra: The Finnish Innovation Fund; FinPro: the National trade, internationalisation, and investment development organization in Finland

<sup>6</sup> FinNode is a global network of Finnish innovation organizations.

<sup>7</sup> The Team Finland network promotes Finland and its interests abroad: Finland's external economic relations, the internationalization of Finnish enterprises, investments in Finland and the country brand.



and Culture. Accordingly, the goals and incentives are similar and appear in the same policy papers. Increasing the number of foreign personnel in Finnish universities and universities of applied sciences, as well as increasing the international mobility of the local staff, is a long-term ambition, clearly stated in the Ministry's latest Education and Research Development Plans. In addition, the Strategy for the Internationalisation of Higher Education Institutions in Finland 2009–2015 (Ministry of Education and Culture, n.d.) has introduced another dimension to the effort: concrete goals for the higher education institutions to attain. Recent nation-wide reforms in higher education have also introduced a tangible incentive to push efforts of internationalization, as parts of the core funding are allocated according to several internationality criteria; e.g. the international mobility of the staff and the number of foreigners as paid employees. The policy backdrop of the temporary mobility of researchers and academics to and from Finland is thus similar to that of students'. In other words, short-term academic exchanges are encouraged in tandem with more permanent recruitment of foreign talent.

Overall, migration of academics and researchers is in most cases temporary in nature both when it is directed to Finland and from Finland. Apart from recruitment organised by the institutions themselves, the Centre for International Mobility (CIMO) and the Academy of Finland have several programmes and schemes to boost international academic exchanges. Whereas CIMO concentrates on various exchange programmes for HEI<sup>8</sup> personnel in general, the Academy of Finland focuses on the international opportunities of researchers. In addition to usual cooperation with Nordic and EU countries, the Academy of Finland<sup>9</sup> supports research and innovation activities with selected non-European priority countries, namely, Brazil, Chile, South Africa, Japan, Canada, China, South Korea and United States.

Even though similar in regards to broader policy goals, permit regulations regarding researchers and students are different. The Finnish Immigration Service (MIGRI) provides the cases in which a foreign researcher needs to apply for a residence permit as a researcher:

- if you are working professionally in the field of science
- if you work in Finland as a visiting teacher, lecturer, instructor, or research worker on the basis of an invitation or a contract, and the duration of your job is no longer than one year
- if you work on the basis of a hosting agreement between the research institute and you, and the Finnish Ministry of Education has accepted the research institute in question as a host in accordance with the Finnish Aliens Act and the European directive on a specific procedure for admitting third-country nationals for the purposes of scientific research (MIGRI, 2014b).

However, “The Finnish Aliens Act is difficult to interpret in regard with researchers. Instead of the term “researcher”, the Act uses the terms “expert”, “visiting researcher” and “alien working professionally in science” (Kiuru, 2012: 132). Additionally, the Act refers to the Directive on researchers (Council Directive 2005/71/EC, Article 2)<sup>10</sup> ... The established practice in the application of the Act is that a researcher may work for example as a professor or a lecturer, or prepare a doctoral thesis.” (2012: 131.) In addition, “researchers are not [...] required to apply for a residence permit for an employed person. Furthermore, Sections 47a–47f of the Finnish Aliens Act contain provisions on the admission procedure in compliance with the Directive on researchers, which is an alternative for other admission procedures specified in the Finnish Aliens Act.” (Kiuru, 2012: 132.) This means that a needs based assessment for researchers or experts is not required, and access to these labour markets

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8 Higher Education Institution

9 Between 2005-2012, the Academy of Finland reported agreement-based mobility of researchers with 6 Asian countries (China, India, Japan, South-Korea, Iran and Taiwan). (Academy of Finland, 2014). The numbers of participants are not comparable between countries, however, due to the fact that agreements with some countries have expired while new ones have been initiated with others.

10 “a researcher” means “a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required” (Council Directive 2005/71/EC)

is in that sense easier.

Firstly, as noted above, there are several categories that are applicable to researchers and academics in the Aliens Act. From 2011 on, first resident permits have been classified separately. Secondly, there is a high variety of possible periods of time concerning the work related to science and research. Even short-term project-based research work is possible, and this can be partly related to Schengen-visa categories. It is possible that such short-term research based project work, or business related market research projects, are carried out under visa-categories of business and other, but even the category of culture may be applicable. There is only indication that such variation may exist, but currently there is no research-based knowledge available. Moreover, the nature of research projects in itself produces temporariness for researchers and academics. For example, after finalising a PhD, the researcher may become a temporary resident with a residence permit that only allows job seeking for a relatively short period of time (6 months).

The Finnish Aliens Act (Chapter 5) specifies the cases in which a researcher may enter the country without a residence permit as well as the cases in which a permit is required (Finnish Aliens Act). These cases are clarified by the MIGRI as follows [there is no need for permit, if]:

- you have a valid visa, you are from a country whose residents do not need a visa, or you have a residence permit granted by another Schengen country, and
- you come to Finland on the basis of an invitation or a contract, for no longer than 90 days, or
- you come to Finland to carry out a part of a research project for which you have a hosting agreement with a research institute in another EU state, if the duration of your stay does not exceed three months (MIGRI, 2014b).

A researcher may also be a student. With regards to which permit applies to whom, the distinction between a student and a researcher is defined by received compensation. If a person comes to Finland to study for a post-graduate degree or to conduct post-doctoral research and receives monetary compensation in the form of a scholarship or a salary from an official sponsor, then he/she should apply for the residence permit as a researcher (MIGRI, 2014b). A postgraduate, who does not receive any compensation, should apply for a student's residence permit (more about students in the following section).

## Educational migration

In Finland, all education, from primary to university level, is free of charge, also for all foreigners. Although, a recent phenomenon are the odd few private colleges and foreign universities in Finland that offer tuition for a fee<sup>11</sup> (Merimaa, 2013). During the past decade, free tuition and the large variety of English language degree programmes on offer, have attracted a growing number of international students to Finland. At the same time, an increasing number of Finnish students have headed abroad for studies.

Finland's upper secondary education system is divided into general upper secondary education (similar to high school) focusing more on theoretical education and preparing students for higher education, and vocational education and training (VET) which addresses the needs of the labour market and awards professional qualifications<sup>12</sup>. Following a similar logic, Finland's higher education (HE) sector is divided into two complementary systems. While traditional universities emphasise theoretical education and research, universities of applied sciences (UAS), sometimes also called polytechnics, are more practice oriented and linked to working life. They also differ in terms of the degrees they award: students in Finnish universities can complete degrees from Bachelor's level to

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<sup>11</sup> Private colleges outside the national HE system are not allowed to award official degrees.

<sup>12</sup> Students may also attain a dual diploma from both VET and general upper secondary.

PhDs, whereas an UAS student can complete a Bachelor's degree, or ultimately a special UAS Master's degree.

Lately, international degree students have been brought into the centre of immigration related political discussions. Their expected role as a part of the solution to the problems caused by Finland's demographic transition is in direct conflict with their temporary status in the Finnish society. Whereas temporary stays are commonly understood and mutually accepted in the case of exchange students, for international degree students the situation is far more nuanced.

### *National policy framework and literature*

In Finland, educational policy, related legislation, as well as finance, are ultimately determined by the Parliament. Formulation and implementation of education and science policy are in the hands of the Government and the Ministry of Education and Culture<sup>13</sup>. The key document of the Finnish education and research policy is the Education and Research Development Plan. It covers all forms of education, as well as research conducted in universities and universities of applied sciences (polytechnics). The plan is adopted by the government every four years, and it directs the implementation of the education and research policy goals stated in the Government Programme. (Ministry of Education and Culture, n.d.) There are also several subordinate and/or independent agencies involved in different aspects of evaluation and developing vocational and higher education; e.g. The Finnish National Board of Education (development of VET, recognition of foreign qualifications), Finnish Higher Education Council (evaluation) etc. (for more information, see Kiuru, 2012; Ministry of Education and Culture, n.d.) In addition, the Europe 2020 Strategy along with the creation of the European Higher Education Area have had an impact on national policymaking.

It is not only educational policies that have an effect on international student mobility, but student mobility is effectively intertwined with policies in other areas, namely immigration and employment (Brooks & Waters, 2013: 44). In this regard, Finland is no different. This applies especially to international degree students. According to the Future of Migration 2020 Strategy<sup>14</sup>, a "top priority initiative" of the Finnish Government is: "Once they graduate, international degree students represent an important resource for the Finnish labour market" (Ministry of the Interior, 2013: 14). How to tap this "resource"; i.e. to make international degree students stay, is another question.

Education and Research Development Plans adopted during the past decade have all laid emphasis on the need for across-the-board internationalisation of institutions in higher education and vocational education and training. One of the main reasoning behind this need is the advancing globalisation and its broad implications, especially for the labour market. Internationalisation is also regarded as a guarantor of the quality of education. (Ministry of Education and Culture, 2004; 2008; 2012a.) Boosting different modes of international mobility has been one of the key components in addressing these needs. The importance of increasing cooperation with the emerging economies, notably with China, Brazil, Russia and India, has also been an important facet of the latest plan (Ministry of Education and Culture, 2012a). Even though Europe and the EU still form the most important international framework for students (esp. evident in mobility flows), a strategic shift eastwards is clearly on its way. Accordingly, separate plans of action have been developed for Russia (Ministry of Education and Culture, 2003) and Asia (Ministry of Education and Culture, 2006).

Internationalisation of the higher education and research sector is widely regarded essential for Finland's global competitiveness (The Ministry of Education and Culture, 2006: 8). The need for internationalisation could be summarised as follows: already now, and even more so in the future, Finns will need to know how to operate in a highly international (working) environment. At the same

<sup>13</sup> Ministry of Education until 21 May 2010

<sup>14</sup> Work on the strategy was completed in late spring 2013 and it was adopted in the form of a Government Resolution on 13 June 2013. (Ministry of the Interior, 2013)

time, Finland needs an increasing number of foreigners to join its depleting work force. Stepping up inbound and outbound mobility through various short and long-term exchange programmes is seen as one of the keys to resolve the lack of international exposure of Finnish students. On the other hand, increasing the numbers of international degree students in Finland and improving their integration is essential to tackle the problems caused by a dwindling labour force.

In addition to the Development Plans, the Strategy for the Internationalisation of Higher Education Institutions in Finland 2009–2015 provides guidelines aimed specifically at HEIs. There are also ambitious, concrete goals. The strategy defines five primary aims: (1) a genuinely international higher education community, (2) increasing the quality and attractiveness of higher education institutions, (3) promoting the export of expertise, (4) supporting a multicultural society, and (5) promoting global responsibility (Ministry of Education and Culture, 2009). Even though the latest development plan (2011–2016) has criticised the level of internationalisation attained by the Finnish HEIs (Ministry of Education and Culture, 2012a), the numerical goal set by the internationalisation strategy for non-Finnish degree students in HEIs (20,000 by 2015) has practically already been reached (Garam & Korkala, 2013: 7).

For the Finnish HEIs, there is also a strong financial incentive to internationalise. Apart from the government programme, the development plan and legislation, Finnish HEIs are governed by performance agreements (Ministry of Education, n.d.). The Finnish HE sector has recently gone through a massive reform, including a thorough revision of its financing models. Funding has begun to play an increasingly important role in steering the internationalisation of the HEIs, as some of the core funding is allocated according to various internationality criteria; e.g. international mobility of students and staff (Ministry of Education and Culture, 2012b; 2014b).

In Finland, international degree students do not have to pay tuition fees, and have not, until fairly recently, been considered from a cost covering point of view (not to mention profit). However, there is an ongoing trial period during which Finnish higher education institutions can pilot tuition fees<sup>15</sup> for students from outside the EU/EEA area and who study in foreign language programmes. The trial has fallen short of expectations and has not resulted in anything solid in terms of the possible impacts of introducing tuition fees. Developments in other Nordic countries, however, can offer some indication of possible outcomes. Introduction of tuition fees for non-EU/EEA students in Denmark and Sweden, for instance, have resulted in notable reductions of international degree students. Although there has been some recovery in recent years, a lot of it can be attributed to non-fee-paying EU/EEA students filling the niches left by third-country citizens. (Ministry of Education and Culture, 2013; 2014a.) Since the majority of international degree students in Finland are non-EU citizens, introducing tuition fees would undoubtedly have an impact on their numbers as well.

In terms of academic research, international student mobility is still a rather obscure theme in Finland. A large part of the research work is conducted by networks, government and/or EU funded authorities and agencies. For instance, the Centre for International Mobility (CIMO), an independent agency under the Ministry of Education and Culture, compiles statistical data and publishes widely and frequently on trends and phenomena of international mobility in the Finnish education sector. CIMO's publications include various guides, reports and reviews on international mobility in the higher education as well as in vocational education and training (CIMO, 2013). The European Commission funded, European Migration Network (EMN), produces and disseminates reports related to migration with the aim of supporting policymaking in the European Union, as well as catering to the general public's need for reliable information on migration. In this role, EMN also publishes about subjects related to international student mobility.

Widespread interest towards international degree students is reflected on the extent of research

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15 The trial period runs from 1 February 2010 until 31 December 2014 (Ministry of Education and Culture, 2013)

conducted in Finland. Student satisfaction, issues of integration, along with labour market considerations have formed the starting point for most extensive studies and reports. Various studies indicate that given the chance many of those foreigners who have studied in Finland would like stay if they found work and were allowed to stay (cf. Niemelä, 2008; Shumilova et al., 2012).

#### *Admission, residence permits and mobility arrangements*

Non-EU/EEA citizens need a student residence permit for all studies that exceed 90 days, whereas citizens of Nordic countries and EU/EEA only need to register at the local police station upon arrival. Studies under 90 days require a visa (apart from visa exempt countries) (MIGRI, 2014a). Based on the Student Directive (2004/114/EC), under section 46 of the Finnish Aliens Act, “An alien who has been accepted into an educational institution in Finland as a student is issued with a temporary residence permit as provided in section 45(1)(3) for studies leading to a degree or vocational qualification or, on reasonable grounds, for other studies” (The Finnish Aliens Act). Taking part in an official exchange between institutions or an exchange programme provide reasonable grounds for granting a student residence permit (MIGRI, 2014a). All students from third-countries are governed by the same regulations; there is no differentiation between degree students and exchange students (Kiuru, 2012: 199).

Before an applicant may be granted a student residence permit, he must meet the general requirements of entry, as well as the specific requirements for students: (1) the applicant must have been accepted as a student at a Finnish educational institution. Even though education in Finland is free of charge, living costs are relatively high and student jobs do not exist in plenty. This means that (2) students must have the financial means to support themselves for the whole period of study. The official minimum requirement is 6,720 euros per year or 560 euros per month. As a rule, the Finnish state does not confer medical cover to temporary residents; therefore (3) having a private insurance is also an official requirement. (MIGRI, 2014a.)

The application is submitted to a Finnish embassy in the country of the applicant’s legal residence. The embassy forwards the application to the Finnish Immigration Service, which then makes the decision to grant or to deny entry. A student residence permit is always temporary, regardless of whether the applicant is a degree student or an exchange student. (MIGRI, 2011; 2014a.) The period of validity of an applicant’s first residence permit is stipulated by Section 53 of the Finnish Aliens Act. As a rule, a student’s first permit is issued for one year at a time, unless the application states a shorter stay (e.g. for exchange students). An extension for a student permit is issued provided the student meets the same requirements as when applying for the first permit and has progressed in his studies. (Kiuru, 2012: 163, 175.) After graduation, degree students may also apply for a new residence permit for seeking employment (currently for a maximum of 6 months), further studies, employment, or family reasons. (MIGRI, 2011; 2014a.) There has been discussion about extending the foreign graduates’ job-seeking permit, and it is currently on the government’s immigration action plan agenda (Government Resolution on the Future of Migration 2020 Strategy 2013; Toimenpideohjelma, 2014: 5) which is based on Future of Immigration 2020 – policy programme. Extension to 12 months is under scrutiny.

Due to support from educational institutions and the lucid frameworks provided by official mobility programmes and contracts, mobility arrangements are generally fairly straightforward for exchange students. The vast majority of students coming to Finland make use of the EU’s Erasmus programme, bilateral agreements between individual institutions, or CIMO’s mobility grants. Additionally, the majority of Finnish students arrange their mobility periods within the frameworks of Erasmus or bilateral agreements, but also the self-arranged “free mover”<sup>16</sup> mobility periods are

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<sup>16</sup> These mobility periods are mostly arranged by commercial agents.



popular. Other mobility programmes are relatively uncommon. (Garam, 2013: 20-22.) In VET, most inbound and outbound students use one of the EU's mobility programmes (Leonardo da Vinci & Comenius/Grundtvik), the Nordic Nordplus, or institutions' own arrangements (Korkala, 2013: 15-16). Finnish HEIs also often set their own requirements for exchange students. These might include a required minimum GPA and a certain level of language proficiency.

Compared to exchange students, international degree students have considerably more practicalities to consider. On top of the Finnish immigration authorities' permit policies, comes the Finnish higher education admission system and its institution specific requirements. The system itself will be revamped in autumn 2014, however, to combine the current separate admission systems of universities and universities of applied sciences into a nationwide one-stop shop for all applicants. In the new system, applicants will only need to submit one application and are able to apply for up to 6 degree programmes from both types of HEIs, in order of personal preference. (Ministry of Education and Culture, n.d.) It remains to be seen how the new system will incorporate international applicants for English language programmes.

Eligibility for studies is defined in the Finnish Polytechnics Act and in the Finnish Universities Act. Most universities use University Admissions Finland (UAF) to determine foreign applicants' eligibility and to authenticate documents. Still, ultimately, decisions on students' eligibility and acceptance are always made by the institutions themselves. A special Finnish characteristic is the entrance exam which all applicants, local and foreign, have to pass in order to get into bachelor's degree programmes. In some fields of study entrance exams are extremely competitive and, consequently, a growing number of Finns opt to move abroad for their studies<sup>17</sup>. Generally, universities select their Master's degree and PhD students according to previous academic qualifications and suitability. In most cases, non-EU/EEA applicants will also have to have official proof of their English language proficiency (e.g. TOEFL or IELTS). Universities rarely offer English degree programmes on bachelor level, and so the majority of entrance exams concerning international students are organised by universities of applied sciences. (Kiuru, 2012: 139-142.)

As a rule, all university entrance exams are organised in Finland. Most of the UAS entrance exams are also held in Finland. If an entrance exam is only organised in Finland, applicants have no choice but to travel to Finland. For many prospective non-EU/EEA applicants, this might prove more than a hindrance. Firstly, many students do not have the financial means to make the trip. Secondly, due to fears of misuse, many Finnish embassies do not issue visas for the purposes of attending entrance exams. This is one of the reasons why the UAS network FINNIPS<sup>18</sup> has started to organise entrance exams abroad. (Kiuru, 2012: 142-143.) Since it is impossible to organise exams everywhere, some applicants are inevitably left out. In the case of the so-called entrance exam visa dilemma, an applicant cannot take the entrance exam abroad, but cannot get a visa for taking it in Finland either.

In tandem with the growing numbers of international applicants to Finnish HEIs, attempts at misusing the student route have also been on the rise. Accordingly, the Finnish Immigration Service has adopted a policy of carefully scrutinising residence permit applications from certain West African and South Asian countries. Even a right to study granted by a Finnish HEI does not automatically mean that entry to Finland is secured. Immigration officials have often decided not to grant student residence permits due to suspicions of inadequate funds, falsified documents, or dubious grounds for submitting the application in the first place; i.e. gaining access to the Schengen area's labour markets. Universities and universities of applied sciences also reserve the right to examine students' qualifications when they arrive to Finland and commence their studies. Students who have falsified documents lose their right to study. (Kiuru, 2012: 166-167, 190-191.)

<sup>17</sup> Finnish degree students abroad receive the same student benefits as students in Finland.

<sup>18</sup> In spring 2014 FINNIPS organised entrance exams in Brazil, China, Estonia, Germany, UK, Hungary, Kenya, Latvia, Nepal, Poland, Russia, Turkey, and Vietnam.

According to the final report of the Working Group for the Prevention of Illegal Immigration (as cited in Kiuru, 2012: 191), the highest refusal rates of student residence permits between 2008 and 2011 were observed among applicants from certain West African countries. Consequently, as a risk management measure, Finnish HEIs have started avoiding organising exams in “high-risk” countries. Especially, since there have been reports of attempts at misuse already at the entrance exams. It seems that demanding official certificates of language proficiency, improved cooperation between HEIs and immigration authorities, and organising exams in Finland or in selected countries only, have helped curb at least the most blatant attempts at misuse (Kiuru, 2012: 147-150, 189-191). For many students coming from developing countries, funding their studies in Finland is a serious issue. Financial problems often lead to misuse of the student residence permit when students focus their efforts on working<sup>19</sup> rather than studying. Consequently, they might face problems extending their residence permits.

Official (and informal) admission policies and practices have a significant impact on the volume and composition of student flows to Finland. Even though the Finnish Immigration Service or Finnish HEIs have no citizenship quotas for degree students, current practices pave the way for citizens of certain countries, while shutting others out. This, however, does not seem like a deliberate strategy from the officials’ or the HEIs’ part, but is more likely a reaction to the surrounding realities. Whereas the starting point for exchange students is a mutual understanding of a temporary sojourn, many foreign degree students are caught in a job seekers limbo after graduation and are effectively driven to temporariness by the rather strict six-month rule for seeking employment. Yet, as tempting as it might be to make certain assumptions, it should still be remembered that not all foreign degree students wish to stay in Finland, but are rather happy to return home or to move elsewhere after graduating. This is also the group of students that has sparked a lot of the public discussion.

## Humanitarian migration

Finland has entered into a number of international treaties and conventions under which it is committed to provide international protection to those who are in need of it. These include the 1951 Geneva Convention relating to the Status of Refugees (The Refugee Convention) and other international human rights conventions. Finland has also actively participated in the drafting of the legislative package related to the Common European Asylum System (CEAS) in the EU Council of Ministers (EMN, 2012a: 182).

Refugee status is granted to those whom the United Nations High Commissioner for Refugees (UNHCR) has recognised as refugees. Since 1987, Finland has been among the 25 resettlement states that accept quota refugees annually. By parliamentary decision, the annual quota has in recent years been 750. In the past few years, Finland has accepted in a quota especially refugees from Iraq, Myanmar, Democratic Republic of Congo and Iran. In its quota policy, Finland emphasises in particular the resettlement of the most vulnerable groups, such as families with children or women in a difficult position (widows, single mothers, lone women). Each year, approximately ten per cent of the quota is reserved for the reception of refugees categorised as emergencies. In those cases, reception decisions are made on the basis of documents applying the emergency procedure. (EMN, 2012a: 183.)

A person may also apply for international protection by submitting an asylum application. The Finnish Immigration Service determines whether the person in question has the right to asylum and whether the asylum seeker is a refugee and makes a decision on her/his application. The Refugee Advice Centre (a non-governmental organisation) provides basic information on the asylum procedure and free legal aid to asylum seekers coming to the country. In recent years, particular attention has been paid to the development of accelerated procedures, to the reception of unaccompanied minor asylum seekers and to the development of humane but effective removal from the country (EMN,

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<sup>19</sup> A student holding a student residence permit is allowed to work, with certain limitations, if it does not hamper his/her studies.

2014a).

The Act on the Reception of Persons Applying for International Protection came into force on 1 September 2011. According to the Act, the Finnish Immigration Service is responsible for the practical guidance and planning of the reception of asylum seekers in Finland. Applications for asylum are submitted to the police or to passport control officers. Asylum seekers are then transferred to reception centres located in different parts of the country.

### *Decision procedure*

Applications for international protection are processed in a normal or accelerated procedure. When a case of an unaccompanied minor is considered, the interests of the child are taken into account. The asylum application must be submitted to the police as soon as possible after entry into the country or to a border control authority upon entry into the country. The police or the border guard investigates the applicant's identity and travel route, for instance by making biometric data inquiries based on asylum seekers' finger prints to other European countries to establish whether the applicant has arrived to Finland via another EU country (or Norway, Switzerland, Iceland). If the applicant has been in another EU country, s/he can be returned to that country according to the Dublin II Regulation. (Refugee Advice Centre, 2014.)

Like in other Nordic countries, in Finland, most asylum seekers stay at reception centres while their asylum applications are being processed. Asylum seekers do not have any residence permit in Finland and neither do they have a municipality of residence. The means of support of asylum seekers are based on the provisions of the Act on the Reception of Persons Applying for International Protection. At the reception centres, they are entitled to a living allowance, which is intended to cover necessary living expenses, including food and clothing<sup>20</sup>. They also have free access to municipal healthcare in the cases of urgent medical treatment, an opportunity to study Finnish or Swedish, and their children are entitled to attend Finnish comprehensive school. Asylum seekers may also work. They are entitled to work without a particular permit three months after they have left an asylum application<sup>21</sup>.

If the identity of the asylum seeker or her/his travel route are unclear, the police may detain the asylum seeker upon arrival in Finland. Additionally, asylum seekers who have received negative decisions can be detained before deportation. The detention centre is located in Helsinki. In other parts of Finland, asylum seekers are kept in police premises. Usually detention lasts from a few days to some weeks but can last up to a few months. The District Court decides whether the asylum seekers should be released or kept in detention. (Refugee Advice Centre, 2014.)

The Finnish Immigration Service conducts the actual asylum interview, in order to establish the need for international protection. After the interview, the agency makes its decision concerning the asylum application or determines whether the asylum seeker can be issued with a residence permit on other grounds. In practice, the Finnish Immigration Service makes one of the following decisions: (1) Positive decision (the person in question is placed in a municipality); (2) Negative decision (the person is refused entry and returned to her/his country of origin); or (3) Dublin decision (the person is returned to the country responsible for examining the asylum application under the Dublin Regulation).

If the decision on asylum is positive, the applicant is usually granted either a refugee status or a residence permit based on subsidiary or humanitarian protection. Subsequently, the refugee will be appointed a placement in a municipality and is entitled to support for her/his long-term integration into the Finnish society and in the process, an individual integration plan is drafted. A negative decision can be made either in a normal or in an accelerated procedure. The asylum application can go into an accelerated procedure if (1) the applicant makes a new asylum application that does not con-

<sup>20</sup> A single adult asylum seeker was entitled to a monthly reception allowance of about EUR 300.

<sup>21</sup> An asylum seeker who does not assist the authorities in establishing her or his identity may only start working six months after submitting an asylum application.

tain new grounds for staying in the country; (2) the applicant has come to Finland from a safe country of origin; or (3) the application is considered manifestly unfounded. (Refugee Advice Centre, 2014.)

### *Removal from the country*

If the requirements for granting asylum are not met, it is examined whether the person in question is entitled to subsidiary or humanitarian protection in Finland. Persons refused entry are removed from the country. This should be done effectively but in a humane and fair manner that is in accordance with their human rights. For a long time, Finland has been one of the most efficient EU member states when it comes to the enforcement of removal from the country. (EMN, 2012a: 170)

After the beginning of 2011, Finland has discontinued the return of asylum seekers to Greece due to the country's inhumane reception circumstances and the dysfunctionality of its asylum system. Outside Europe, there are several 'challenging' destination countries, such as Iraq, Somalia and Afghanistan, to which the return of persons is exceedingly difficult or even impossible. Recently, the Finnish Ministry of the Interior has prepared a Memorandum of Understanding (MoU) between Finland, Afghanistan and the United Nations High Commissioner for Refugees to agree on practical procedures for return. The MoU aims to promote the return of Afghan nationals residing in Finland to Afghanistan. The MoU would form a basis for humane and controlled return that takes into account the significance of prioritising voluntary return, the prevailing circumstances in Afghanistan and the importance of a safe, dignified and sustainable return. The Ministry of the Interior is examining the opportunity to draft a similar MoU with Iraq and possibly the United Nations High Commissioner for Refugees. (EMN, 2012a: 170-171.)

Moreover, assisted voluntary return procedures have been developed by a return project organised by IOM Helsinki and the Finnish Immigration Service. The Developing Assisted Voluntary Return in Finland project ran in 2010–2012 and offered foreign nationals residing in Finland and originating from outside the EU an opportunity of voluntary return to their home countries. The purpose of the project was to harmonise the procedures nationwide and make the return arrangements as humane as possible, with the special needs of the most vulnerable groups taken into account. The project received 1,333 applications. Altogether 858 foreign nationals, most of whom had arrived in Finland as asylum seekers, returned voluntarily to their home countries. (EMN, 2012a: 124, 170-171.) There has been, however, discussion on how "voluntary" the return actually is and whether the returning person really intends to stay permanently in the home country (see Huttunen 2010).

The Ministry of the Interior has also set up a project with the aim of consolidating a system of voluntary return and making required legislative amendments<sup>22</sup>. The aim of the project, conducted in 2012-2013, was that it would give people whose asylum applications have been refused in Finland or who have cancelled their asylum applications the opportunity to return to their home countries or countries of permanent residence voluntarily. The project also looked into needs for legislative amendments concerning the temporary residence permit granted on the grounds that removal from the country has not been possible. In addition, Finland aims at implementing bilateral return agreements with countries in which circumstances have improved, making the return of asylum seekers to their countries of origin possible. (EMN, 2012a: 197.)

Finland implements also accelerated asylum procedures and there is a timeframe of eight days for the enforcement of the expulsion decision, which means that in practice the applicant does not have enough time to prepare an appeal, including appropriate legal and interpretation assistance. (Refugee Advice Centre, 2014.)

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<sup>22</sup> One of the background aspects in the project is the EU Return Directive that was enforced in Finland in 2011. The Directive emphasises voluntary return as the primary form of return. (EMN, 2012a: 197.)



## Irregular migration

Irregular migration generally means “movement that takes place outside the regulatory norms of the sending, transit and receiving countries” (EMN Glossary & Thesaurus). Related terms that are often used are illegal migration, clandestine migration, unauthorised migration and undocumented migration. In public discussion, the term paperless is commonly used as well. There is no universally accepted definition of irregular migration (IOM Glossary on Migration). European Migration Network glossary defines irregular migrant in EU context as ‘a third-country national who does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State’. In a broader global context, an irregular migrant is defined as ‘someone who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country’. Council of Europe Parliamentary Assembly’s Resolution 1509 (2006) stated that the term ‘illegal migration’ describes a status or a process, and ‘irregular’ would be preferred when referring to a person (EMN glossary). Irregular migration is not used in national legislation but is often preferred by NGOs. The term undocumented is used widely as well which relates to legislation and to the national practices of registering population but does not carry negative connotations like the term illegal (Leppäkorpi 2011: 27).

Research on human trafficking and irregular migration has been relatively limited in Finland (Jokinen et al. 2011b: 8-9) but over recent years, there has been growing research activity, and cooperation with other near region countries concerning the issues. European institute for crime prevention and control (HEUNI) has carried out the most significant research in Finland, compiled reports with other partner countries (Jokinen et al. 2011a) and a case study concentrating on work-related human trafficking in Finland (Jokinen et al. 2011b). For example, the book “Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia” was published in 2011. Detailed information on particular cases are provided and the report brings out difficulties in identifying victims. In addition, the report provides detailed information on the variety of aspects that can take place in human trafficking and exploitation. The reports of the Ombudsman for Minorities (OFM) from 2010 on have been important for dissemination of knowledge on human trafficking and irregular migration, and have given concrete tools for identifying victims of human trafficking. OFM is the Finnish National Rapporteur on Trafficking in Human Beings, appointed to the task in 2008 (Jokinen et al. 2011a: 39). European Migration Network (2012) has cooperated at the EU level, and has reported information on Finland and provides information on good practices to the government authorities and for the public discussion, thus, aiming to raise awareness on human trafficking and irregular migration.

Some health care provisions are provided to undocumented persons and their children in Finland. There are also some voluntary-based services, for example legal counselling and a global clinic which provides health care free of charge (Paperittomat-hanke, 2014). Public health care provisions are limited to the undocumented persons, but the Health Care Act states that urgent treatment must be given to everybody, including undocumented persons. The patient needs to pay for the treatment if the person does not have a municipality of residence in Finland or lacks health insurance coverage in Finland. An undocumented person can get treatment from public health care for non-urgent care but then needs to pay the full cost of the treatment. (Ministry of Social Affairs and Health, 2014b)

According to Paperless NGO-project, many different groups of undocumented people lack access to health care and can be unaware of their right to obtain it. Undocumented children should be entitled to public health care provisions according the international human rights agreements but the Paperless project publications state that these rights are not available fully in Finland. There have been decisions on municipality levels that wider public health care should be provided to the undocumented persons too but both legislative and practical levels need changes for the realisation of such efforts (Al Omair & Heikinheimo 2013; Paperittoman lapsen oikeus perusopetukseen 2013).



Police, border and custom authorities carry out practical investigations on irregular migration. The Ministry of the Interior is responsible for national level coordination and has produced an inter-governmental action plan against illegal immigration, which include several practical development plans and efforts to combat irregular migration (EMN, 2012b).

### *Human trafficking*

Irregular migration including illegal entry, illegal stay or illegal employment can be related to human trafficking, or trafficking in persons, or other acts against criminal legislation. At the EU level, there has been a development of legislation in order to create common EU-level policy measures and practices to combat human trafficking and to regulate rules of entry to the Schengen area (Schengen Borders Code). At the Finnish national level, it is nowadays common to consider risks of human trafficking when visa applications are considered, and these are evaluated depending on the knowledge on sending countries, but also on individual level. Entrance to one Schengen country can be denied if the person is considered in another Schengen country, for example, as a threat to general order, internal security or public health (Schengen Borders Code, N:o 562, 2§ 19), or it is suspected that the applicant aims to by-pass regulations of the Aliens Act. Both with visa applications and with residence permit decisions there are shares of rejected cases, which vary considerably, from a few per cent to almost 50 per cents. (Visa statistics & Residence permit statistics 2010-2013). These are practices of border control that aim to prevent irregular migration to Schengen area before the entry. In Finland, inter-ministry cooperation monitors and carries out operations on irregular migration, for example, locating illegal employment or overstaying in the country, and investigating cases of suspect of human trafficking, or other related breaches of the criminal law (most importantly 'extortionate work discrimination' which can occur when migrant workers' conditions differ from the other employed persons). Difference in international and national legislation creates also difficulties for concrete cases and human trafficking is easily confused with other related phenomena and thus treated as illegal migration or smuggling of migrants rather than victims of human trafficking.

The human trafficking as criminal offence was included to criminal legislation in 2004 and it is considered a severe offence. The first sentence was given in a case of prostitution in 2006 (in national legislation under the offence of sexual abuse or exploitation). The first work-related court decision on human trafficking was sentenced in 2012 (in national legislation under forced labour or other demeaning circumstances). The offences included human trafficking, extortionate work discrimination, grave tax frauds and grave false accounting. Human trafficking, then, is easily connected to criminal activity that aims to conceal working conditions of the perpetrated victims (even close to slavery, forced labour, or creation of debt-bondage and limitations of movement and excessive hours of work).

At the national level, one of the most important actors concerned with human trafficking is the Ombudsman for Minorities. It was established in 2002, and is currently an independent governmental office under the jurisdiction of the Ministry of Interior for Finland (Laki vähemmistövaltuutetusta ja syrjintälautakunnasta 13.7.2001/660). The sphere of activity is wide concerning both aspects migration and ethnic relations<sup>23</sup>. The first extensive OFM report was published in 2010, and its title describes its most important aspects of scrutiny: 'Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland' (The Finnish National Rapporteur on Trafficking in Human Beings, 2010).

The victims of human trafficking are given protection in Finland and a residence permit is assigned. When a suspected case of human trafficking occurs, the victims can apply for inclusion into protection system while the case is under scrutiny but this is not very common. In some of the suspected cases, the initial police investigation can indicate that there are no signs of human trafficking,

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<sup>23</sup> [http://www.ofm.fi/en/tasks\\_and\\_duties](http://www.ofm.fi/en/tasks_and_duties)

and therefore no grounds for a residence permit. It has been often noted that identifying victims of human trafficking is hard and that educating civil servants is important in combating human trafficking. (Jokinen et al. 2011b: 8-9).

## Family based mobility

Family ties are the most common way to gain entry into Finland. Policies related to family-based migration are always linked to other migration policies since by definition, family-based migration means that someone in the family has other grounds for migration/ residence. Migration with one's family members is controlled by regulations that set certain criteria for who is considered a family member and by regulations on how much income one must have in order to be allowed to bring non-Finnish family members to live in Finland. Those labour migrants who come to work in low-paid professions are often denied the possibility of bringing their families to Finland because of the relatively high income limits that the state of Finland uses as a qualification for family-based migration (Asa & Muurinen, 2011: 46). For example, nurses recruited from Asia may not earn enough to be qualified to bring their spouse and children to Finland.

One of the main ways for migrants to gain access to another country is through marriage (Schmidt, 2011: 55) and this becomes an increasingly popular form when migration policies become stricter (Säävälä, 2013: 111). Marriage migration is thus an example of how individuals may try to tackle national legislation in the different receiving states (Schmidt, 2011: 56). Marriage migration is controlled by regulations that aim to ensure that the marriage is "genuine" instead of being a tool for the spouse to gain entry to Finland. In addition to migrants marrying non-Finnish citizens, increasing numbers of Finns marry foreigners and authorities are keen to make sure that such marriages are "genuine" instead of used as a channel to gain entry to Finland.

It is worth noting that family-based migration and family re-unification in Finland are strictly limited to married (or registered<sup>24</sup>) couples and their children: adults cannot bring their (elderly) parents or other relatives to Finland. The main reason behind this is that the Finnish social security is available to all permanent residents regardless of their nationality. Consequently, one cannot bring a family member to Finland even if one would assure to cover the living costs and possible health care costs oneself. Finland uses DNA testing in order to determine who is a family member and who is not and there is not much space for negotiating family as a social unit instead of as a biological unit (see Hautaniemi, 2004; Helen & Tapaninen, 2013); only the immediate nuclear family is considered entitled to family re-unification.

The legal status of migrants affects their opportunities in the destination country and family dependants often face greater restrictions than labour migrants in what they are allowed to do (Martikainen & Gola, 2007:13-14). The labour force of marriage migrants has been largely ignored in Finnish policies (Martikainen & Gola, 2007: 84) and especially with regard to highly educated migrants, this often results in temporary migration as families move on to other countries where both spouses have better work opportunities. In fact, the Finnish migration policy seems to neglect marriage migrants as an explicit target group (Martikainen & Gola, 2007: 33). There are various programmes to support migrant families (and to solve their problems), especially measures that try to support and activate migrant housewives. Those programmes are, however, not targeted to highly educated people. For migrant children, Finland is a particular country because any child residing in Finland is entitled to free education, regardless of the child's status or nationality.

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24 Same sex couples cannot marry in the same way as heterosexual couples in Finland but they can be registered as couples.

## Finnish expatriates

Increasing numbers of Finns live temporarily (or permanently) abroad as expatriates. There is no particular policy for this type of migration but Finnish people usually lose their rights to social security benefits and public health care when they stay abroad for more than a year unless employed by a Finnish employer. There are a couple of academic studies on Finnish expatriates. Anu Warinowski (2012) has studied Finnish children who return to Finnish schools after having lived as expatriates abroad and Annika Oksanen (2006) has studied the experiences of Finnish expatriate wives in Singapore. Nicole Foulkes (2011; 2012) has studied how Finnish and Danish expatriates experience their citizenship in India. Saara Koikkalainen (2013) has studied highly skilled Finns in the labour markets of the European Union. Although not addressed in official policies, temporary skilled migration of Finnish people is usually viewed in positive terms, as it is believed to contribute to the internationalisation of Finnish businesses and to the talents of Finnish workers.

## Lifestyle migrants

Because of Finland's strict immigration policy, lifestyle migration to Finland is not possible for non-EU citizens. Foreign citizens were not allowed to own land in Finland until the country joined the European Union in 1995 after which Europeans were allowed to buy land in Finland. In the year 2000, property ownership was allowed also to non-EU citizens. Russian property ownership has been increasing in recent years (see TEM 2013; Lipkina 2013a; 2013b) and there is now discussion on whether policy measures are needed in order to limit the Russian property ownership in Finland.

An increasing number of retired Finns live (usually part of the year) abroad as lifestyle migrants. There are no specific policies connected with this phenomenon but there are limitations on which kind of pensions can be paid abroad, and this often prevents people from migrating permanently or officially abroad as they do not want to lose their pensions. The result is temporary, often seasonal, migration that is not visible in statistics.

## Public Discussion

The public discourse has not been welcoming towards migrants in Finland. In the recent years, a populist "True Finns" party has rapidly become popular and critical views towards immigration have been very visible in politics and media. The public debate focuses mainly on permanent migration but issues of temporary migration are addressed at times too. Different types of migrants are often confused in the discussion and all foreigners tend to be treated as a homogeneous group. Migrants are often viewed as a threat to the nation, its culture and jobs of the natives. (see e.g. Haavisto 2011; Horsti & Nikunen, 2013; Pöyhtäri, 2014).

The public discussion and temporary labour migration have had four major themes in the new millennium. At the beginning, the link was indirect, and global experts coming to Finland, for example from China and India, were discussed in the context of global talent attraction. A much more visible and negative tone was used in the context of posted workers, who were deemed harmful for the Finnish labour markets and for the immigrants themselves. The third discussion was related to the health care personnel recruited from Asia to Finland, although the numbers were small and the aim was to bring permanent workers, rather than leased labour. The discussion on posted workers was clearly the most visible one, and it provided a negative image to the whole phenomenon. The singular case that attracted the most visibility was the biggest construction site of Northern Europe, the nuclear plant site of Olkiluoto where the use of the foreign personnel was substantial and a part of the many other difficulties plaguing to the building of the plant. Fourth current theme has been a wide and at times heated public discussion on the use of the Thai seasonal migrants in the wild berry industry from 2005

on (Rantanen & Valkonen 2008; 2013) where especially exploitation of Thai temporary migrants has been a constant topical issue: it is very hard work with low income and there have been cases where the pickers have not earned enough to even cover their travel costs to Finland. The discussion has also brought to the fore issues of human trafficking which otherwise have remained rather scant in the public discussion.

Related to the issue of tuition fees, international degree students have received a fair amount of public and political attention during the past few years. There is an ongoing public debate about the role of international degree students in the Finnish society. Simply put, the question is whether they should be considered as items of expenditure or revenue. More specifically, the discussion often relates to the question of tuition fees and problems attached to non-EU/EEA students. In public discussion, foreign students who receive a free education, but leave immediately after their graduation, are often depicted as freeloaders. Many feel that, since they study in English and do not learn Finnish or Swedish properly; they have no intention (or any realistic prospect) to integrate and should therefore pay for their education. Public funding of the Finnish HEIs has also declined in the recent years resulting in the need for alternative financing schemes.

Occasionally surfacing cases of misuse of student residence permits, foreign students' financial problems and their weak possibilities for employment have also caused something of a public stir in recent years (Kiuru, 2012: 147-152). Practically, a lot of the discussion has concerned non-EU students from developing, especially African, countries. From this point of view, introducing tuition fees would not only cover incurred costs, but would also curb the flows of "unwanted" students from some of the developing countries.

Many politicians and other public figures, including the current Minister of Education, are in favour of introducing tuition fees for non-EU/EEA citizens (Boxberg, 2014). Conversely, many student organisations are strongly against the fees and see that, "tuition fees do more harm than good", by deterring foreign degree students and thus undermining one of the means of expanding Finland's labour force (SYL, 2014). The discussion shows that the introduction of tuition fees for non-EU/EEA students is a complex issue that intertwines with many interests and should not be simply considered from the HEIs' cost covering perspective.

There has also been some public discussion on how to attract more foreign researchers to the Finnish universities as it is seen as a key to innovation and internationalisation of the Finnish academia. The most optimistic proponents of recruiting foreign academics and researchers predict positive ripple effects for the whole society.

Asylum affairs appear frequently in the Finnish media. The public dialogue on asylum affairs has mainly focused on the costs of refugees and asylum seekers. The True Finns party in particular has been critical of the expenses caused by humanitarian migration to Finland. On the other hand, the accelerated asylum procedures in Finland have been widely criticised by NGOs. It has been said that the legal safeguards are not sufficient considering the interests of asylum seekers. Further, the timeframe of eight days for the enforcement of the expulsion decision is too short for an applicant to prepare an appeal, including appropriate legal and interpretation assistance. NGOs have presented that the timeframe of eight days should be given up. (Refugee Advice Centre, 2014.)

The Finnish removal practices of asylum seekers who have been denied asylum status have also been criticised. It has been said that every year Finland returns dozens of tortured asylum seekers to their home countries and consequently violates UN's Convention Against Torture, signed also by Finland (Nykänen, 2013). For many returnees, the return may signify a death sentence because in many cases, they have been tortured by authorities of their home country who may also be informed of their return. The Finnish Immigration Service has responded to the criticism by commenting that solely the fact that someone has been a victim of torture is not always sufficient grounds for asylum or other residence permit even if the seeker's story was credible and there was a medical certificate to

support it (Finnish Immigration Service, 2012).

Irregular migration has not been widely discussed in the Finnish media but the theme is addressed occasionally. In particular, there have been recent debates on whether undocumented migrants should be entitled to health care services and if so, to which kind.

Although family-based mobility is the most common way to migrate to Finland, public discussion has not paid much attention to this phenomenon. There is, however, a rather critical public discourse in Finland regarding family re-unification of asylum seekers and it is often claimed that people abuse the system by trying to bring to Finland people who are not really their family. On the other hand, there have been cases in the media where it has been pointed out that Finland has denied residence from migrants' old and sick parents who cannot take care of themselves in their countries of origin. In these cases, the public discourse has been very sympathetic towards the families that want to accommodate their elderly relatives. The issue of fake marriages in order to gain residence permit to Finland appears in the media every now and then and some Finns who marry foreigners find it humiliating that authorities may treat their marriages with suspicion. There has also been public discussion on the phenomenon where Finnish men marry younger foreign (often Asian) wives; people are concerned whether the women are abused in such marriages and whether they know their rights in Finland.

There is not much public discourse on lifestyle migration of Finnish people but the occasional discussions tend to be rather critical, especially in terms of the non-retired lifestyle migrants. There seems to be a strong discourse that a good citizen should stay in Finland, work for the country and pay taxes; moving to a more relaxed life in a warmer climate is somehow morally wrong. In terms of the elderly lifestyle migrants, there have been some public concerns of them being lonely and in danger of becoming alcoholics. There has also been a few newspaper articles on retired Finns who claim that they spend winters abroad because their pensions are too low to cover their living costs in Finland. Health tourism has not caught much public attention but there have been a few newspaper articles where Finnish doctors have expressed concerns of the safety of medical services abroad.

The Russians' increased interest in Finnish properties is a frequent topic of public discussion in Finland. People have complained that Russians cause property prices to rise too high for Finnish buyers. There have also been suspicions of money laundering and disapproval of the large well-equipped buildings that remain un-vacated most of the year. In fact, because of the fear of increasing Russian property ownership, in 2014, half of the Finnish Parliament members signed a petition to restrict property purchases of non-EU citizens.

Public discourse has not paid much attention to Finnish expatriate families but every now and then, there appears a story in the media where a Finnish expatriate family is introduced. The focus is often on the success of the family. In addition, women's active agency is emphasised, claiming that Finnish women do not want to move abroad because of their husband's job in order to become housewives like women from many other countries are assumed to do; Finnish women want to be employed too.

## **Conclusions and Recommendations**

Historically, Finland has not been a popular immigration destination. After Finland joined the European Union in 1995, the situation, policies and legislation have changed. Lately, Finland has also increasingly become a transit country for migrants, that is, many migrants sojourn in the country only temporarily. There is quite a lot of research done on migrants in Finland but most of it focuses on permanent migration and integration. Similarly, the Finnish policy documents either ignore short-term movers or attempt to keep temporary and permanent systems separate thus not reflecting the real-life situations very well. The policy documents focus heavily on permanent immigration. Only recently have they paid attention to temporarily mobile people. Acknowledging various phenomena related to temporary migration at policy level gradually affects legislation and results in practical measures but



these processes are slow and complicated.

The Finnish immigration policy can be characterised as a policy of national interests and security. Non-EU citizens need visas and residence permits in order to be allowed to stay in Finland. The first residence permit is always temporary, which means that Finland initially defines all migrants as temporary, even if their intention would be permanent residence. Those wishing to come to Finland as labour migrants are evaluated by the Employment and Economic Development office, which means that work permits are given only to those fields in which there are no domestic workers available. At the same time, there are specific areas (e.g. health care personnel and ICT-professionals) where labour recruitment from abroad is encouraged. Yet, even if this is acknowledged in politics and policy documents, there have been little practical measures.

In policy texts, there is no clear definition for who is a temporary migrant. Such a definition would be particularly important in terms of the social security rights. A recent report (June 2014) from the Ministry of Social Affairs and Health discusses in detail the challenges of the Finnish social security system in regard with the systems of other EU member states in terms of temporary mobility. The situation of non-EU citizens residing temporarily in Finland was, however, not in the scope of the report.

In Finland, there are two governmental migration policy programmes, established in 1997 and 2006. In general, the focus of the programmes has shifted from humanitarian migration to labour migration, the focus lies in long-term migrants and their integration. The latter programme acknowledges temporary migration but does not pay much attention to it. In the document *Future of Migration 2020 Strategy* (2013), temporary labour migration is mentioned and two-way migratory movement of skilled labour has been recognised. It has also been noted that the lack of accurate statistics on temporary labour migration makes policy-making difficult.

An important category of temporary labour migrants in Finland is the seasonal agricultural and horticultural workers, berry pickers in particular, who come to work with the three-month-long Schengen visas. Almost all other labour migrants need both a work permit and a residence permit.

Tertiary level education is free in Finland. By offering various degree programmes in English, Finland has successfully attracted increasing numbers of foreign students, especially from Asian countries. Finland hopes that the highly educated students would eventually settle permanently in the country. Consequently, after having completed their studies, they can obtain a six-month-long visa that allows them to search for employment in Finland. There is an on-going debate on whether Finland should introduce tuition fees to international students.

Finland has signed several international treaties and conventions on humanitarian migration. Nevertheless, the country has been very strict in how these obligations are interpreted and the Finnish policy towards humanitarian migration has been rather harsh. Irregular migration and human trafficking have gained policy attention only recently.

Family-based migration has not caught much attention in Finnish policies in spite of the fact that there are increasing numbers of migrant families and Finnish citizens marrying foreigners. Family-based migration to Finland is strictly limited to nuclear families. There are rather high-income requirements for migrants who wish to migrate with their families and hardly any policies targeted towards the family members of the highly skilled migrants. For examples, the lack of employment opportunities for the accompanying highly skilled spouses has been largely ignored in policy measures.

There are no policies in regard with lifestyle migration or Finnish expatriates but rules regarding the payment of Finnish pensions abroad effectively restrict retirement migration abroad. The increasing interest of Russians to buy second homes in Finland has caused some public debate on whether policy measures would be needed in this regard.

The public discussion in Finland is dominated by critical voices towards migration. In this discussion, the different categories of migrants are often confused and the general tone is suspicion and

rejection. A clear trend in the Finnish immigration policy documents and public debate is that the country does not really want foreign *residents* but wants above all *labour force*. From an economic point of view, this may make sense but the problem is that it is difficult to attract workers if their family members' needs are not acknowledged. When the policies focus on permanent migration, the emphasis is on integration measures and the needs of temporary migrants are forgotten. In addition, the Finnish immigration policy appears as highly selective, but one can question how attractive Finland actually is among the potential highly skilled migrants who are welcome to many other places as well.

A significant problem in the Finnish asylum policy and migration policy is the long and complicated processes of gaining the right to reside in the country. Finland's strict immigration policy has also been criticised on various fronts. At the same time, there are many anti-migration voices in the public discourse, which makes it difficult to come up with effective policy measures that would facilitate migration, including temporary migration. The lack of knowledge on temporary migration is obviously a serious hindrance for policy measures, too.

Policy makers and administrators want to have a clear definition for temporary migration but this is a difficult, perhaps even an impossible task, because there are so many different kinds of phenomena that can be characterised as temporary migration. The definition also depends on who is defining: is the focus on the intention of the mobile individual or on the point of view of the receiving state or the sending state or some particular authority, for example, the social security authorities? In spite of the fact that Finland wants permanent skilled labour migrants, the country is particularly keen on defining people as temporary since the first residence permit to Finland is always temporary. In other words, in the Finnish context, the state tends to define people as temporary migrants even when their own intention may be permanent migration. At the same time, temporary migration is not defined or carefully targeted in policies. Based on the existing policy documents and a review on existing research scrutinised for this report, the following tentative policy recommendations may be done:

- When considering policy measures, it is important to acknowledge two different aspects: there are temporary migrants who move on after some time, and there are temporary migrants that Finland could try to attract to stay in the country permanently.
- There is clearly a need to do more research on temporary migration in Finland as not much is known of it. The different types of temporary migration should be addressed also on policy level and policies should be better implemented and evaluated.
- It might be feasible to consider carefully, in policies and research, the groups that are visiting for less than three months but who are not tourists and those who stay for more than a year (e.g. students) but whose residence is intended to be temporary.
- Gaps in statistics and lacking knowledge about temporary migration make policy making difficult. In the EU, the application for a Schengen Visa includes several categories for "main purpose(s) of the journey" under which temporary work can be done. It is hard to scrutinise what kind of work these categories may include, as the relevant information is likely to be found from "supporting documents", for example, from invitation documents.
- The implementation of the recent EU directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment should be carefully monitored.
- Professionals and highly skilled temporary migrants include both those arriving with local contracts, inter-company transferees or "ex-pats" as well as those who arrive as leased labour or as consultants. They are in a different position compared to seasonal workers and other low-skilled project workers, and it is evident that the same policy may not be feasible for all groups. Policies should thus take into account the multi-faceted nature of temporary migration.
- There has been a public debate already for years concerning tuition fees for international students coming from outside EU and EEA. This issue must be solved in the near future as the

current uncertainty is preventing the planning of clear policy measures and the planning of international programmes in educational institutions.

- Since Finland is a welfare state with relatively good social security benefits, it is important to clarify which social security benefits are available to which migrants. In particular, who is a temporary migrant and what are their rights in terms of social security? Moreover, when do certain rights start and when do they end? (Ministry of Social Affairs and Health, 2011) It should be noted, however, that EMN (2014b) recently published a report on these issues and there is a forthcoming report coming up from KELA (the Finnish social insurance institution). There is also a need to increase the knowledge of temporary migrants' rights to social security entitlements and to other support.
- The regulations regarding the wild berry industry in Finland should be developed so that the migrant pickers would be in a less vulnerable position. Recent government report indicates that employment contracts would be the clearest measure to improve the situation.
- The official process regarding asylum seekers should be made more effective and clearer.

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## 4.3 TEMPORARY MIGRATION IN GERMANY

Mustafa Aksakal and Kerstin Schmidt-Verkerk  
PI: Thomas Faist

### Introduction

Recently, temporary transnational movements between certain Asian countries and European Union member states have become ever more important for development processes in the emigration, immigration and transit countries involved. This trend can also be observed in the German migration context, which invites to have a closer look at the emerging Asian-German transnational space. While the transnational character of these newly arising migration corridors are only indirectly focused and needs to be analysed in-depth in the course of the EURA-NET project, it is assumable that existing empirical data provide first concrete insights on migrants' cross-border ties. Some reference to the temporary dimension of these movements is provided in different kinds of documents and legislations as discussed below. The report aims to offer an inventory of these emerging temporary migration forms, based on a review of existing literature, public discourses and immigration policies. To reach this objective, the following question guides this report: *What are the identified characteristics of immigration, the public discourses and legal frameworks with regard to temporary migration between Asia and Germany?*

As hypothetical assumption it can be argued that with the New Foreigner Law in 2005 a first legal incentive for the attraction of certain types of immigrants (e.g. professionals) was initiated. Also after 2005, several other legal measures were created to promote more effectively the entrance and temporary stay of professionals in Germany. Before addressing the noted question in the main part of this report, a historical overview of migration, of immigration policies, as well as the current migration situation in Germany will be provided in the remainder of the introduction.

### Historical background of migratory movements to Germany

Immigration to Germany after 1945 took place under two different political circumstances, which means that also two different migration systems developed. During the 1950s, when the economy boomed in the *Federal Republic of Germany* (FRG), certain labour gaps emerged. Although in this period the unemployment rate was up to seven per cent (Treibel, 2008) "regional labour demands in specific rural sectors" on the one hand, and "increasing demand in construction and industry" (Borkert & Bosswick, 2011: 96) emerged. The positive economic circumstances stimulated the initiation of temporary labour recruitment initiatives, with the objective of attracting relatively short-term cheap and young labour mainly from the peripheral neighbour countries of Southern Europe. The initiative was called *Gastarbeiterprogramm* (guest worker programme) and its principal idea was to shift unskilled work force from regions where labour was abundant to Germany, where it was partly scarce. Therefore, temporary labour migrants were recruited, whereby, as already noted above, the temporariness should be based on the rotating system, meaning that workers should be only contracted for a fixed time, "usually for one or two years [because] it was thought that most would then return to waiting families in their native countries" (OECD, 1978:16). And if so, they could be quickly replaced by other guest workers. In the period between the end of the 1950s and 1973, around 14 million temporary guest workers came to West Germany (Bade & Oltmer, 2007: 75). In 1973, the recruitment ban for guest workers stopped large-scale labour migration to Germany.

Another important group of migrants is constituted by about 1.5 million ethnic German emigrants (*Aussiedler*) and late-repatriates (*Spätaussiedler*) who came to Germany in the late 1980s to early 1990s, following the dismantling of the iron curtain (Treibel, 2008: 39). Also, after the German reuni-

fication the inflow of refugees from former Yugoslavia played a central role. In this context “refugee movements culminated in 1992 at a peak of 438,000 applications” (Borkert & Bosswick, 2011: 97).

The motivation for the employment of foreign temporary labour migrants was in the *German Democratic Republic* (GDR) very similar to the reasons in West Germany. However, in comparison to West Germany the labour forces were recruited from different geographical areas (Gruner-Domić, 1999). In this vein, above all contract workers were recruited, those represented mostly temporary low-skilled and partly skilled and high-skilled immigrants from socialist sister states. Based on bilateral governmental agreements in the course of the 1960s, labour recruitment from East European countries (e.g. Poland, Hungary, etc.) was achieved, in the 1970s recruitment from non-European regions (USSR, Cuba, Vietnam, North Korea, Algeria, Mozambique) was accomplished, and in the 1980s recruitment from Angola and China was carried out (ibid.). The total number of foreigners amounted in 1989 to 190,400 people in the GDR.

With respect to the history of Asian immigration to Germany in the context of West German guest worker programmes, between 1963 and 1980 also migrants from South Korea were recruited, particularly to work in mining. Yet, their share of 8,000 people (Kreienbrink & Mayer, 2014) is small compared to the total of about 2.6 million guest workers who lived in Germany when recruitment ceased in 1973. After 1965 the political response to the scarcity in nursing care was the recruitment of skilled nurses; first in the 1960s from China and the Philippines, and then in the 1970s from South Korea. Yet, these recruitment agreements also only brought a small number of several hundred people to the FRG (ibid.).

Vietnamese nationals constituted until 2011 the largest group of Asian migrants in Germany, which was caused by two historical developments. Between 1978 and 1982, West Germany had provided asylum to 23,000 refugees from Vietnam. At the same time, East Germany had recruited workers from its sister state, the Socialist Republic of Vietnam (Kreienbrink & Mayer, 2014; BAMF, 2014a: 8). As a consequence, under these different circumstances two separate Vietnamese migrant communities have developed in Germany.

Another important inflow of Asian migrants to Germany already took place in the early 1950s. It was represented by Chinese immigrants, who “gradually developed restaurants as a niche of entrepreneurship and employment, [therewith they tried to compensate] limited opportunities for Chinese in the local labour market” (Christiansen & Xiujing, 2007: 289). The highly heterogeneous Chinese immigration was mainly based on chain migrants and refugees; those numbers increased until 2000 to an estimated 100,000 persons (ibid: 290).

After discussing some concrete historic developments of (Asian) migration processes to Germany, we will now turn to analysing the relevant policies in this context. In 1965, a decade after the start of the first guest worker agreement, the German Parliament adopted the Foreigners Law (*Ausländergesetz*). Major aspects covered by the law were the introduction of a residence permit for foreigners living in Germany, regulations on asylum and deportation, as well as regulations in case of delinquent behaviour by foreigners. Yet, it did not cover any aspects related to the integration of foreigners into German society. After 1973, when labour recruitment agreements had ended and many former guest workers had decided to stay and to bring family members to Germany, the tenor of the German government against immigration became more explicit. Along the lines of the government’s policy that Germany should not be considered an immigration country (Brech, Die Welt, 02.08.2013), a statement by the Cabinet of the FRG in February summarises the basic points of this policy:

- “Effective limitation of continued immigration of foreigners into the FRG;
- Reinforcement of willingness to return home;
- Improvement of the economic and social integration of those foreigners who have been living in the Federal Republic of Germany for many years, and clarification of their residency rights.” (Hennessy, 1982: 638)



In 1983, the Law for the Promotion of Foreigners' Repatriation (*Rückkehrförderungsgesetz*) came into force, providing financial stimuli and subsidising voluntary return of foreigners living in Germany to their countries of origin. 250,000 migrants made use of this law, which left the government's expectations with respect to numbers largely unmet (Borkert & Bosswick, 2011). In the early 1990s, the same conservative government under Chancellor Helmut Kohl replaced the 1965 Foreigners Law by a new legislation, which for the first time mentioned the possibility of naturalisation for foreigners living in Germany for more than 15 years.

Also in the early 1990s, two laws ended the strict non-immigration policy that had been adopted since 1973. The FRG issued a decree on exemptions from the halt of recruitment. Contract labourers and seasonal workers were now allowed again to work in Germany for a limited period of time and under certain conditions. At the same time, the GDR issued a law facilitating the immigration of Jews from the former Soviet Union (ibid.).

In 1993, the German government adopted the Asylum Procedure Act (*Asylverfahrensgesetz*), which officially recognised the 1951 Geneva Refugee Convention of the UNHCR. Yet, in response to the public discourse, which had constructed an image of too many refugees entering Germany in the early 1990s, asylum seekers were now only accepted if they had not entered Germany via a safe third country. As a consequence, people wishing to apply for asylum in Germany could now only enter via an airport (ibid.).

The 1995 agreement about the repatriation of Vietnamese citizens included the gradual repatriation of 40,000 Vietnamese citizens (Treibel, 2008). In this vein, it was intended to repatriate 2,500 people in 1995, 5,000 people in 1996 and finally 40,000 people in 2000. The agreement particularly targeted former contract workers, asylum seekers and undocumented immigrants (Deutscher Bundestag, 1996).

In 1997, the Amendment to the Foreigners Law underpinned the already restrictive character of the Foreigners Law of 1990. In this reconfiguration it was provided that "unaccompanied minors from Turkey, the former Yugoslavia, Morocco and Tunisia" as well as already resident foreign children from these states (Borkert & Bosswick, 2011: 101) required visas or a residence permit, respectively, for the entrance and the stay in the country. The reform of the law on nationality in 1999 was a clear countermovement to the Amendment of 1997. In this reform, it was specified that children of foreign parents born in Germany can obtain German citizenship, if one parent has lived permanently in Germany for at least eight years (Bade & Oltmer, 2007).

In 2000, an independent Commission on Immigration was built up. The commission's main claim was a substantial change to the contemporary policies on migration and integration. The conviction was that due to economic and demographic trends, a controlled immigration of high-skilled foreigners should be allowed (ibid.). This discourse influenced the decision to implement the German Green Card (Borkert & Bosswick, 2011). As a consequence, the profile of migration to Germany gradually changed towards more temporary forms of immigration.

## Characteristics of temporary migration

Given the limited volume of data and literature on temporary migration to Germany, the following section first provides a general overview of migration and then an outlook into newly emerging migration forms that are inherent to the numbers in the general overview but difficult to extract quantitatively. Furthermore, there is no uniform conceptual understanding about the duration of stay of temporary migrants, which is reflected by the deficiency of explicit data material and its interpretation in academic literature.

Both the volume of migrant stock and migrant flows to and from Germany have risen over the last two decades. According to the OECD, in 2010 the foreign-born population in Germany accounted

for 16.4 per cent, and the foreign population for 9 per cent of the total population of about 82 million inhabitants. Different statistics presented by the German Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge - BAMF*) in its most recent report on Germany's migration profile show that the total number of foreigners in Germany amounted to 6,627,957 people, representing 8.2 per cent of the total population of the country in 2012 (BAMF, 2014a). In the same year, the total number of immigrants of foreign nationalities amounted to 965,908 people. These numbers are contrasted by 578,759 cases of outmigration by foreign citizens, resulting in a positive migration balance of +387,149 people in 2012 (BAMF, 2014a). These numbers show that (temporary) migration to Germany plays an increasingly important role. Yet, as noted above, the temporariness of these movements is difficult to determine.

The largest group of immigrants to Germany is represented by people from former and new member states of the European Union (EU). This is related to the permission of free movement of workers from EU countries, as well as to the enlargement of the EU. The percentage of this type of immigration amounted in 2004 to 40.6 per cent and rose in 2012 to 63.9 per cent, whereby immigration from the new EU-member states increased by 18.8 per cent, significantly represented by immigrants from Poland and increasingly from Bulgaria and Romania (BAMF, 2014a). This influx is followed by immigrants from other European countries outside the EU. This percentage decreased from 27.4 per cent in 2004 to 21.4 per cent of all migrants in 2012. The duration of stay of these migrants is very heterogeneous; while, for instance, migrants from Ukraine and Kosovo on average remain in Germany for less than nine years, other immigrant groups mainly from countries formerly involved in guest worker programmes, such as Turkey, stay about 25 years or longer on average.

The next largest immigration group is represented by international movers from the continent of Asia. This regional group was represented by 14.5 per cent of all international immigrants in 2004 and declined slightly to 12.4 per cent in 2012 (BAMF, 2014a). China, Vietnam and Iraq were the most highly represented nationalities among Asian migrants with 1.2 per cent each, followed by Thailand, Iran and India with 0.8 per cent each. Since 2011, Chinese migration to Germany has been strongly growing, a trend which continued in 2012, making migration from China the largest migrant inflow from Asia (Kreienbrink & Mayer, 2014). The migration balance between China and Germany was positive in 2012 (+ 6,688), with 21,575 persons coming to Germany from China and 14,887 persons leaving Germany for China. The most important category of Chinese temporary migrants are students, followed by skilled and high-skilled workers and a similar trend shows for the case of India (BAMF, 2014a). Thus although Asians are currently not among the most important group of migrants in Germany as far as numbers are concerned, their importance, particular for the German education system and for the German labour market, is likely to grow in the future.

With respect to the temporariness of Asian immigrants to Germany, it can be argued that the most significant migrant categories are international students, highly represented by China, as well as high-skilled labour migrants, mainly of Indian origin. Furthermore, although not as strong in migrant numbers, bilateral agreements on the temporary recruitment of health care specialists to Germany, for instance with the Philippines, are of high importance for the analysis of migrants' temporariness. While the current state of research on these relevant migrant categories for the German-Asian migration context will be analysed in detail in the following chapter, it is important to state that neither precise references to temporariness nor on the transnational attributes of Asian migration exist so far.

## **The Current State of Research**

In the light of the limited amount of policy documents and secondary literature available on temporary transnational migration between Asia and Germany, the objective of the first part of this chapter is to revise relevant respective research and literature on recent migration to Europe and particularly

to Germany and vice versa. A specific focus is set on those immigration categories, in which migrants from Asia are most strongly represented. In the second part of the chapter, trends of temporary migration from Germany to Asia are analysed, which are even less documented in existing literature.

## Literature review: from Asia to Germany

The recent far-reaching amendments to migration policies in Germany, as analysed above, have the potential to significantly change existing patterns of immigration, migrant settlement and activities of migrants. The following sections will review existing studies about several of these consequences with particular relevance related to Asian migration to Germany. The section is divided along the lines of different migrant categories, which are most representative in the context of temporary Asian migration to Germany. With regard to the immigration of foreign skilled and high-skilled persons, students, academics, researchers and entrepreneurs, the public interest to attract these particular segments increased in the last years significantly and therewith the political opening mechanisms were and are oriented towards this immigrant groups. In some sectors, it can be argued that the country needs, and therefore actively promotes, the immigration of low-skilled, but above all skilled and high-skilled foreign labour in order to compensate for transformations of societal structures (e.g. the negative effects of demographic change) and to adapt to requirements in the competition in the global economy. In this globalised context, the influx and recruitment of Asian migrants plays an ever more important role. The particular focus in the following sections lies with migration from the relevant EURA-NET partner countries: China, India, Thailand, the Philippines, Turkey and Ukraine.

### *Professionals: qualified and highly-qualified migrants*

The need for high-skilled persons, as well as political efforts to attract these immigrant segments, have encouraged a broad discourse in Germany over the last years. Therewith, immigration from third-countries, and especially from Asian countries, came into the public and academic focus.

The main reasons addressed are on the one hand first shortages of professionals in certain occupational sectors and regions due to past labour market fluctuations that adversely affected the demand for particular professions (Mayer, 2014). While the demand for labourers decreased in certain sectors, as a reaction also the numbers of German university students and graduates relevant for these sectors declined, leading to sectorial labour bottlenecks, such as in the sectors of mathematics, engineering, informatics, human medicine etc. (Möller, *der Spiegel*, 11.06.12).

On the other hand, demographic change, i.e. low birth rates that will lead to a shrinking population size and an ageing society, is a crucial factor that will gradually lead to a skilled and high-skilled worker shortage in the long term (Mayer, 2014). Based on estimates of the Institute for Employment Research, the Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales* – BMAS) argues that in the period between 2010 and 2025 the number of potential work forces will decrease by 6.5 million (BMAS, 2011: 10).

These unfavourable trends are threatening the future economic development, as well as Germany's competitive role in the global economy, because a successful competition in a globalised economic world is directly linked to the availability and deployment of professionals (Boswell & Straubhaar, 2005). Hence, due to the existing domestic shortages the entry and stay of skilled and high-skilled immigrants are of crucial importance for the future of the country.

Professionals are generally defined as skilled and high-skilled persons. According to the definition by the German government, qualified immigrants are defined as labourers, who completed a vocational training, and high-qualified third country nationals are defined as migrants with a recognised university degree (Mayer, 2014). Furthermore, scientists and researchers, certain kinds of entrepreneurs, as well as intra-company transferees are defined as high-qualified individuals. Additionally,

international university students are perceived as future high-skilled personnel (ibid: 79). Also independent job seekers can be classified as a subfield of professionals, represented by mobile foreign persons, who enter to or stay after graduation in Germany with the objective to search for an adequate job opportunity.

In line with these definitions, the category of professionals embraces a multitude of subgroups. The present paper addresses under the category of professionals however only some of the noted subfields with the objective to obtain information about general trends and characteristics of the recently increasing immigration groups. The groups of professionals are considered here as a) locally recruited professionals, such as staff members in domestic enterprises, researchers and scientists academics and b) intra-company transferees in Germany.<sup>1</sup>

With regard to the two subfields here classified as professionals, it can be argued that in recent academic debates, locally recruited professionals, researchers and scientists get more attention than intra-company transferees. Assumedly, this has to do on the one hand with public prominence of the German Green Card and the recent implementation of the Blue-Card; both represent political measures for facilitating the entrance and stay of locally recruited professionals. On the other hand, locally recruited professionals, researchers and scientists are working mostly in German enterprises and universities, and obtain with the Blue Card very good preconditions in order to stay permanently in the country. In turn, intra-company-transferees are not considered under the Blue Card scheme, as they work in subsidiaries of foreign companies for a limited period of time, thereafter in most cases they return to their countries of origin. Accordingly, it can be argued that the academic and political debate around locally recruited professionals, researchers and scientists has intensified, because of their perceived particular potential as crucial forces in order to close the specific labour gaps in Germany.

Recently, in the context of immigration of high-skilled persons to Germany under the Blue Card scheme, mainly three interrelated aspects are considered as unfavourable influencing factors:

*First*, there are traditional industrialised countries, such as the USA or Canada in the international and the UK and Netherlands in the European context, which began at an early stage to provide incentives for the immigration of foreign professionals. These economies seem to be more effective in the recruitment of high-skilled persons, because they are, in contrast to countries such as Germany, more successful in lowering the bureaucratic barriers for the entrance of this type of immigrants by developing recruitment programmes for limited stays or bilateral agreements on the recruitment of high-skilled migrants (Angenendt & Parkes, 2010). Some industrialised countries, such as the USA, have followed the strategy of recruiting high-skilled migrants for several decades, meaning that these immigration countries have important advantages in terms of experiences, but also the migration system is more established, leading to more solid cross-border social formations and social remittances to the migrants' countries of origin. These dynamics, in turn, are likely to have spill over effects and increase the attractiveness of these receiving regions for new immigrants. Saxenian has revealed this context by analysing how US-educated Chinese and Indian-born engineers working in Silicon Valley, USA are sending social remittances to their home regions through the cross-border construction of professional and business links. The author called these transnational social practices and respective flows of remittances *brain circulation* (2005: 36).

*Second*, linked to the concept of brain circulation, we can find emerging countries, particularly India and China, who indeed represent main source countries for professionals, but also have an increasing need for these high-skilled persons. In this vein, due to economic growth, to the expansion in the service sector, as well as to attractive incomes and upward mobility opportunities these emerging economies seem to offer enough incentives to convince professionals to stay in the country of origin (Finke, Der Spiegel, 11.05.12). In addition to these incentives, authorities of India and China seem to

<sup>1</sup> International students and entrepreneurs are discussed separately, because of their high relevance in the German immigration framework.



be very effective in the development and implementation of institutional programmes and networks for international migrants, with which previously emigrated persons are supported explicitly and maintain a link to countries of origin. Thus, by these institutional strategies mobile individuals can be attracted successfully back to the country of origin (Wogart & Schüller, 2011).

In this vein, it is argued that other industrialised and transforming countries are strongly competing and the authors argue that through competition for professionals by these emerging countries *the global war for talents* has intensified (ibid.: 6).

Finally, it can be argued that besides high bureaucratic barriers (Angenendt & Parkes, 2010), also cultural and language barriers play an important role in the consideration of a potential immigration of professionals to Germany (Finke, Der Spiegel, 11.05.12). This includes also the domestic political and public controversy since 2000 in Germany (Mayer, 2013), regarding the question whether the skilled worker shortage should be compensated by the recruitment of foreign professionals or by specific training of domestic unemployed, as well as by the strategic education of young persons. The consideration of the recruitment of foreign professionals implicates the discussion around the creation of a culture of acceptance of these immigrant segments (*Willkommenskultur*)<sup>2</sup>.

These aspects that are reflected critically in the academic literature are discussed with regard to the success of the European Union and especially Germany in the attraction of professionals. Accordingly, it is argued that although Germany has advanced significantly in the implementation of legal reforms for providing incentives for the immigration of professionals and has started different public initiatives (Mayer, 2013), in order to attract professionals and researchers the achievements remain quite small, which is in turn related to still too high bureaucratic and cultural barriers, as well as to too few incentives for high-skilled movers, above all for professionals from Asian emerging countries (Angenendt & Parkes, 2010; Wogart & Schüller, 2011). Therefore, it seems crucial to supply incentives beyond reducing hurdles that are, for instance, related to the freedom in designing mobility according to individual needs and visions of the future. Germany's general immigration policy is, however, aligned towards permanent stays of professionals in order to compensate occupational bottlenecks in a long-term, meaning that in the legal immigration frame circular migration is indeed allowed but not explicitly promoted. This signifies that without an explicit permission or special arrangement, exit from the country is limited to up to six months, and in the case of the Blue Card to up to 12 months. Thereafter the residence permit expires. This demonstrates that the permitted period of time is too short to stimulate circularity, and as a consequence the attractiveness of high-skilled immigration declines (Schneider & Parusel 2011: 34).

### *International students*

The category of international students can embrace different kinds of immigrants, such as university students, language school students, apprentices or Au-Pair students. However, in this literature review the focus is set explicitly on international university students, due to the fact that the limited existing literature mainly refers to this student immigrant group.

This group is in a certain way discussed in similar ways as high-skilled immigrants in general. They are perceived as one outcome of globalisation, because this process has facilitated the academic mobility importantly, meaning that “[e]ducation and research opportunities abroad have become more accessible, and in many regions efforts to increase capacity have not kept up with need and demand” (DAAD, 2012: 1). In particular, international cooperation and student exchange among universities has increased through the intensification of the interconnectedness of different geographical regions.

In the recent academic literature, mostly the benefits of these developments are discussed, stressing that international students contribute to Germany's progress. The respective literature mostly por-

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<sup>2</sup> For a detailed discussion see below



trays a sometimes critical review of public discourses. Furthermore, there are studies that address in particular the networking capacity that points towards the interconnectedness between international students in Germany, as well as to transnational ties and practices that are linking international students with their countries of origin. Both topics will be addressed in the following sections.

International students are considered in many aspects as favourable for closing gaps in Germany's long-term demographic, economic, and educational development, as summarised in the following five points:

*First*, it is argued that international students represent generally spoken a mainly young immigrant segment, which can contribute for a longer time to the German labour market than other immigrant groups, provided that they stay after graduating for a longer period of time. This is particularly relevant for many European immigration countries and especially for Germany, because of expected future development issues due to demographic change. In line with this idea, international students could contribute to a positive demographic development in the country (Kolb, 2006).

*Second*, from a national economic point of view, it is assumed that international students receive a solid university education in Germany. Therewith, there are favourable conditions for getting excellent job opportunities. Accordingly, this means a win-win situation: while immigrants will obtain outstanding incomes, the state will receive monetary returns by income taxes, and the national economy in general will receive revenues by expenditures for subsistence (Schmidt, 1997; Kolb, 2006). Furthermore, it is assumed that this immigrant group will suffer less from unemployment, leading to fewer charges on the social security system (Klabunde, 2014).

*Third*, it is supposed that international students can contribute positively to the learning atmosphere and enhance it due to the enrichment by different languages, perspectives and cultural attitudes that could be beneficial for those German students, who do not have the possibility to study abroad to obtain intercultural experiences (ibid.). Additionally, it is argued that international students have a distinguished perspective and expertise with regard to certain topics, given their formation in different educational systems. Thus, they can influence teaching through approaching contents in a different way that can lead to diverse thematic and didactic seminar methods (Ward, 2001). In this vein, the interaction with international students can have an important contribution in preparing domestic students for a globalised world, in which the communication with foreign actors is crucial.

*Fourth*, after graduating, international students could represent, due to their particular commercial understanding and intercultural communication skills, significant contact persons, particularly relevant for the export-oriented German economy (Klabunde, 2014).

*Finally*, it is argued that next to pronounced intercultural skills, international students possess particular sensitivity for linguistic proficiencies that facilitate the language learning process of the receiving country (Kolb, 2006), leading to fewer hurdles and less costs in the integration process in Germany.

International immigration by foreign students plays an increasingly important role in Germany. According to Isserstedt and Kandulla (2010), in 2009 after foreign students, who obtained their qualification abroad (*Bildungsausländer*) from European countries, Asian international students were the most significant *Bildungsausländer* group in Germany (2010: 11). In comparison to classical immigration countries of foreign university students, such as the USA or UK, the numbers of Asian *Bildungsausländer* in Germany are still very small (ibid: 9), and as illustrated in the report *Characteristics of Temporary Transnational Migration* (D.1.2), most Asian students do not stay permanently in Germany, which is assumedly also related to strategic political reforms in sending countries for promoting circular, temporary, or return migration. According to Wolgart and Schüller, especially the governments of India and China accomplish effective legal, economic and social incentives in order to maintain tight contact or to stimulate international students to return (2011: 5) that probably counteract the objective that these migrant segments stay over a long period of time or permanently

in Germany.

Schüller and Schüler-Zhou analysed Chinese student and alumni associations and note that Chinese students maintain strong links to families, communities and state institutions in sending countries but also seek linkages to the German society, as the following quotation reveals:

*These associations offer opportunities to exchange information and also help to establish connections with home regions in China. Some of them enjoy financial support from the Chinese Embassy or the consulates, from the local governments of their hometowns in China and from overseas Chinese business leaders. One of the most important networks in this regard is the Federation of Chinese Scholars and Students Associations in Germany, founded in 2002 and located in Frankfurt/Main. Its primary mission is to promote communication and interaction between Chinese students, scholars and local Chinese communities and German society at large (Schüller and Schüler-Zhou, 2013: 13).*

This statement indicates that in the case of Chinese students transnational networks are created by cross-border social formations, as well as promoted actively by Chinese state institutions', local Chinese governments, or by other overseas transnational actors and migrant organisations. Therewith first important foundations are laid in order to institutionalise solid transnational social spaces and border crossing social practices in the near future. Nonetheless, there is also the interest to stay in active communication with the German society. This indicates that emerging Chinese migrant organisations in Germany aim to stimulate the university student exchange in a long run. It likely also portends that a more intensive post-graduate temporal or permanent stay is at least considered for the future. In order to obtain more detailed information on emerging Chinese and other student networks; its specific social practices with regard to sending and receiving countries and communities, as well as with regard to other Chinese migrant organisations, further in-depth research needs to be carried out.

### *Migrant entrepreneurs*

The importance of migrant entrepreneurship in Europe has been growing since the 1980s and in many cases migrants are more likely to be self-employed than the equally skilled native-born population (Baycan-Levent & Nijkamp, 2009). For the case of Germany, a study by the German Institute for Employment Research (IAB) found that the share of migrants between 18 and 64 years who founded a business between 2008 and 2012 is with 5.3 per cent of the whole migrant population<sup>3</sup> equally high as the share of business foundations among people born in Germany (Karriere Spiegel, 2013). Another study argues that the share of migrants founding businesses is proportionally higher as compared to the total population in Germany, for instance migrants founded one third of all businesses established in 2010, and migrants are three times as likely to become entrepreneurs as the native German population. Yet, migrant businesses often operate for a shorter period of time, so that the high number of liquidations compensates for the surplus of business foundations (Leicht *et al.*, 2010). The relatively short duration of migrant businesses in Germany is on the one hand caused by unsuccessful business plans, which force migrants to exit self-employment again quickly. On the other hand, migrants often use self-employment as a means to prevent unemployment. As a consequence, in many cases, migrants tend to exit self-employment once they have got the opportunity to work in paid employment again (Baycan-Levent & Nijkamp, 2009). Furthermore, regional differences between the German federal states are significant, showing that, for example, the state of *Baden-Württemberg* hosts the highest number of migrants but the lowest number of migrant entrepreneurs in a national comparison (Leicht *et al.*, 2010).

Baycan-Levent & Nijkamp (2009) provide an overview of existing qualitative research on migrant entrepreneurship in Germany. They show that migrant entrepreneurs in Germany tend to be self-se-

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<sup>3</sup> In this research migrants were defined as people born outside of Germany, independent of their nationality.

lected with respect to human capital, age, years since migration, family background characteristics, home ownership, and enclave living. Migrants maintaining strong intergenerational links, homeowners, as well as migrants experiencing financial worries or discrimination are more likely to be pulled into self-employment. Also, the likelihood of migrants becoming entrepreneurs increases with age and time elapsed since migration. EU migrants are more likely to become entrepreneurs in Germany than nationals from third countries.

Since January 2005, self-employed foreigners can be granted a residence permit in Germany under the condition that they produce a sound business plan, contribute to innovation and research in Germany, and provide the necessary experience and capital to establish and manage the proposed business. After three years, and in case of a successful realisation of the planned activity, which needs to provide for the household income, the self-employed migrant may be granted a settlement permit (*Niederlassungserlaubnis*), allowing permanent residence and permitting migrants to work in Germany for an unlimited period of time (BAMF, 2014a: 78).

Unemployment is not the main cause of starting a business, but the motive for migration often is the lack of opportunities to start a business in their home country. Most migrants who come to Germany under this immigration scheme are educated above-average and have worked in their respective business segment before. Revenues are moderate with about 50,000 € annually. Most migrants did not invest 250,000 € or employ at least five people when they started their business, which are sufficient criteria to be granted access to the scheme. Yet, also without fulfilling these requirements migrants can be granted residence as an entrepreneur in case they are experienced in self-employment, have got a sustainable business idea and secure funding (Block & Klingert, 2012).

#### *Family reunification and marriage migration*

The volume of migration to Germany for family reunification has steadily declined from the early 2000s on (Kreienbrink & Rühl, 2007). This trend can to some extent be explained by the EU enlargement, leading to the fact that nationals of the new member countries do not need a visa anymore to enter Germany. Yet, as compared to the EU average, marriage migration and migration for family reunification still is of relative high importance in Germany. In 2009, 44.4 per cent of residence permits were issued for family reunification reasons. This number lies 16.2 percentage points above the EU average (Aybek *et al.*, 2013). Migrants entering Germany in the context of family reunification are expected to stay in Germany on a long-time basis and are therefore not considered temporary migrants by the government (BAMF, 2014a). On the other hand, migration for the purpose of family reunification is often closely linked to previous labour migration, which explains the high number of Indian women joining their husbands who are employed as skilled or high-skilled workers in Germany. In that sense migration for family reasons including marriage migration in many cases is “female” (ibid.)

Another aspect of marriage migration is the migration of spouses, mainly female and from developing countries, with the purpose of marrying a German partner, whom they not necessarily know. The rising importance of tourism to developing countries, particularly in Asia, in the 1970s has entailed a boom of agencies for the intermediation of spouses from developing countries for German “customers”. These men generally choose their prospective brides from a catalogue, a service provided by agencies and more recently via Internet. The proportion of Asian women is about 15 per cent of the total number of women coming to Germany in the context of this kind of marriage migration (Stelzig-Willutzki, 2012). Thailand and the Philippines are the Asian nations with the highest proportion of marriage migration to Germany (Stelzig, 2005). Ruenkaew (2006) illustrates for the example of Thailand that there are three ways in which women get involved in marriage migration to Germany (1) after internal labour migration and often a failed marriage in Thailand, (2) for women born in

Bangkok directly without previous migration, or (3) after being engaged in prostitution, often marrying a customer.

### *Refugees and asylum seekers*

Legislation related to asylum is regulated by German constitutional law (*Grundgesetz*); Article 16a states that politically persecuted foreigners enjoy the right to asylum in Germany. Political persecution, as defined in this context, can be executed by the state of the sending country or any organisation that has taken over the role of the state (quasi-state persecution). The definition of a refugee is based on the wording of the 1951 Geneva Refugee Convention, which says that a refugee is: *...any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country* (UNHCR, 2006: 16).

In 2005, in the context of the New Foreigner Law, gender was explicitly included as a recognised reason for persecution. Applications for asylum are treated on an individual basis by the BAMF, and foreigners whose application is denied can appeal against this decision in court. Yet, since a change to constitutional law in 1993, persons entering Germany through a safe third country do not enjoy the right to asylum because they could have applied for asylum in the country they entered through. Practically this means that refugees who are eligible for asylum in Germany can only enter via air or sea and not via land (BAMF, 2014a). This change of legislation had significant consequences for the protection of refugees in Germany and the number of people who were granted asylum. The conservative government in the early 1990s had sought to limit the increasing number of refugees entering Germany to apply for asylum, and to stimulate the integration of migrant populations already residing in Germany. In the context of politics of European integration, Germany tried to promote the creation of a common European legislation with respect to refugees and asylum (Klusmeyer & Papademetriou, 2013).

German legislation seriously affects the living conditions of asylum applicants, who are forced to live in detention centres and are denied the right of free movement within Germany. Social benefits are almost exclusively provided in-kind and not on a monetary basis. The German constitutional court reconsidered some rejected cases of asylum applicants, arguing that not all European states could be considered safe-third-countries of entry (*ibid.*). These legislations and policies were established in the 1990s but currently still affect the living conditions of asylum seekers in Germany (Löhlein, 2010). They caused an intensive debate about the human rights of refugees, asylum seekers, and migrants in general. It was particularly initiated by German and international human rights organisations and took place in an increasingly xenophobic and racist political and societal climate. Since the early 1990s, much of the academic literature on refugees and asylum has concentrated on different aspects of the precarious situation of refugees and asylum seekers in Germany (Täubig, 2009; Kühne & Rüssler, 2010), or on their life stories (Heinrich & Hano, 1999; Krumbiegel & Arnold, 2005, Suvak & Hermann, 2008).

### Literature review: from Germany to Asia

In times of ever increasing global mobility, Asia has become a more attractive region for German students, professionals and life-style migrants. While, for example, numbers of German migrants to the USA have remained relatively stable over the past two decades, numbers of German migrants moving to China have increased more than eleven times from 263 persons in 1991 to 2,928 persons in 2012 (BAMF, 2014a:154). This increase of the volume of German migration to China is part of a global trend, which shows that China has become an increasingly attractive destination for migrants

from developing and developed countries in Asia, but also for European countries and the USA (IOM, 2013: 77). Literature and statistics on migration from Germany to Asia are even scarcer than publications about migration from Asia to Germany. Due to this limitation of data, the following sections particularly focus on the most important categories of migrants moving from Germany to Asia: students, professionals including researchers and intra-company transferees, as well as ‘others’, which include retirement migrants and life-style seekers.

#### *Professionals: Qualified and highly-qualified migrants*

In the context of increasing global mobility, professionals moving from Germany to Asia are another important category of migrants next to students. Statistics of Germans emigrating out of Germany do not include information about the purpose of the stay abroad or the level of education of these emigrants. Therefore, no figures about the volume of emigration of skilled or high-skilled Germans exist, who often migrate temporarily to work on a project or assignment abroad before they return to Germany (BAMF, 2014a: 150). There are different sub-categories of professional emigrants from Germany and different schemes under which they (temporarily) find employment in another country.

In 2012, the *International Placement Service of the German Federal Employment Agency (Zentrale Auslands- und Fachvermittlung – ZAV, Bundesamt für Arbeit)* arranged job placements abroad for 6,489 Germans, which constitutes a decrease of 31 per cent as compared to 2011 (9,421 placements). The sectors in which these job placements are based include development cooperation (442 persons) and international organisations (101 persons). With 77.7 per cent, the vast majority of these arrangements was made with employers in European member states. The share of Asia as receiving region has been constantly growing from 4.9 per cent in 2007 to 6.6 per cent (426 placements) in 2012 (BAMF, 2014a: 276). Two further important sub-categories of Germans moving temporarily abroad are intra-company transferees (expatriates) and researchers.

The Oxford English Dictionary broadly defines an expatriate as “a person who lives outside their native country”. Yet, in the current use of language the term refers to skilled or high-skilled employees, who are sent to a branch office abroad for a limited period of time by an internationally operating company, or as “highly skilled temporary migrants and accompanying spouses” (van Bochove & Engbersen, 2013). A 2010 study by the British magazine *Economist*, based on 400 interviews with young managers worldwide, found that about 80 per cent of the respondents would be willing to spend some time outside their own country for professional reasons. One important motive for this attitude is career enhancement, although companies find it increasingly difficult to offer an adequate leadership position after the expatriate’s return (Expatriate-News, 2014).

In comparison with nationals from other countries, German employees seem to be less willing to move abroad as intra-company transferees. According to a study by the market research institute IPSOS, about one third of German employees would move abroad for two or three years for professional reasons if they were offered the opportunity, particularly if they could return to their previous position after return to Germany. Important motives would be a salary increase, a higher quality of housing, and the perspective of gaining international experience, which could be used for career enhancement. Table 5 lists the most important incentives, which companies can provide to motivate their employees to temporarily move abroad as an intra-company transferee.



**Table 5** Incentives that might motivate employees to temporarily move abroad (in per cent) (Source: IPSOS, 2012)

|                                                          |    |
|----------------------------------------------------------|----|
| Guaranteed return to previous position in Germany        | 69 |
| Tickets for return visits                                | 65 |
| 10 per cent salary increase                              | 64 |
| Language training offered                                | 63 |
| Further vocational training offered                      | 63 |
| Company car                                              | 61 |
| Possibility for spouse to find adequate employment       | 58 |
| More holidays (1 week)                                   | 57 |
| 5 per cent contribution to costs of moving               | 56 |
| School tuition for children offered                      | 55 |
| Assistance for finding adequate housing and schools      | 53 |
| Housing for one month offered                            | 52 |
| Assistance in selling/renting house in Germany           | 52 |
| Compensation for financial loss (selling car in Germany) | 47 |
| Financial assistance for moving of pets                  | 32 |

Although considered important by most sending companies, many expatriates and their families are not interested in learning the language of the host country and in cultural training. Nonetheless, the major reasons for dissatisfaction during the stay abroad are related to problems of cultural adaptation, as well as communication in the local language. The dissatisfaction of spouses, often caused by the lack of adequate employment opportunities, is another reason for discontent during the stay abroad, which might lead to a preliminary return of the intra-company transferee (IPSOS, 2012). Furthermore, preparation for accompanying spouses of expatriates is often inadequate, leading to isolation at the destination (Kupka *et al.* 2008). A study by Selmer (2006) based on a survey with 251 business expatriates in greater China shows that the extent of adjustment of the business expatriates and their families also differed by location. Expatriates in Singapore as well as Hong Kong were better adjusted and content with their living situation than their counterparts in mainland China. The authors explain this observation by the more ‘international’ life in Singapore with easier access to international food and entertainment (Selmer, 2006). Thus, preparation, ability and willingness to adapt to the cultural environment abroad, as well as access to an ‘international’ social and cultural environment have been identified as major facilitating factors for the success of the expatriate experience in much of the existing literature.

Often, expatriates are analytically treated as a separate category of migrants or mobile people because of their different lifestyles and their position as temporary intra-company transferees. Yet, van Bochove and Engbersen (2013) argue that a conceptualisation of expatriates as either cosmopolitans or people locked in an ‘expat bubble’ neglects the complexity of their identities and engagement with different communities (co-nationals, other expatriates, ‘locals’) in different spheres of life. In many cases, expatriates’ engagement in the transnational social space between their country of residence, the country of temporary residence, as well as potentially other countries, makes them very similar to other groups of migrants, despite the public discourse (van Bochove, 2012). Debates about researchers going abroad have often been framed in the context of brain drain or brain circulation. Originally, in the context of scientists from developing countries moving to more economically developed countries, the discourse has also reached the emigration of scientists from developed countries (Edler *et al.* 2011).

### *International students*

Analytically, university students, who live in Germany and leave the country, can be divided into distinct subcategories; some of these will be discussed below in order to delimit the understanding of international students from Germany in this paper.

Principally, from a methodological point of view, international university students can be perceived as: a) German nationals or foreigners with a residence or settlement permit, who immigrate

temporarily to a third-country in order to study several semesters, or a complete course of university studies, and b) foreign nationals, who previously studied a semester or a complete study and return to the country of origin. While the former group can be defined as temporary migrants, the latter group can be considered international return migrants, who mostly represent the above discussed sub-category of *Bildungsausländer* students. International students can also be subdivided in another way, such as: a) international students who are German nationals and b) international students, who represent *Bildungsinländer*, meaning German university students, who have a foreign nationality but possess a residence or settlement permit in Germany. Another distinction can be accomplished by dividing international students from Germany with regard to the particular motivation and therewith the durability of university stays abroad. In the annual report of the *German Academic Exchange Service* (Deutscher Akademischer Austauschdienst – DAAD) and the *Institute for University Research* (Institut für Hochschulforschung – HIS) “degree mobility”, meaning a long-term stay and “credit mobility”, representing a temporal sojourn are distinguished: while the first concept “covers all study visits in which a degree is gained abroad [the latter term] refers to study-related visits abroad in the course of a domestic study programme, which lasted at least three months and/or during which at least 15 ECTS credits were acquired. In addition to temporary study visits abroad, this also includes visits abroad as part of placements, language courses, study tours, project work and summer schools” (DAAD/HIS, 2013: 58).

In this section the authors’ focus is set on German nationals or foreigners with a residence or settlement permit, who immigrate temporarily to a third-country in order to study several semesters, or a complete university study. Therewith, international university students from Germany are not differentiated in *Bildungsausländer*, *Bildungsinländer* and German nationals, nor distinguished between degree and credit mobility.

The general discussion about international university students, who depart from Germany in order to accomplish semesters abroad or complete their studies in a foreign country, is principally embedded in a discussion similar to the above noted debate on foreign international university students’ entrance to Germany. Accordingly, it is argued that the mobility of students and scholars is not a new social practice and – especially in the case of Germany – internationalisation was and still is an essential part of academic activities (Isserstedt & Schnitzer, 2005). Although the significance of internationalisation of science was over the last centuries in a permanent process of transformation, recently the process of globalisation, including technological advances in communication and transport has not only restructured the conditions for economic practices worldwide, as well as the scope of political action, but has also substantially reshaped the academic arena of action over the last years. Players in this globalised world were and are compelled to respond to the new circumstances by adapting to, as well as by contributing to shaping emerging structures under the process of globalisation. This is also the case in the context of universities; while internationalisation constituted over a long period the academic identity and particularity of universities in Germany, educational aid programmes by formal institutional funds were established after the Second World War. One prominent example is the Fulbright programme that was initiated in order to support German students’ university study abroad (Isserstedt & Schnitzer, 2005: 4). In recent years however, internationalisation, meaning, for instance, studies abroad are considered imperative in times of globalisation (ibid.). Universities, understood as global players in education, are affected by globalisation and need to change their respective structures in order to remain competitive (Barrow *et al.*, 2003; Eggins *et al.*, 2003). In this context, competitiveness can be approached in two different ways:

On the one hand, the term can mean that countries, such as Germany, had to reform higher educational institutions in order to create favourable conditions for university students’ inflows and outflows. Therewith not only future professionals should be attracted, but also German future professionals could be prepared adequately to work effectively in globalised economic and political

frameworks, and contribute in particular to Germany's future development and performance in the global market. Therewith, this conception addresses Germany's competitive role as a business location. By attracting international students and sending students temporally abroad, a strengthening of the German business location is envisaged. On the other, competitiveness, as addressed by Isserstedt & Schnitzer (2005), or Barrow et al. (2003) denotes the competition among universities in a global context. The creation of favourable conditions for international student's inflow and outflow, and other international cooperation signifies the reinforcement of the German science and research location (Isserstedt & Schnitzer, 2005: 5) with the objective to compete successfully on a global level.

Generally spoken, in academic activities it is aimed to create and to enhance the knowledge society, which in turn is linked to the future development of societies. Accordingly, the internationalisation of university education implicates the task to help shape the worldwide knowledge society by the promotion of academic exchange (ibid: 4). Principally, this can be carried out in two ways: Due to important advances in communication technologies, this can be achieved virtually, from which both students and scientists could potentially benefit (ibid.). However, the virtual knowledge transfer bears the disadvantage that different levels of language skills, unequal access to communication media, and fee-based information in combination with marginalisation in some regions can lead to unequal opportunities of participation.

Another form of scientific and educational exchange is based on geographical mobility. Therewith, particular knowledge can be exchanged directly, for instance, through student or researcher exchange by respective programmes, which include temporal sojourns for accomplishing particular study modules, or in few cases whole university courses abroad. Student and academic exchange is formally promoted in Germany. Prominent examples are represented, for instance, by the *European Community Action Scheme for the Mobility of University Students* (ERASMUS) founded in 1987, by the *German Academic Exchange Service* (DAAD) and its several scholarships for worldwide temporal student and researcher exchanges, as well as by different post-graduate student and post-doctoral researcher programmes of the *German Research Foundation* (*Deutsche Forschungsgemeinschaft* – DFG). Only a small body of literature addresses the subject of student exchange and the adverse preconditions in Germany for accomplishing university studies abroad. Weiß and Wiewiorra (2011) discuss this issue by addressing tight schemes of Bachelor or Master studies as a result of educational reforms under the Bologna Process. Accordingly, the argumentation is that a challenging scheme of studies in combination with very high workloads represent central factors in Germany, which limit the freedom for considering an university stay abroad. On the other side, there is also evidence that the relevance of university studies abroad is not of high importance as an additional qualification in Germany. Hoffmann and Forch (2011), who refer to data of a DAAD study, argue that in 2009 only in 50 per cent of all cases analysed, study credits achieved abroad were recognised in Germany, and in 18 per cent of the cases there was no recognition of study credits received abroad.

In most cases, academic literature refers to scientific and educational temporal emigration only in general terms. As noted above, in some publications the advantages of student exchange with regard to individual qualifications are highlighted, or the expected benefits for Germany's development are focused on. However, there is hardly any literature that explicitly focuses on particularities in the outflow of international German university students. The following points summarise the current situation:

- While academic internationalisation by researcher and student exchange is not a new context in Germany, new study countries are focused on and selected by German international students in recent years, such as some Asian countries. Why there is a turn towards Asian study countries remains still an open question to which no literature seems to refer.
- There is neither literature found regarding networks and other transnational ties of international students from Germany, who study abroad. Particularly, there are no studies and literature with

regard to transnational ties and migrant networks of German university students in new study countries, such as China.

- No significant literature was found with regard to benefits or disadvantages that international academic agreements and cooperations – that are often manifested in international student exchanges – comprise for receiving countries, especially for Asian countries.

*Other categories of migration (lifestyle, retirement, care)*

After discussing the most important categories for migration from Germany to Asian receiving countries, now other existing, but less significant migrant categories will be addressed. While some of them will be discussed in more detail, others will only be considered conceptually. This mainly has to do with the current theoretical information situation: while literature on the related categories of retirement migration and care migration is scarce, literature on lifestyle migration from Germany to Asia is almost non-existent. Hence, given the limited information situation, a theoretical overview on retirement and care migration will be illustrated and critically discussed in the following.

(a) *Lifestyle migration*: This category represents a kind of emerging North-South migration that is associated with several societal processes over the last years, such as individualisation, globalisation, the facilitation of human mobility due to advances in communication and transportation technologies, an increased flexibility of labour organisation, and a general rise in wealth (O'Reilly & Benson, 2009). In contrast to labour or educational migrants, lifestyle migrants represent a highly heterogeneous category with very distinct motivations as notable in the following quotation: “They travel from and to very different places with apparently diverse motivations; they demonstrate distinct mobility patterns, some returning annually while others migrate permanently; finally, they migrate at various points in the life course and in different familiar situations” (ibid: 1). In this vein, motivation of lifestyle movers can vary and embrace temporal or permanent migration due to health, retirement, leisure, escape from urban cities, hedonism etc. Finally, lifestyle migrants are distinct from other classical forms of mobile people, because this group’s objective is mostly “the (re)negotiation of work-life balance [meaning to follow the main idea] of a good quality of life and freedom from prior constraints [that results in] a search, a project, which continues long after the initial act of migration” (ibid: 2).

These uncertainties that lifestyle migrants are confronting in the trajectory of their migratory project, are also reflected in the migration patterns, which in turn make the empirical analysis of this category very difficult.

(b) *Retirement and care migration*: Retirement migrants can be differentiated into several forms and accordingly this category could be approached theoretically and empirically due to these different forms of appearance. In this subsection, different typologies will be illustrated and thereafter some particularities of the relationship between retirement and care migration will be addressed. The section will conclude by considering some empirical information on retirement migration.

**Table 6** Potential forms of retirement migration (Source: Authors' compilation based on Schneider, 2010: 6-7)

| <b>Differentiation due to...</b> | <b>Resulting types</b> |                        |
|----------------------------------|------------------------|------------------------|
| Space                            | continental            | intercontinental       |
| Duration                         | temporary              | permanent              |
| Legal status                     | Return migrants        | German nationals       |
| Motivation                       | „amenity“ migration    | „dependency“ migration |

Table 6 above shows that retirement migration can result in different types and therewith can have different characteristics, whereby some of them are related to each other. Accordingly, retirement migration can be carried out in the form of continental migration, meaning within the European continent, or accomplished in the form of international migration. The most attractive receiving countries in Europa are represented by Italy and Spain (Deutsche Rentenversicherung, 2012), whereby Spain is the most important immigration country for German nationals (Schneider, 2010). The most relevant

receiving country in Europe that is not representing an EU-member state, is Turkey. In the context of intercontinental retirement migration, the USA represent the most significant country of inflow.

Retirement migration can also be differentiated by the duration of stay. Consequently, temporal stays or permanent stays are possible options. The legal status of retired people, related to the distinction between return migration of people who had migrated to Germany before and a stay abroad by German nationals, is a further distinguishing criteria. In both cases, principally temporal or permanent stays are possible. There is, for instance, evidence that most return migrants leave children back in Germany, and temporal stays with the aim of visiting family members are therefore usual. Finally, retirement migration could be divided into the following types:

(a) “Amenity” migration refers to an active strategy, wherewith principally the improvement of the quality of life is aimed at (Schneider, 2010: 4). This type of retirement is linked to the sub-category of lifestyle mobility.

(b) “Dependency” migration refers to mobility based on economic necessities and deficiencies due to the reduction of incomes after retirement (ibid.). Both types of exodus can represent continental or intercontinental forms of migration. Furthermore, both can represent temporal and permanent forms of mobility and principally amenity and dependency migration can be accomplished by return migrants, as well as by German nationals, whereby the possibilities that return migrants represent dependency movers, who move to their home regions is higher than vice versa.

Dependency migration can also be manifested in care migration. The growing cost of old-age homes, high charge and a general lack of professional care personnel in Germany (Connolly, *The Guardian*, 26.12.13) are representing aspects that probably encourage the immigration of elderly people, who require nursing care, to third countries. The costs, for instance, in Hungary, Greece or Thailand amount on average to between a third and two-thirds of the existing prices in Germany. Related to the deficiencies in Germany, it is also argued that the care standards in third countries are much better than in Germany (ibid.).

Finally, recently new incentives for retirement migration are achieved by the elimination of fees for sending pension payments to third countries in 2013 (Deutsche Rentenversicherung, 2013). Based on the German Pension Insurance (Deutsche Rentenversicherung), Schölgens argues that within the last ten years pension payments have increased by 35 per cent (Schölgens, *Mitteldeutsche Zeitung*, 13.01.14). It can be assumed that these numbers will increase in the future, due to growing quantities of retirement homes abroad and given to the payment incentives described above.

## **Inventory of National Policies and Practices**

As the previous sections suggest, temporary forms of immigration play an increasingly important role in Germany. The objective of this section is to put a particular focus on temporary immigration from Asia to Germany. Therewith, it is aimed to better understand which migrant categories exist and are relevant, as well as what the specific characteristics are within these immigrant groups. Therefore, in the first part of this section we discuss existing research and national immigration policies by using relevant academic literature and policy reports.

### **Existing policy documents, regulations and laws**

Immigration from Asia to Germany is marked by diverse types of human mobility. This trend stays closely in relation to political opening and closing mechanisms, and these mechanisms in turn are linked to societal and global trends. There are different moments, in which these political tools are used and are influencing the Asian-German immigration context significantly. Before addressing particular immigrant categories in Germany, it seems important to consider and discuss in detail public initiatives and immigration policies after the year 2000.



Since 2000, the development of the German immigration policy shows that the country started again to gradually open the national borders after the recruitment ban in 1973. In the guest worker programme after the mid-1950s recruitment was mainly based on low-skilled labour immigration from European states. To the present, a recruitment ban for non-European low-skilled workers is maintained and the need for low-skilled immigrant segments has recently been addressed through the EU enlargement and the permission of free movement of workers in the frame of the European Union member states that currently includes labour immigration principally from Poland, Bulgaria and Romania (BAMF, 2014a).

Due to the shortage of skilled and high-skilled persons that is increasingly discussed as a future development issue caused by demographic change, Germany turned towards an active immigration policy, in which non-European countries play an increasingly important role (Mayer, 2013). One reason for the increasing relevance of Non-European immigrants could be the fact that most EU member states suffer from the same demographic problem, which is the ageing and shrinking of populations (Angenendt & Parkes, 2011). To compensate this dilemma, political initiatives and reforms were oriented towards actively attracting international professionals. This political opening process towards the attraction of foreign skilled and high-skilled personnel broadens the immigration scope to Asian migrant sending countries.

One of the first political initiatives to attract professionals to Germany was the so-called German “Green Card”, also known as the immediate-action programme to cover the IT-skilled worker gap (*Sofortprogramm zur Deckung des IT-Fachkräftebedarfs*), implemented in 2000. This temporary high-skilled labour recruitment programme aimed to attract IT-experts from non-European countries to Germany. The intention was to offer high-skilled IT-personnel a five year residence and work permit in order to meet the needs of Germany for IT-specialists in a short-term (Westerhoff, 2007). Accordingly, in the frame of the German Green Card from 2000 to 2004 around 18,000 IT-Experts arrived in Germany, mainly from India, Russia, Belarus, Ukraine, the Baltic States and Romania (Kolb, 2005). The high-skilled labour recruitment programme was a relatively spontaneous reaction to the shortage in the IT-sector, but the first explicit political measure to attract professionals to Germany, which however did not meet expectations in terms of numbers (Westerhoff, 2007).

Nonetheless, the German government kept this political direction and the programme disembogued in 2005 to the New Foreigner Law (*Neues Zuwanderungsgesetz*) that, inter alia, institutionalised the privileged entrance of professionals. In this vein, the New Foreigner Law (NFL) represented an important legal change related to immigration-concerning politics of the country. The NFL consists of two articles containing policies related to the following aspects: Article 1 is divided into the Politics of Integration (*Integrationspolitik*), and the Immigration Act (*Zuwanderungsgesetz*). Article 2 regulates the free entrance, stay, and settlement of EU nationals in EU member states.

Article 1, which is the core piece of the NFL, contains central aspects regarding the promotion and recruitment of skilled and high-skilled personnel, which can be resumed as follows:

(a) *Reforms in the Residence Act*: According to the reform, short-term stays (visas) are defined in the framework of NFL as an independent residence title. After the entry per national visa, a long-term stay can be requested that is regulated as temporary residence permit (*Aufenthaltserlaubnis*) or as perpetual settlement permit (*Niederlassungserlaubnis*). Temporary residence permits can be granted for educational, occupational, humanitarian or family unification reasons, in contrast perpetual settlement permits can be requested, in combination with the fulfilment of other regimentations (e.g. guarantee of the foreigners subsistence, absence of a criminal record, sufficient knowledge of the language) after a five year period (Schneider, 2007).

(b) *Reformation of temporal stays for studies and vocational training*: In the NFL of 2005, foreigners have the right to obtain renewable temporal residence permission for the purpose of university application, or university studies. Temporal residence permits are also assigned to German language

students and in exceptional cases for school attendance. With the permission of the Federal Employment Agency (*Bundesagentur für Arbeit*) foreigners can obtain temporary legal stays to carry out vocational training (Federal Ministry of Foreign Affairs, 2012).

(c) Changes to the labour migration regulation: Since 1973, there is a general ban of migrant labour recruitment, which remained in force also after the implementation of the NFL, meaning that a fundamental limitation on admission to the labour market is continuing. However, exceptions exist for some occupational sectors and specific cases, such as high-skilled immigrants and their families. For these segments, some processes related to the stay in Germany, such as obtaining visas, residence permits and permanent residence are facilitated. For instance, these migrant categories can obtain the permanent residence permission directly after entering the country. Family members of high-skilled immigrants also have legal advantages, for example, they obtain their labour permission directly after entrance. Entrepreneurs can obtain a residence permit, if the business/investment idea meets the country's particular economic interests, or if there is a regional need that the business idea can accomplish. Educational immigrants have the right to stay for a further year after graduation (since 2012 1.5 years) to look for an appropriate job (*ibid.*).

(d) *Foreign researcher residence*: With the objective to carry out investigations, foreign researchers have the right to receive residence allowance. Thereby it is required that the foreigner collaborates directly with a German research institute that is formally recognised by the BAMF. The cooperation is recognised if there is a hosting agreement between the foreigner and the research institute. The respective residence allowance is defined as a simplified procedure, meaning that the procedure is carried out without the institutional involvement of the foreigners' registration office (*Ausländerbehörde*).

(e) *Immigration due to humanitarian, political or similar reasons*: Germany hosts foreigners for humanitarian reasons or according to international refugee law. An important change to German asylum law in the context of the NFL is the inclusion of the EU Qualification Directive, according to which refugee status will also be granted in case of non-state and gender-specific persecution (EFMS, Migration Report, July 2004).

(f) *Family reunification*: Foreign spouses joining their partners in Germany need to prove that they can communicate in basic German before they are allowed to enter the country. Also, both partners need to be 18 years of age or older. Foreigners who want to bring their spouses to Germany must possess a valid residence permit and be able to provide sufficient living space and resources to make a living. Spouses are allowed to work in Germany. Children must be younger than 16 years of age to join their parents or show the potential and willingness to integrate into life in Germany if they are between 16 and 18 years of age (BAMF, 2013).

(g) *Promotion of Integration*: Social integration into the host country is another important realm in the NFL. In this vein, it is aimed to enable immigrants' widespread and equitable participation in all societal realms. This includes the study of the German language and the obtainment of knowledge about important aspects of the German constitution laws (Schneider, 2007).

These reforms displayed fundamental political decisions for the future immigration policy in Germany. Consequently, the German immigration policy of 2005 was oriented towards the initial attraction of certain types of temporal immigrants from third countries (non-European Union countries). As specified above, these types can be defined as professionals (skilled and high-skilled persons, including academics and researchers, as well as university students). Through different legal measures the entrance and stay of skilled and high-skilled foreign workers and their family members should be facilitated. Thus, the objective was to retain these types of immigrants in the long-term, meaning in other words that temporary high-skilled and skilled immigration should be converted into permanent influxes over time. This in turn is closely related to the shortage of professionals due to demographic changes that the country is confronting. Consequently, the NFL represents a legal corner stone

for promoting the influx of professionals that can be specified in several categories of international migrants, such as locally recruited experts, entrepreneurs, independent skilled and high-skilled job seekers, researchers, academics and international students.

The 2007 Directive Implementation Act (*Reform des Zuwanderungsgesetzes gemäß der EU-Richtlinien*) is an amendment of the NFL, regulating residence in Germany in the categories of family reunification and asylum according to European directives. These European directives entailed the following changes to national law:

(a) Germany fully adopted the 2003 European Council Directive 2003/86/EC on the right to family reunification in 2007. Much of the content of the directive is based on the draft Immigration Act (2001-2004) so that the existing Residence Act, which regulated family reunification before 2007, was only marginally amended. One of the major goals stated in the Residence Act was the promotion of integration of foreigners by means of compulsory integration courses, and through the minimum age of 18 years for the reunification of spouses (Kreienbrink & Rühl, 2007). Two further stated aims of the directive are avoiding “potential abuse through sham marriages and bogus adoptions, as well as combating forced marriages” (Borkert & Bosswick, 2011: 104). A policy brief by the European Migration Network (EMN, 2012) concludes that, despite the media discourse, which suggests that fake marriages and acknowledgements of paternity are a common phenomenon, it is not possible to quantify these cases and to compare their frequency at the European level.

(b) The European Council Directive 2003/9/EC (reception directive) on the reception of applicants for asylum in European Member States as well as the European Council Directive 2004/83/EC (qualification directive) were followed by changes to German national asylum law in 2007. The new national law provides legal ground for the immediate deportation of persons linked to terrorism and related activities. Additionally, it ordains to “sentence traffickers to imprisonment” and “introduced a residence title for victims of trafficking” (Borkert & Bosswick, 2011). “Longstanding cases of asylum seekers“, meaning refugees, who have been for many years ‘tolerated’ in Germany (*Duldung*) without regular residence title were also regulated in this Act (ibid.). Yet, while the European directives seem to promise more rights for asylum seekers and refugees, German NGOs are concerned about their implementation at the national level. They claim that fundamental issues are inadequately addressed, for example the mentioned regulation of ‘tolerated’ persons only applies for few people and ‘chain tolerations’ (*Kettenduldungen*), which leave asylum seekers in limbo for many years in a row, are still a very common procedure.

The law on the regulation of labour migration (*Arbeitsmigrationssteuerungsgesetz*) of 2008 is an additional legal measure to stimulate the attraction of foreign professionals, as well as entrepreneurs to the country. Therefore, the income limit of high-skilled persons, who receive an immediate residence allowance was reduced from the assessment ceiling of 86,500 € to 63,600 €. Meanwhile, the minimum investment amount of foreign entrepreneurs was decreased from 500,000 € to 250,000 € (Federal Ministry of the Interior, 2008). With the implementation of the law also a general legal framework for the procedure of the recognition of foreign qualifications was created. In this vein, the law improved the detection and recognition of professional qualifications (university degrees) that are acquired abroad, in Germany that above all alleviate the recognition procedures of citizens from non-European countries. The legal entitlement was stipulated as a working mechanism, independent of the residence status working mechanism. This means that, for instance, also asylum seekers have the right to recognition of qualifications acquired abroad. In this vein, the law on the regulation of labour migration and its inherent right for the recognition of qualifications has broadened the group of foreign people, who potentially could integrate into the German labour market. Furthermore, the law implicated an additional facilitation of the entrance and stay of scholars and family members from non-European countries (Federal Ministry of the Interior, 2008). In other words, with this law it was intended to remove still existing bureaucratic hurdles and therewith additionally facilitate the pro-

cedure of recognition of university qualifications for professionals from non-European economies. Furthermore, the objective was to give labour market access to professionals, who previously did not have a work permit due to their legal status. Also, the law on the regulation of labour migration represents an attempt to promote the entrance to and activation of already existing high-skilled persons in Germany.

This measure was followed by the Implementation of the EU-Directive for High-qualified Immigrants, Blue Card (*Umsetzung der EU-Hochqualifizierten-Richtlinie*) in August 2012, which is a further measure initiated by the European Union in order to stimulate and facilitate the entrance and temporal stay of high-skilled personnel from third country states. The EU directive was introduced in Germany in August 2012 (BAMF, 2014a). The objective of the Blue Card was to create a particular residence title for high-skilled workers on the EU-level and therewith combating the existing high-skilled shortage more effectively by reducing once again the bureaucratic barriers, as well as to contain brain drain in the EU (Wogart & Schüller, 2011). The Blue Card is temporarily limited for a period of four years. Under certain preconditions, however, facilitated permanent settlement permission can be awarded (BAMF, 2014b). Entitled persons for receiving the Blue Card are those foreigners, who have a German, recognised foreign or equivalent higher education qualification. Additionally, the foreign professionals need to proof an “annual minimum gross salary of currently EUR 47,600” (BAMF, 2014b). Exception exists in so-called bottleneck occupations, represented by professions such as engineers, scientists, mathematicians, doctors, or IT-experts, where the minimum gross salary amounts to 37,128 € (ibid.). The implementation of the directive in Germany also includes the entrance of foreign professionals with the objective to search for a job. Accordingly, foreigners with a German university degree or a recognized or equivalent foreign university degree have the right to enter Germany in order to search for adequate job opportunities. An entry visa allows stays until six months, whereby a proof of a secured livelihood is required (Federal Ministry of Foreign Affairs, 2012).

The EU Blue Card was a particular attempt within the EU community of states to arrange basic principles for control and regulate immigration of high-skilled professionals from non-European countries, meaning that also the high-skilled influx should be facilitated by removing bureaucratic barriers. However, after the implementation of the German immigration policy in the existing Residence Act, the implicated legal rights for professionals exceeded the regulations under the Blue Card for non-European immigrants, meaning that Germany’s immigration policies offered additional benefits for non-European professionals and their respective sending regions. Mayer (2013) addresses these aspects by revealing the following points: a) the short period for the issuance of the perpetual settlement permit, b) job search permit for high-skilled personnel, c) the expansion of income earning opportunities for foreign students (from 90 days to 120 days per year), d) the extension of the period for searching a job after university studies from 12 months to 18 months, and e) the prevention of brain drain by different measures and public initiatives (Mayer 2013:15), and f) the resident permit after completing vocational training in order to find employment in the learned profession (BAMF, 2014a: 91).

Although the Blue Card is recognised as an appropriate step towards the attraction of non-European third country professionals to Europe and especially to Germany in political and academic discussions, the regulation, its implementation, and its success are discussed and critically addressed in the next section.

With the amendment in the employment regulation (*Novelle der Beschäftigungsverordnung*) in July 2013, it was aimed to restructure and facilitate the previous employment regulation. Therefore, different types of skilled foreign workers (Blue Card holders, foreigners with a German University degree, executives and experts, etc.) were subsumed in the second part of the regulation. Additionally, reforms were accomplished for specialised foreign personnel without an academic degree. Previ-



ously, the occupation permit for qualified occupations was granted to foreigners, who accomplished their vocational training in Germany. Yet, this regulation was loosened, and skilled personnel, who received vocational education (minimum of two years) in a third country, can validate the respective certification in Germany. However, the Federal Agency for Employment has a regulatory function, meaning that the institution controls the skilled personnel flows to Germany according to the domestic sectorial needs and existing bottleneck professions (BAMF, 2014a). Furthermore, the regulatory function should serve to avoid brain drain from developing and emerging countries by limiting immigration in the context of bottleneck professions to only selected sending countries (Mayer, 2013).

With the amendment in the employment regulation a fundamentally reconfigured and simplified regulation was accomplished. According to Mayer (2013), the paradigm change towards an offensive recruitment of professionals from Non-European countries, which was initiated through the implementation of the EU-Directive, was transferred to the German employment regulation (ibid: 17). Therewith, also skilled immigrants with foreign qualification have the right to legal recognition and the right to work formally in the respective sectors in Germany.

The law for the improvement of the legislation for international beneficiaries of protection and foreign employees (*Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern*) of August 2013 was designed to enhance the legal framework for both international beneficiaries and foreign employees by addressing foreigners, who already reside or stay in Germany or who are about to receive a residence title. This group of immigrants obtains with this law the right to look for a job, which is appropriate with respect to their qualifications, previous to the obtainment of a residence permit.

In summary, it can be said that since 2000 Germany has endeavoured to attract and recruit professionals from abroad and increasingly from non-European third countries. Since 2005, several legal reforms were accomplished to facilitate the entrance of professionals, and on these grounds it can be argued that Germany currently represents one of the countries in the European Union “with least restrictions on the employment oriented immigration of highly-skilled workers” (OECD, 2013: 15). With the above addressed legal measures, it is aimed to respond politically to the expected adverse impacts of the demographic change (population aging and long-term shrinking) that most of the European countries and especially Germany will confront in the future. Accordingly, through the NFL and the related following reforms, opening mechanisms were created for immigration from third countries that are, however, selective in nature. Since the 1990s the migratory relation to Asia was not of high importance. This is changing gradually in the context of the immigration of high-skilled personnel, initiated in Germany in the afterwards of the German Green-Card implementation. This means that international immigration from Asia to Germany is developing into an increasingly important factor in German society. In this context, public discourses play an important role; on the one hand they can legitimise certain political initiatives, on the other hand, they can stimulate or hinder the development of immigration policies. These sometimes controversial discourses will be discussed in the following section.

## Public discourse on temporary migration in Germany

Under the guest worker programmes between 1955 and 1973 legal opening mechanisms were created in order to attract industrial low-skilled labourers from developing economies. This recruitment measure has substantially shaped immigration patterns. Political discourses and academic discussions were mainly focusing on the benefits for sending and receiving countries, for instance, by increasing employment/income opportunities and respective remittances that were seen as fruitful for the development process in the home region (Kindleberger, 1967), whereby this process potentially would spill over to other societal spheres in countries of origin. Receiving countries could, according to the dom-



inant perspective, fill by this controlled influx labour gaps in certain sectors and advance by this way in their development process (OECD, 1978). After the recruitment stop in 1973, immigration policies changed and accordingly, immigration to Germany was representing a highly selective process that mainly was permitted only for family members of previous immigrants, refugees and asylum seekers, German ethnic immigrants, late repatriates and for few specialised labour immigrants, as well as for a limited number of foreign university students (Treibel, 2008).

Since 2000, and especially since the implementation of the *New Foreigner Law* in 2005, Germany's immigration policy is again in the process of change due to the attempt to create formal incentives for promoting the inflow of certain mobile groups. In this vein, with the exception of refugees and asylum seekers, it was and is attempted to stimulate the systematic inflow of professionals, international students, entrepreneurs and respective family members mainly from Non-European third countries over the last years. In this process, set in motion by several legal reforms in and after 2005, not only shifts regarding relevant sending regions and immigration numbers have occurred, but also qualitatively new patterns of immigration were created. In line with this idea, temporal immigration of professionals from Asian countries, such as China and India, has increasingly gained importance after 2005 (Kreienbrink & Mayer, 2014).

Since political efforts started in 2000 by the implementation of the German Green Card, controversial public discourses have rotated around advantages and threats that new immigration flows assumedly entail. Economic players in Germany have argued that serious skilled personnel shortages are prevailing, that probably will adversely impact economic growth in Germany. As addressed below, the spontaneous reaction of the government of that time was the implementation of the German Green Card that included legal measures and political promotion in order to accomplish the entrance and temporal stay of mostly Asian professionals (Westerhoff, 2007). The initiative has also caused concerns, reflected in political discourses, for instance, in the North Rhine-Westphalia state election campaign in 2000 (Klusmeyer & Papademetriou, 2013: 230). Also the related discussion regarding the threat that additional migrant inflows represent for the conservation of the German *Leitkultur* (guiding culture), initiated by the Christian Democratic Union (ibid.: 231) in 2000 was a further expression of fear. Beside these political discourses, likewise other public discourses were generated by the Green Card implementation, such as the incomprehension that foreigners would be recruited, while more than three million unemployed people existed at that time in Germany. It was therefore claimed to exploit domestic capabilities (i.e. through adequate trainings) instead of attracting new immigrants (Westerhoff, 2007).

In recent discourse, controversial views on immigration are still continuing: on the one hand, the societal creation of a *welcome culture* (*Schaffung einer Willkommenskultur*) that is strongly linked to the debate on the urgent need for professionals, due to skilled labour shortages, demographic change and competitiveness in the global economy, is discussed. In this vein, it is expressed that within the German society positive incentives should be developed in order to increment the attractiveness of the country for professionals (Finke, *Der Spiegel*, 11.05.2012). On the other hand, there is a debate on *poverty migration* (*Armutsmigration*) that thematises recent immigration as a threat for the German social system (Roßmann, *Süddeutsche Zeitung*, 28.12.13) that is in turn associated with adverse development impacts.

These controversial discourses indicate that immigration to Germany is currently polarised between those immigrants, who supposedly represent a development threat (e.g. Bulgarian and Romanian immigrants, who are perceived as poverty migrants) and those, who are associated with development benefits (e.g. professionals, entrepreneurs, international students from Asia), and therefore need to be attracted by particular incentives, such as legal reforms, and through the creation of positive societal conditions (the creation of a welcome culture).

## Conclusion

This report addressed questions about the nexus between recent political measures, prevailing characteristics of migration, and relevant analytical migrant categories in the context of migration between Germany and Asia. As argued in this report, the German government – partially in line with European legislation – since 2005 has introduced a set of new migration policies against the background of emerging demographic changes and a related growing lack of qualified specialists in a range of specialised fields. These developments led to a process of public recognition of the need of experts in these professional areas from abroad, which entailed a shift of the conception of immigration, away from a culture of foreclosure towards a ‘welcome culture’ with respect to particular groups of migrants. This strategy can be situated in the context of the political desire for competitiveness and integration into the global market, which is achieved by highly selective and exclusive immigration policies, and the strengthening of internationalisation, particularly in the sectors education, research, and technological development.

In the context of Asia’s growing markets and increasingly highly educated population, the German-Asian transnational space has received increased attention in the German public debate. Migration between Asia and Germany – which previously had played only a marginal role, also as far as numbers are concerned – in this context has gained momentum as well, yet only for certain categories of migrants. This increase of the importance of migration can be observed in both directions, from Asia to Germany and from Germany to Asia.

With respect to migration from Asia to Germany, the most relevant categories of migrants are students, as well as skilled and high-skilled professionals, and entrepreneurs. The most important Asian country in the context of international student exchange with Germany is China. Both China and India are also important sending countries for skilled and high-skilled professionals, including researchers, to Germany.

In parallel to the growing importance of migration from Asia to Germany, the importance of migration from Germany to Asia has also increased in recent years. The most important categories of this migration flow are students, professionals, as well as – to a very small extent as far as numbers are concerned – retirement migrants and life-style seekers. Flows of professionals to Asia have to be distinguished by the nature of their employment. On the one hand, the importance of Asia, and particularly China, as destination for intra-company transferees has significantly increased over the last two decades. This trend is related to global economic transformations and growing foreign direct investment flows towards these countries as well as resulting needs for a highly specialised workforce from Germany.

There is a considerable lack of literature on the qualitative aspects of skilled migration from Germany to Asia as for the case of migration from Asia to Germany. Yet, it seems that the general trend of an increasing importance of mobility between Germany and Asia is related to the expansion of international business relations in the context of globalisation. Migration related to this process generally has got a temporary nature and is based on a circular exchange of highly educated professionals as well as students. These categories are also the groups of migrants, which the German government (and other European governments) try to attract in the context of the new legislation, particularly related to the Blue Card. However, the new German legislation for skilled and high-skilled immigrants tries to target migrants with an intention to stay for a longer period of time or even permanently in Germany. Thus, there seems to be a hiatus between the intended effects of changes to legislation and policies, and actual current developments of labour markets and migration patterns. Therefore, in conclusion of this report, it is recommended to seek coherence in migration and integration policies, particularly between different policy areas and levels.

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## 4.4 TEMPORARY MIGRATION IN GREECE

Konstantinos Tsitselikis

### Introduction

#### Historical background

Starting in 1990, Greece has become a country of reception for immigrants and refugees on a large scale for the first time in its modern history with the exception of the Greek-Turkish Population Exchange of 1923. Immigrants emigrated from homelands in Eastern Europe, Asia, and Africa where economic or political reasons as well as armed conflicts made a dignified life untenable. This new situation, which is related to economic and geopolitical factors, brought novel social and economic dynamics to a society (Greece), which had long perceived itself to be nationally homogeneous. The massive settlement of immigrants in Greece engendered a first reflex of intolerance and racism, and to a lesser extent, feelings of solidarity and challenged the institutional readiness of the Greek governments (Rombolis, 2007; Maroukis, 2012; Ventoura, 2004; Baldwin-Edwards, 2009).

The first influx of migrants arrived in Greece as recruited workers at the suggestion of the League of the Greek Industries (SEV), which noted that some sectors of the economy suffered from labour shortages. As such, in 1974-75, some 20,000 foreign workers arrived in Greece, mostly from Muslim countries such as Morocco, Egypt, and Pakistan. Also in the 1970s, some 12,000 Muslim Palestinians and Lebanese migrated to Greece for political reasons. In the early 1980s, a new immigrant wave arrived from Syria (about 10,000) (Triandafyllidou, 2012: 58). Since the early 1990s, and the collapse of the socialist regimes in the Balkans, the Soviet Union and Eastern Europe a considerable number of immigrants came to Greece from Albania and the former USSR. Soon later, and with the on-going crises starting in 2000 in Iraq, Sudan, Somalia, and Afghanistan, Kurds, Iraqis, Somalis, Sudanese, and Afghans, and after 2010 from Syria, started to seek refuge in Greece. Most of the potential asylum seekers were either denied the right to apply for political asylum and were consequently deported, or for a minimal number of refugees were granted asylum or, as in most of the cases, remained in Greece in limbo, with no legal status and continuous legal insecurity (see below). For successive waves of people originating from Africa and Asia who have sought a better life in the West, Greece has represented a first point of entry in EU space, which by the years has been more and more rigid at her borders causing hundreds of casualties.

Gradually, a growing population of migrants from Asia and Africa has become more visible in the cities, mostly in Athens. Seeking a way to continue their journey to the West they gathered in Greece only to discover that there was no way out from Greece. The legal regime built on Dublin I and Dublin II consolidated this situation. Moreover the Greek economic crisis, especially after 2009 and the collapse of the construction sector, could not absorb any more workers, most of them remained totally marginalized and excluded from housing, health and social care.

#### Temporariness vs. permanentness?

Temporariness and permanentness are modes which acquire their value-significance from plans or intentions whose deployment requires time. Therefore no such mode is to be promoted as preferable without reference to the specific viewpoint that is expressed in each occasion. Migrants are individual persons who made plans for their life, probably alternative ones as well, which involve usually-but not always- a degree of permanentness or at least a non-temporariness of their sojourn. From the standpoint of nationalism the more temporary and short the immigrants residing, the better. Yet, if viewpoints, intentions and plans are to be taken in account, what matters is not the time dimension, be

it long or short, but rather a condition of residing, which is warranted and therefore secure. Warranted residence status is not important just because it may confer rights but primarily because it constitutes an official recognition of someone as a legal subject and a right holder. Such recognition is the working or legal rules which even if their authors were not amicably disposed towards immigrants afford certainty and some degree of freedom for immigrants. Warranted residing implies legal powers/rights to immigrants and respective duties of officials for justification and administrative/judicial review. It enhances the capacity for life-plans and social cooperation it therefore conforms with an idea of strengthening HR, and the rule of law.

Migration in Greece is interrelated to the broader phenomenon of immigration in Europe, labour policies and needs as well as major crises that push millions of people to seek a better life or refuge far or close to their home country. The Greek case has to be seen in the context of EU polices and related legislation regulating immigration. However, Greece's geographical position, dominant ideologies and her weak economy mark domestic migratory policies, law and practices . The latter play a significant role in defining the status of migrants who seek to pass or to stay in Greece. Time of stay as an active member of a socio-economic environment determines *temporariness/permanentness*. Acknowledgment by the law of the status of the immigrant determines the legal status as regards legality. Permanentness and legality would result in integration. However both notions are fluid, as permanentness can not be fixed in time, and hence should be comprehended as a tendency rather than a fixed category. A tendency which involves qualitative processes sometimes irrelevant to quantitative factors such as time. The qualitative processes refer to the cultural and social 'preconditions' imposed by each society as barriers distinguishing between insiders and outsiders. One month of residence cannot constitute a permanent stay, or even a 3-year stay, which initially had the scope of temporariness. Temporariness should be considered at the end of the stay in a certain country and this raises a series of methodological problems. Temporariness can be seen as a process in time through which permanentness never came. Law also can be a crucial factor for determining the threshold between *temporariness/permanentness*. As regards to legal status, the legal barrier for a migrant to be granted legal documents or to lose them is variable and subject to conditions which are not foreseeable at the beginning of the stay. The increasing uncertainty about labour, law and policies, especially during the socio-economic and political crisis, renders this border line even blurrier and fluid. Greece adopted policies that could not make visible and regularise *transit migration*, as EU law could not legally allow free movement of undocumented migration. Irregular migration was and still is the big 'opponent' to law and policies that attempt to put under control: to ban any entrance to European soil or to remove and return those who are irregularly residents.

Migration is correlated to an ephemeral situation that puts immigrants in a vulnerable position when compared to the rest of the population; a position whose determination is at the discretion of the state, which has the jurisdiction to grant rights and to determine legal relationships. Migrants in Greece thus strive for better social and economic positions in a country where they do not possess citizenship nor enjoy political rights. The most important issues are the dependency of residence and work for individuals on conditions set forth by continuously shifting policies both at the state and the EU level.

Migrants who have settled for the long term, are becoming gradually more integrated into the Greek society through their participation in the labour force and economic processes. Nonetheless, social exclusion is often exacerbated by perceptions regarding aliens coming from Asia and Africa as a negative and backwards element as opposed to the positive reception which the 'repatriated' of Greek origin enjoy (see below, Section 5). Thus, Greek Orthodox immigrants (defined as of 'Greek origin') from Albania or the former Soviet Union receive a privileged welcome in comparison to immigrants from Asia or Africa (of non-Greek origin and in many cases Muslims). This dichotomy plays a crucial role as far accommodation of the 'other' into the Greek society.

## Some quantitative and qualitative remarks on the phenomenon

It is difficult to identify and estimate the total number of migrants in Greece. As mentioned above, it is even more difficult to draw a line between *temporariness* and *permanentness*. *Grosso modo*, after 2004 migrants would be more than a million, or more than 10% of the total population. Among immigrants, Albanian citizens constitute constantly the largest group representing more than 55% of the immigrant population. It is worth noting that some of the Albanian citizens claim Greek family backgrounds, thus affiliating themselves with the Greek people, gaining access (as *omogeneis*, or of Greek descent, see below Section 7.a) to a special stay permit and citizenship. Other groups are only partly visible through statistics, as they would fall under the category of ‘undocumented migrants’ (especially those coming from Asia and Africa). Figures are questionable, because either they allow a large segment of migrant groups to slip through the official statistics, or they represent migrants by using categories (such as nationality or citizenship) that may be misleading for both the state authorities and the migrants themselves. Moreover, numbers are used politically and often inflated fuelling fears that Greece faces a ‘cultural threat’. The regions of origin of immigrants living in Greece in 2014 from non-EU countries can be grouped as follows: Albania, former USSR (Russia, Armenia, Georgia), Middle East (Syria, Iraq, Iran), Central Asia (Afghanistan), Indian subcontinent (Pakistan, India, Bangladesh), Africa (Egypt, Nigeria, Senegal, Sudan, Morocco, Cote d’Ivoire, etc.) and other (Philippines etc.). The profile of immigration vis-a-vis permanentness-temporariness has to be understood in three major groups, as ‘long term’, ‘short term’ and ‘transit’. These categories are fluid and with no secure internal and external boundaries. As the Greek experience illustrates, the number of undocumented migrants who live in Greece for long-term (protracted irregularity) and migrants whose deportation is unfeasible (unremovables) decreases over time (Takis, 2013). Finally, it should be noted that whatever is the exact number of migrants, they constitute a considerable percentage of Greece’s population (as said about 10%) and therefore contributes to an important extent to the phenomenon of otherness or multiculturalism and the reproduction essentialistic perception of the ‘Other’ (Agelopoulos 2013: 75; Papataxiarhis, 2006).

**Table 7** Statistical data on migrants in Greece (Sources: National Service of Statistics, Population census of 2001 and 2011; Ministry of Interior, Secretariat General for Population Cohesion, Triandafyllidou, 2012: 66)

| Country of origin | Census 2001    | Stay permits 2008 | Census 2011                                                                         | Stay permits (March 2014) |
|-------------------|----------------|-------------------|-------------------------------------------------------------------------------------|---------------------------|
| Albania           | 438,036        | 274,390           | 480,824                                                                             | 325,528                   |
| Bulgaria          | 35,104         | 29,959            | 75,915                                                                              |                           |
| Georgia           | 22,875         | 12,825            | 27,400                                                                              |                           |
| Romania           | 21,994         | 19,349            | 46,523                                                                              |                           |
| USA               | 18,140         | 1,893             |                                                                                     |                           |
| Russia            | 17,535         | 10,564            | 13,807                                                                              |                           |
| Cyprus            | 17,426         | 5,592             | 14,446                                                                              |                           |
| Ukraine           | 13,616         | 17,456            | 17,006                                                                              | 17,383                    |
| UK                | 13,196         | 6,715             | 15,386                                                                              |                           |
| Poland            | 12,831         | 7,798             | 14,154                                                                              |                           |
| Germany           | 11,806         | 4,063             | 10,778                                                                              |                           |
| Pakistan          | 11,103         | 11,084            | 34,177                                                                              | 14,614                    |
| Australia         | 8,767          |                   |                                                                                     |                           |
| Turkey            | 7,881          | 1,069             |                                                                                     | 1,239                     |
| Egypt             | 7,448          | 10,090            | 10,455                                                                              | 10,869                    |
| India             | 7,216          | 8,688             | 11,333                                                                              | 12,330                    |
| Philippines       | 6,478          | 6,790             | 9,804                                                                               | 8,687                     |
| Italy             | 5,828          | 2,218             |                                                                                     |                           |
| Moldova           | 5,718          | 8,767             | 10,391                                                                              |                           |
| Syria             | 5,552          | 5,586             |                                                                                     | 5,834                     |
| Bangladesh        | 4,854          | 3,761             | 11,076                                                                              | 5,128                     |
| China             |                |                   |                                                                                     | 3,087                     |
| Thailand          |                |                   |                                                                                     | 446                       |
| Iraq              |                |                   |                                                                                     | 622                       |
| Iran              |                |                   |                                                                                     | 486                       |
| Afghanistan       |                |                   |                                                                                     | 137                       |
| other             | 68,385         |                   |                                                                                     |                           |
| <b>Total</b>      | <b>761,817</b> |                   | <b>907,104<br/>from non-<br/>EU countries<br/>199,101<br/>from EU<br/>countries</b> | <b>473,124</b>            |

Immigrants work as cheap labour in construction, agriculture, and the manufacturing sectors, house cleaners, as well as private employees. Nonetheless, the number of owners of shops and small enterprises was slightly increasing and groceries and small restaurants owned by immigrants multiplied by the end of 2000s. Among immigrants, Muslims are the most religious and coherent group. On the other hand, family reunification rates are very low for Muslim immigrants, most of whom are men (Labrianidis & Lyberaki, 2001; Tonchev, 2007).

Xenophobic responses to migrants on the part of the local majority tend to have two, contradictory goals: to assimilate and absorb, and/or to deny and reject ethno-religious difference. Muslim immigrants, more than any other immigrant sub-group, became a potential ground for intolerance and racism, as the majority's dominant ideology tend to nationalise social relations and naturalise the predominant position of the majority's religion. Taking into account the historical past of the Greek-Turkish controversy through religion, Muslim immigrants are seen as an alien element to the 'host' society and national ideology, especially in Greece where Islam is traditionally and ideologically associated with the 'enemy other' of the Ottoman past (Tsitselikis, 2012). In the context of the socio-economic crisis, the pressure to the government by nationalist and extreme right populist parties, with the support of public opinion, started to intensify and the neo-Nazi party of Golden Dawn –a previously marginalized political formation- made its first appearance in the municipal election of 2010 gaining a seat in Athens municipality (Nikolopoulou, 2014) with an intensive and harsh anti-migrant campaign. This is why undocumented migrants were and still are the most issue to be 'solved', 'eradicated' or 'abolish'. Greece is for a big part of migrants a transit country and this phenomenon



is not visible to Greek law. The harsh, although variable, divide between ‘documented’ and ‘undocumented’, ‘regular’ or ‘irregular’, ‘legal’ or ‘illegal’ migrants has become a dominant categorisation that ignores social realities and construe ineffective policies.

## The Current State of Research

Academic literature has dealt with and highlighted migration in Greece at a multi-disciplinary level: demography, political studies, law, economy, anthropology, history examine both state practices and migrant communities, the main characteristics of Greek law and policies, the accommodation of migrants within the Greek society and economy or the distribution of immigrants in Greece’s regions (Baldwin-Edwards, 2008). In many cases, a critique is targeting the ideological characteristics of the Greek state policies, the legal shortcomings and the ineffective regulation of migration mobility (Tsitselikis, 2013a). Other works have an anthropological view on the communities themselves and their position within the Greek society. Employment, integration and exclusion are key notions for these studies that illustrate social cohesion as a marker between Greek citizens and migrants (Kasimis & Papadopoulos 2012).

Among the research centres and ‘think-tanks’ with the most important production of research and intervention in the public discussion we could mention the following ones: The “Hellenic Foundation for European and Foreign Policy” (ELIAMEP) (ELIAMEP 2009, Triandafyllidou 2005), “The National Centre for Social Research” (EKKE) (Afouxenidis, Sarris & Tsakiridi 2007, Sarris 2008, Stratoudaki 2008, Tzortzopoulou & Kotzamani 2008), i-red (i-red 2010), or Mediterranean Migration Observatory (until 2009, Panteion University) (Baldwin-Edwards 2008, 2009), Harokopio University, Department of Geography,<sup>1</sup> and the “Labour Institute of the Workers Union” (INE-GSEE) (Kapsalis & Linardos-Rylmon 2005; Kapsalis 2007, Bakavos, Papadopoulos & Symeonaki 2008), “Minority Groups Research Centre” (KEMO) (Pavlou & Skoulariki, 2009; Tsimbiridou, 2009), the “Foundation for Economic and Industrial Research (2012), ANTIGONE<sup>2</sup>, the “Rosa Luxembourg Foundation” (Papastergiou & Takou, 2013) and “Hellenic League of Human Rights” (HLHR) (HLHR, 2013). The “Institute of International Economic Relations” is the only one to have dealt especially with immigration from Asia (Tonchev, 2007).

During the first decade (1990-2000) the research has focused on Albanian migration (Labrianidis & Lyberaki, 2001), social integration and legal status (Kapsalis, 2007; Sarris, 2008, Takis 2010), or criminality (Stratoudaki, 2008). Gradually the interest has moved to securitisation and on the human rights agenda as far as detention-deportation and casualties are concerned (Ktistakis, 2013; Tsitselikis, 2013b) and reception of migrants within the Greek society (Andriotis and others, 2010). A common concern of the main body of the literature is the legalisation processes (Foundation for Economic and Industrial Research, 2012), the orientation of the governments’ policies towards banning entrance at any cost, the European reluctance to share the burden of immigration with Greece, and the lack of basic integration policies lines, access to work, social and health care (Petraou & Dimitrakopoulos, 2003; Bakavos, Papadopoulos & M. Symeonaki, 2008) or the participation of migrants in the Greek political body (Christopoulos, 2004) or local economies (Kasimis, Papadopoulos & Pappas, 2010). A considerable part of the literature also deals with the migrant communities themselves, their history and demography, their social and economic profile, their internal organisational structures, their integration prospects (Antoniou, 2003; Triandafyllidou, 2012; Tsimbiridou, 2009, Kasimis & Papadopoulos, 2012). Finally, xenophobia, police violence and political extremisms related to the economical crisis targeting migrants are some of the most popular topics for research (Ktistakis, 2001).

Public discourse as expressed through the media and the political elite of the country is spread on

1 See <<http://galaxy.hua.gr/~metanastes/>>

2 <[www.antigone.gr](http://www.antigone.gr)>

the axis left-right, the latter being by far more important in numbers and influence. Xenophobic and anti-migration discourse is often used by the media and government officials based on false or misleading information (Papastergiou & Takou, 2013, i-red, 2010). Especially Muslim immigrants are depicted as a threat and a potential element of alienation of Greece's demography (Tsitselikis, 2012: 161).

## Who Deals with Immigration and Immigrants in Greece?

There are a series of different bodies dealing with immigration in Greece. The Secretary General of Ministry of Interior was charged with migration issues. By 2010 a new *Secretariat General on Population Cohesion* has been established within the ministry of Interior. The Secretary General is responsible to deal with migration, to draft legislation and to supervise its administrative implementation. The only research and consultative body on migration to the government was the "Hellenic Migration Policy Institute" (IMEPO) which has been set up in 2002 and closed down in 2010 as it failed to fulfil its goals, in the frame of the cuts decided during the economical crisis. Migrants experience close institutional contacts with health insurance and pension bodies ("Foundation for Social Insurance" [IKA] or "Organisation for Agrarian Insurance" [OGA] among others) or employment organisations ("Organisation for the Employment of Working Force" [OAED]). Often all the above mentioned bodies do not possess the administrative capacity to satisfy the work load and responds with considerable delay to demands, especially regarding migrants. Other ministries, such as the ministry of Health, of Public Order, of Justice and Education deal also with migrants.

The local administration (Municipalities, Regions) has been charged to carry out procedures dealing with legalisation of migrants. For the past 20 years complicated and bureaucratic procedures, lack of administrative organisation and means were placing serious hurdles to the accurate and adequate completion of the procedures. Finally, a less bureaucratic model was sought in view to simplify procedures. Actually, by late 2013 a "one-shop-stop" has been set up within the Regions in view to facilitate procedures. However these offices seem to be unable to satisfy high demand as they are understaffed.

International organisations based in Athens such as the UNHCR or the IOM have their own contribution to the formation of policies on migration. Others, such as the EU (through FRA), or the Council of Europe (through the CPT or ECRI) exert a monitoring type control on human rights abuses regarding migrants among other vulnerable groups. Quite a few non-governmental organisations deal with immigrants through a human rights perspective (such as the *Hellenic League of Human Rights*, *Helsinki Watch*), general or focused on specific topics such as legal and medical aid (*ARSIS*, *PRAKSIS*, *Medecins du Monde*, *Doctors without frontiers*) or refugees (*Greek Council for Refugees*). A series of organisations have been also set up by immigrant themselves (Forum of migrants and various communities on the basis of national affiliation)<sup>3</sup>. Other organisations have been set up by leftist groups aiming at the political support of immigrants (*Network for social support of refugees and migrants*). Moreover, the "General Workers' Confederation of Greece" (GSEE) played an important role in discussing immigrants' labour rights and depending on the location some local authorities raised the issue of migration. Since 2012, according to the new organisational structure of the local authorities (*Kallikratis*), a consultative body, the "Council for Integration of Migrants" (SEM) set up within each municipality with the participation of members of the Municipality Council, migrant organisation and other NGOs. However due to lack of resources these bodies have very limited influence.

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3 For a guide on migrants' organisations (dated 2009) see: <[www.geo.hua.gr/~metanastes/MKO\\_Metanaston.pdf](http://www.geo.hua.gr/~metanastes/MKO_Metanaston.pdf)>

## National Law, Policies and Practices

After a period of negation (1990-1997), Greece passed to “temporary tolerance and crime-phobia” (1998-2000), then to “elementary migration policy” (2001-2004), and finally to a “positive turn of the public discourse” (2005-2009) (M. Pavlou, 2009: 42). In 2009-2011 serious efforts aimed at putting a general framework of regularisation, with not very successful outcomes, as the political and economic crisis strengthened xenophobic discourse and policies. Act 1975/1991 on immigrants was characterised by the absence of any concern for human rights; the main goal was the regularisation of illegal migration. Taking a modest step ahead, a new act on immigration was passed by the Parliament on 2 April 2001 (Act 2910/2001). This act regulated the conditions under which immigrants could obtain a residency permit and facilitated their integration into Greek society. These measures drastically reduced the number of illegal immigrants and eased legal migrants’ incorporation into the national health and insurance systems, the safeguard of their labour and other social rights (Th. Maroukis, 2009) only temporarily. The law was introduced very late, and addressed symptoms rather than core problems. Again, in 2014, the number of documented migrants dropped drastically<sup>4</sup> as thousands left the country or lost their legal status.

To give a few examples of legal regulations on undocumented immigrants, Act 3536/2007 (FEK A 42) attempted to regulate legalisation and procedures of deportation. As amended in 2009, the law allows the police to deport any immigrant, ‘legal’ or ‘illegal’, even if he/she is merely prosecuted and not condemned by a court. This regulation contradicts fundamental human rights such as the presumption of innocence, and creates discriminatory divisions through citizenship, which engender societal cleavages. Last, Act 4018/2011 (FEK A 215) aims at the implementation of EU’s Regulation 380/2008 (which amends Regulation 1030/2002) laying down a uniform system for the provision of stay permits for third-country nationals. Nonetheless a lot remains to be achieved as long as human rights related to labour and housing, education and health care are not satisfactorily guaranteed.<sup>5</sup> Today, Act 4251/2014 (in force by the 1<sup>st</sup> June 2014), the “migration code” adopts the EU standards on stay permits. Namely, stay permits are categorised as follows:

### **(A) Stay permit for work or professional reasons**

- A1. Workers with depended work contract, services or work
- A2. Workers of special goals
- A3. Investing activities
- A4. Highly skilled workers «Blue card»

### **(B) Temporary stay permit**

- B1. Seasonal stay permit
- B2. Fishermen
- B3. Member of artistic groups
- B4. Citizens of third countries who move from a business established in an EU or in a Common Economical Space state member, in view to provide services
- B5. Citizens of third countries who move from a business established in third country in view to provide services
- B6. Leaders of organised tourism groups
- B7. Citizens of third countries, student of third-level education participants in internship

<sup>4</sup> Thanos Maroukis (2012), reports that undocumented migrants in Greece were 390,000 in December 2011.

<sup>5</sup> For a comprehensive overview of the implementation of a series of rights regarding immigrants in Greece see: European Union Agency for Fundamental Rights, 2011, *Fundamental rights of migrants in an irregular situation in the European Union*, <[http://fra.europa.eu/fraWebsite/attachments/FRA\\_2011\\_Migrants\\_in\\_an\\_irregular\\_situation\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA_2011_Migrants_in_an_irregular_situation_EN.pdf)>

programs

**(C) Stay permit for humanitarian reasons, exceptional reasons and other**

- C1. Humanitarian reasons<sup>6</sup>
- C2. Exceptional reasons
- C3. Public interest
- C4. Other reasons

**(D) Stay permit for studies, volunteer work, research and professional training**

- D1. Studies
- D2. Volunteer work
- D3. Research
- D4. Professional training

**(E) Stay permit for victims of human trafficking and illegal trafficking of migrants**

**(F) Stay permit for family unification**

- F1. Members of a family of a third country
- F2. Members of family of a Greek citizen or of *omogeneis*
- F3. Autonomous stay permit for family members of a citizen of third country or *omogeneis*
- F4. Individual right to stay for family members of a Greek citizen

**(G) Long term stay permit**

- G1. Long term resident permit
- G2. Second generation stay permit
- G3. 10-year stay permit

A total of 473,124 stay permits were valid in April 2014, and correspond to the above mentioned categorisation. These stay permits are broken down to more than 20 different categories:<sup>7</sup>

**Table 8** Stay permits in force

| <b>Stay permits</b>                                            | <b>Number</b>  |
|----------------------------------------------------------------|----------------|
| Humanitarian reasons                                           | 3,400          |
| Exceptional reasons                                            | 2,220          |
| Members of family (alien, Greek/EU citizen, <i>omogeneis</i> ) | 148,700        |
| 10-year stay permit                                            | 96,386         |
| Long term                                                      | 1,450          |
| Unlimited                                                      | 36,893         |
| Students                                                       | 4,035          |
| Depended work                                                  | 78,090         |
| Work upon approval                                             | 12,510         |
| Husband/wife of a Greek citizen                                | 51,840         |
| Parents of a Greek/EU citizen                                  | 10,550         |
| Children of a Greek/EU citizen                                 | 3,930          |
| Other categories (athletes, monks, investors, professors etc.) | 23,120         |
| <b>Total</b>                                                   | <b>473,124</b> |

The above mentioned categories correspond to a series of legal texts that coexist and in many cases overlap each other creating confusion about their legal content and their requirements.

<sup>6</sup> The stay permit for humanitarian reasons, after vivid discussions in the Parliament was set through a ministerial decision (30651/2014, FEK B 1453, 5.6.2014).

<sup>7</sup> For the statistics see: <[www.ypes.gr/el/Generalsecretariat\\_PopulationSC/general\\_directorate\\_migration/diefthinsi\\_metanastefitikis\\_politikhs/](http://www.ypes.gr/el/Generalsecretariat_PopulationSC/general_directorate_migration/diefthinsi_metanastefitikis_politikhs/)>

## Policies of exclusion – policies of inclusion

Since the early 1990s up to date, the Greek policies vis-à-vis immigration are characterised by an awkward stance stemming from two opposite, as already said, views: (1) To push back as much as possible inflow of migrants, to keep under legal irregularity as many as possible once they enter the country, so that a maximum number of returns is achieved; (2) To accommodate immigrants and secure integration through legalisation procedures, granting stay and work permits and acquisition of citizenship. It seems that the contradiction between the two tendencies is omnipresent almost in any aspect of migration policies, setting thus very uncertain the barriers between *temporariness* and *permanence* in terms of legality and social inclusion.

Greek policies and law applied since early 1990s have to be seen in the frame of the broader European migration policies and law. Under Article 79(1) of the Treaty on the Functioning of the European Union, the Union must “develop a common immigration policy” which ensures “fair treatment of third-country nationals residing legally in Member States” and prevents and combats “illegal immigration and trafficking in human beings”. According to Article 79(2)(c), the TFEU measures to be adopted at Union level shall be in the area of “illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorization”. In practice, measures designed to achieve migration management objectives are likely to impact directly or indirectly on the rights of persons affected, including on migrants in an irregular situation. Measures to facilitate removal of persons from the territory include, for example, the possibility of detention, which touches upon the core fundamental right to liberty (FRA, 2011, 25).

The European policies about circulation of asylum seekers within the EU space are governed by the Regulation, known as “Dublin III”, which in 2013 amended the previous Regulation Dublin II. The amendments have been made in light of the European Court of Human Rights jurisprudence according to which return of an asylum seeker to the country of first entrance cannot be conducted in the case the state of entrance cannot guarantee fundamental human rights. The changes were in accordance to the findings of the case *MMS v Belgium and Greece* case<sup>8</sup>. Already in late 2010 the Commissioner for Human Rights, Tomas Hammarberg (Council of Europe) stated: “*the gravely dysfunctional asylum procedures in Greece have brought the Dublin system to a genuine collapse and lessons must be drawn from this breakdown*”.<sup>9</sup>

Thus, domestic immigration policies and legal regulations affect drastically the bipolar structural dichotomy between *temporariness-permanence*, as pragmatic conditions overturn initial plans and aspirations of migrants who often find themselves entrapped in Greece for years, or others who envisaged to stay permanently in Greece and finally are obliged to return home or to continue their migratory trip elsewhere. Greek law, the judiciary, and police practices govern the transition from temporariness to permanence and vice versa through a wide spectrum of regulations governing the following fields:

- Inspection of the borders,
- Apprehension for entering irregularly the country
- Asylum seekers
- Detention of irregular migrants (and asylum seekers)

<sup>8</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application no 30696/09, at: <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>>

<sup>9</sup> T. Hammarberg, “The Dublin Regulation undermines Refugee Rights”, 22.9.2010, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=80](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=80). The same day a coalition of civil society organizations requested the EU to stop sending asylum-seekers to countries like Greece that do not guarantee protection and demanded a complete revision of the Dublin Regulation and a European suspension mechanism ECRE, JRS, Amnesty International, CIRE, BCHV-CBAR and VwV, “The EU should stop sending asylum seekers that do not guarantee their protection”, Joint Press Release, Brussels. [http://www.ecre.org/resources/Press\\_releases/1650](http://www.ecre.org/resources/Press_releases/1650)



- Deportation/Return
- Inspection of identity, places of accommodation and work places
- Suspension of removals
- Special status for humanitarian purposes
- Special stay/work permits
- Regular stay/work permits, short-long term
- Renewal of stay permit/failure to renew a permit

It should be mentioned that inclusive policies are applied in the fields of education, health, political participation and citizenship: a). The right of undocumented children to attend Greek public school was guaranteed after the Greek Ombudsman intervened and the government pulled back circulars according to which legal status was a requirement for migrant children's enrolment to school<sup>10</sup>. b). The right to health services in public health centres and hospitals is shrinking in the name of cost savings. As medical care should be offered unconditionally, gradually after 2012 special fees and requirement of health insurance excludes from basic services undocumented and poor immigrants. c) Right to vote in municipality elections. This right was granted by the law 3838/2010 and was implemented only once when 12,000 non-EU nationals participated in the November 2010 local elections. The High Administrative Court ruled that this right does not comply with the Constitution (StE 460/2013). d) The right to citizenship is discussed further below.

Residence and work have to be considered through a double lens: as a de facto situation or as de jure acknowledged legal ground. Legally, work and stay permits are always granted for a well defined reason to general or special categories (such as: students, workers, refugees, etc). Stay permits are always conditional in time. Some categories are related to an inherent temporariness as they are dependent on the authorities' tolerance. De facto tolerated undocumented immigrants, live under a continuous threat to be caught, detained and deported, or to get a special short suspension of their removal. If a toleration or similar permit is issued, this accords a certain level of 'security of residence', as temporary solution. Immigrants of any category are subject to large scale inspections (of identification, of places of accommodation, of work-place). Verification of the irregular legal status and apprehension of an immigrant leads to a long term incarceration in special detention centres or police station cells until deportation, up to 18 months or even more. Instead of releasing those who have completed the maximum 18-month period of legal detention, and against relevant EU legislation and jurisprudence, the "Legal Council of State" (*Nomiko Symvoulío tou Kratous*) in an opinion saw an opportunity to prolong detention under the pretext of "*non-cooperation of the individuals for their deportation*", "*safety and public order*"<sup>11</sup>. Thus, detention centers become places of temporary residence. Deprivation of liberty results in the acknowledgment of a certain residence of temporary character whereas, and freedom equals to illegality and legal invisibility of temporary or permanent character.

The socio-economic and political crisis resulted also in repatriation especially in the case of migrants coming from Albania, who have started to return home or move to other countries. Meanwhile, with an unprecedented unemployment rate of 30 per cent in the country overall, immigrants have

10 Greek Ombudsman (2003, 2005) <http://www.synigoros.gr/?i=childrens-rights.el.egrafi.30382>, <<http://www.synigoros.gr/?i=childrens-rights.el.epanapatriamos.32389>>

11 Opinion, Legal Council of State, N° 44/11.2.2014, <[www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=1868995](http://www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=1868995)> (in Greek): according to the figures provided by the Headquarters of Hellenic Police, by the end of February 2014 7.500 individuals would be in detention awaiting deportation and 300 would have exceeded the maximum limit for detention. It has to be mentioned that the numbers do not include those detained in police cells and facilities all over the country; See also "Greek Legal State Council Justifies detention pending removal beyond 18-month limit set by EU Return Directive", 7/04/14, <[www.asylumineurope.org/news/07-04-2014/greek-state-legal-council-justifies-detention-pending-removal-beyond-18-month-limit](http://www.asylumineurope.org/news/07-04-2014/greek-state-legal-council-justifies-detention-pending-removal-beyond-18-month-limit)>

been heavily affected, both in terms of finding work and in terms of being able to claim benefits like insurance (Foundation for Economic and Industrial Research 2012). As a result, thousand of migrants have not been able to present social security stamps (*ensima*), a legal requirement to obtain the biannual extension of their stay permits. The following table illustrates the complicated flow of immigrants in terms of legal status and integration in the axis of time.

**Table 9** Migrants in Greece – Temporariness and integration in terms of their legal status

| Significant $\leq$ ← ----- Grade of integration ----- → $\geq$ Non-existing                                                                                                                                                                           |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>C</b><br/><b>i</b><br/><b>t</b><br/><b>z</b><br/><b>e</b><br/><b>n</b><br/><b>s</b><br/><b>h</b><br/><b>i</b><br/><b>p</b></p>                                                                                                                  | <p>Omogeneis (of Greek descent) 50,000</p>       | <p>Legal status <math>\approx</math>850.000</p> <p>Refugees + auxiliary protection: 10.000</p> <p>Status “humanitarian reasons” <math>\approx</math> 2.000</p> <p>EU citizens (Bulgarians, Romanians, others): 199.101</p> <p>Special I.D. of Omogeneis: 150.000 (mostly from Albania and former USSR)</p> <p>Stay permit for 2 and 10 years/ long term/family reunification/studies, etc.: 473.124</p> <p>Minus: those who lost their status [2010-13]</p> <p>New stay permits for work: 0</p> | <p>Pending asylum cases (grade <math>\alpha'</math> + <math>b'</math>): 50.000 =&gt; temporary status</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                                                                                                                                                                                                                                       | <p>Allogeneis (of non-Greek descent) 4,000</p>   | <p>Loss of legal status/undocumented migrants: 80.000-100.000, already integrated. Continuously fluctuating number. Expectation of legalisation. Very small possibility of re-legalisation (special reasons, Act 3386/05 – Act 14)</p> <p>Common characteristics: detention and return as a threat</p>                                                                                                                                                                                          | <p>Lack of any legal status</p> <p>Irregularly entered / domiciled: 200.000-300.000</p> <p>plus: new entrance [50.000-100.000 apprehension per year]</p> <p>minus: effective exit to the West</p> <p>minus: repatriations</p> <p>minus: returns/deportations [<math>\approx</math>12.000/year]</p> <p>detention, deportation</p> <p>7,500 in detention at special centres/police cells. Detention for 18 months or more. Continuous flow. 95% ineffective deportation. Violation of the ECHR for illegal detention and inhuman detention conditions.</p> <p>Temporary stay: 0-3 years</p> |
| <p>Minors, 10,000 (procedure suspended since 2012)</p>                                                                                                                                                                                                | <p>Permanent stay <math>\geq</math> 10 years</p> | <p>Semi-temporary stay: 3-10 years</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>Minors [at school] 140.000, are legalized depending from their parents, right to citizenship</p> <p>Minors under humanitarian status, with no prior legal status: 1.500</p> <p>Unaccompanied minors, pending their asylum demand, in detention</p> |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

### Anti-migrant and securitisation agenda

The political and socio-economic crisis foster anti-migrants feelings though mainstream public discourse that eased the adoption of a series of measures, at the borders or in the country. Undocumented migrants and asylum seekers became a target for xenophobic hysteria that eased the adoption of regulations and the implementation special measures. Mainstream politicians, specifically from the governing New Democracy party, launched pre-election campaigns with mottos such as “let’s clear our cities out” and “take them back from illegal migrants”. In 2012 the ministers of citizens’ protection and health launched an unprecedented anti-immigrant campaign accusing the latter of being a “health

*time-bomb*”<sup>12</sup> by bringing contagious diseases to Greece, thus constituting a threat to public health.

The Greek-Turkish borderline is one of the hotspots regarding movement of undocumented migrants and asylum seekers in Europe. If the sea frontiers cover more than 1,000 km, the borderline in Thrace does not exceed 190km (land borders are only 12.5km, while 175kms are covered by river Evros). It should be noted that until 2010, landmine fields along the river hindered those who wanted to enter Greece illegally. In tandem with the removal of the landmines, the EU set up a special force, FRONTEX<sup>13</sup> which conducted the RABIT (=Rapid Border Intervention Teams) operation together with the Greek police. The aim was –and still is- the securitization of EU’s South-eastern external border as a response to the concern of combating illegal migration. Finally, as statistics show, an unprecedented decrease in arrivals from the Evros region is observed<sup>14</sup>.

In 2012 and in the context of crucial double national elections held in May and June, the establishment in the political life of the neo-Nazi Golden Dawn with its extreme anti-immigrant discourse and practices the Greek governments opted to highlight the security question as an antidote for the migration question. Measures to face the ‘threat’ have been soon implemented:

- Pre-removal centers opened in northern Greece (Komotini, Xanthi, Paranești), Attica district (Amygdaleza) and Korinthos with a capacity of 5,000 persons. Thousands of arrested aliens were transferred to so-called pre-removal centers housed in old military barracks and facilities of police academies irrespectively of their individual status.
- “Xenios Zeus” (“hospitable Jupiter”, *sic*), a police sweep operation across the country which conducted mass arrests mainly in Athens and Thessaloniki. The plan was to prevent/arrest all those attempting to enter illegally the Greek territory. Greek police announced that by the end of 2012 they had conducted checks to 65,766 aliens among whom –only- 4,145 were found to be irregular migrants<sup>15</sup>.
- Police operation “Shield” at the Greek-Turkish land border: in August 2012, about 1,900 policemen were sent to the North-Northeastern border for the sealing of the borders with the support of Frontex.
- The Greek government proceeded to the building of the fence, of high political importance in favour of security demands of a symbolic value. The fence aimed at the prevention of new arrivals and protection of the Schengen zone<sup>16</sup>.

The fence was not financed by the EU. The latter funded other security measures: refurbishment of detention centers and police cells, building of new ones, provision of the police with security equipment. Greek authorities continued generalising detention. The fence shifted migratory flows to other

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12 The ministers of citizens’ protection and health said “*They will not circulate totally uncontrolled ‘free’ even if they have asked for their recognition as refugees*”. For a detailed presentation of the ministers’ views see [in Greek]: [http://www.minocp.gov.gr/index.php?option=ozo\\_content&perform=view&id=4194&Itemid=540&lang=](http://www.minocp.gov.gr/index.php?option=ozo_content&perform=view&id=4194&Itemid=540&lang=).

13 On Frontex see: [www.frontex.europa.eu](http://www.frontex.europa.eu), EC Press Release 2011 – European Commission - Press Release, Brussels, 13 September 2011, “European Parliament adopts Commission proposal for stronger EU border management agency”, Human Rights Watch, Report 2011 – Human Rights Watch, “*The EU’s Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*”, New York, 2011, [www.hrw.org/sites/default/files/reports/greece0911webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1020>

14 September – December 2012: 506 persons, comparing to 26,498 persons during the same months of 2012, see Hellenic Police, Arrests of illegal migrants at the Greek-Turkish land border by month for 2011-2012, [http://www.astynomia.gr/images/stories/2012/statistics2012/paranomhmetanasteush/ethsia/2012ethsio\\_ana\\_mhna.JPG](http://www.astynomia.gr/images/stories/2012/statistics2012/paranomhmetanasteush/ethsia/2012ethsio_ana_mhna.JPG); a decrease by 96,31% in 2013 compared to 2012: [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=24727&Itemid=73&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=24727&Itemid=73&lang=).

15 [www.astynomia.gr/index.php?option=ozo\\_content&lang=%27.%27&perform=view&id=23510&Itemid=1012&lang=>](http://www.astynomia.gr/index.php?option=ozo_content&lang=%27.%27&perform=view&id=23510&Itemid=1012&lang=)

16 Christos Papoutsis, Minister of Public Order and Citizens’ Protection, said that the fence would “*facilitate the coordinated operations of the Greek Police and Frontex who could achieve a bigger prevention. But what matters most is that the fence has a very big symbolic value because it sends a message to the international community that Greece is not unguarded ... and especially for the countries of origin of these people. And on no occasion will we let Greece become a transit place on their way to other countries of the EU*” (6 February 2012).

much more dangerous routes and passages that exposed people to an imminent risk for their lives<sup>17</sup>. If, in accordance to the principle of sovereignty the Greek government has the right to build fences on the Greek territory, the refusal of entry would expose refugees to *refoulement* that entails Greece's international liability vis-à-vis the Treaty of Geneva.

As a result, there was a rise in arrivals in Bulgaria<sup>18</sup> and Eastern Aegean islands<sup>19</sup> provoking a series of naval accidents that caused the death of dozens of undocumented migrants and refugees seeking shelter in Europe. Moreover, systematic illegal pushbacks of refugees at the country's land and sea borders with Turkey, especially since summer of 2012<sup>20</sup>.

Securitisation has to be considered together with criminalisation of immigration<sup>21</sup>: Irregularity is linked to criminality: those who facilitate irregular migrants to move around or assist in making their lives better are punished. Migrants under administrative deprivation of liberty in order to be deported are seen as criminals. Thus, immigrants in general are seen as potential criminals, a feeling that is fuelling xenophobia and racism.

## Facilitating returns/deportations

Returns (a new European term that replaced "expulsion") have always been a part of the Greek immigration policy. The facilitation of returns through the implementation of the Greek Action Plan, the transposition of Returns Directive and the European Returns Fund clearly reflects the European response towards mixed flows and asylum policies: international protection to be granted to all those who are entitled to it and return - by voluntary or forced means- of anybody else entering/residing illegally in EU through Greece. In this context the International Organization for Migration in collaboration with the Greek Ministry of Public Order and UNHCR have launched a project on voluntary returns on EU funds<sup>22</sup>.

Prior to European support, returns were extremely limited. It was common for a significant number of detainees to -literally- beg the police for expulsion after spending some time in captivity in the abovementioned conditions, with no result at all. For long the Greek authorities invoked administrative inefficiencies and lack of resources as a justification for not realising returns. As for readmission agreements for the return of undocumented migrants to the contracting countries, such as Albania, Italy, Bulgaria and Turkey, they are generally dysfunctional. Moreover, readmission mechanism to Turkey lacks of a proper screening and the extremely limited access to asylum expose refugees to a continuous risk of *refoulement*. Even so, the very small number of readmitted persons makes the agreement *de facto* inapplicable.

The Greek government launched the *Xenios Zeus* operation, through which the police made iden-

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17 UNHCR Greece, Contribution to the dialogue on migration and asylum, <[www.unhcr.gr/fileadmin/Greece/News/2012/positions/2012\\_Migration\\_\\_Asylum\\_GR.pdf](http://www.unhcr.gr/fileadmin/Greece/News/2012/positions/2012_Migration__Asylum_GR.pdf)>.

18 Bulgaria saw a sharp rise in entries and asylum applications in 2013: "(...) from mid- August to mid-September 2013, 5,000 people entered Bulgaria (...) 9,325 persons submitted asylum applications in Bulgaria in 2013, of whom only 7,144 asylum seekers were officially registered by 31 December 2013", see Iliana Sanova, Bulgarian Helsinki Committee: "The Bulgarian Government chose not to react to the possible arrival of Syrian refugees", in ECRE weekly Bulletin, 11 April 2014, [file:///C:/Users/user/Downloads/ECRE%20Weekly%20Bulletin%2011%20April%202014.pdf](http://file:///C:/Users/user/Downloads/ECRE%20Weekly%20Bulletin%2011%20April%202014.pdf)

19 According to the Hellenic Police in January 2014 there was a 186,54% increase in arrivals from the Greek-Turkish sea borders comparing to January 2013 and a 213,53% increase throughout 2013 comparing to 2012: [http://www.astynomia.gr/images/stories/2014/statistics14/allod2014/statistics\\_all\\_2014\\_01\\_methorio.pdf](http://www.astynomia.gr/images/stories/2014/statistics14/allod2014/statistics_all_2014_01_methorio.pdf), [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=24727&Itemid=73&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=24727&Itemid=73&lang=) (in Greek); "Evros crossings down radically", *Kathimerini*, September 5, 2012, [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_05/09/2012\\_459907](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_05/09/2012_459907)

20 Pro Asyl, "Pushed Back, Systematic human rights violations against refugees in the Aegean sea and the Greek-Turkish land border, [www.proasyl.de/fileadmin/fm-dam/1\\_EU\\_Fluechtlingspolitik/proasyl\\_pushed\\_back\\_24.01.14\\_a4.pdf](http://www.proasyl.de/fileadmin/fm-dam/1_EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf) .

21 For a detailed comparative study on criminalisation of immigration in Europe see FRA 2014.

22 The project is called "Preparation, implementation of actions of voluntary returns of third-country nationals and their reception in their country of origin" and is financed by European Returns Fund; <http://www.yptp.gr/images/stories/2011/AVR%20Project%20Leaflet.pdf> .



tification controls to any immigrant through “face screening”. Thousands have been arrested and detained in order to be returned. Very few though have been returned. Thousands of people remain detained in pre-removal centers and police cells all over the country awaiting deportation. Even asylum seekers from Syria, Eritrean and Somalia were [are] detained although the Greek government should have declared the non-realization of returns due to political unrest<sup>23</sup>. For as long as people remain detained in substandard humiliating conditions for prolonged periods of time, while police brutality and serious ill-treatment of detainees go on following alleged *orders* by the Head of the Greek police<sup>24</sup> and while more detention facilities are planned on EU funds increasing the total capacity to 10,000 places,<sup>25</sup> it becomes clear that any rise in recognition rates alone is not enough to fulfil the needs and expectations of vulnerable individuals (Nikolopoulou, 2014).

## The Human Rights Perspective: A Guideline for Immigration Policies?

Greece is party to a number of international law instruments which establish special commitments related to immigrants’ fundamental rights.<sup>26</sup> However, in many cases, these instruments are rarely used by their potential beneficiaries as they are reluctant to claim their rights, and/or have limited access to the judicial system. A quite significant number of cases brought by immigrants to the ECtHR illustrate the general problems that the most vulnerable individuals face regarding deprivation of liberty, expulsion procedures and conditions of detention in police stations or prisons. The repetitive pattern of violation reflects the reluctance of the Greek governments to align their policies to human rights standards. Indeed, the majority of cases against Greece in which the ECtHR found in favour of a foreign applicant have dealt with deprivation of the right to a fair trial (*Yilmaz*, 25 November 2010; *Kola*, 2 April 2009; and *Elezi and Others*, 9 July 2009), detention conditions in prison or in police stations (*Kaja*, 27 June 2006; *Shuvaev*, 29 October 2009; *Tabesh*, 26 November 2009; *Mahmundi and Others*, 31 July 2012; *Bygylashvili*, 25 September 2012; *Lin*, 6 November 2012; *Peers*, 19 April 2001; *Geher*, 5 July 2007; and *Taggatidis*, 11 October 2011), and illegal detention or a combination of the above (*Ahmade*, 25 September 2012) and police violence (*Zelilof*, 24 May 2007; and *Alsayed Allaham*, 18 January 2007) (Ktistakis, 2012; Psychogiopoulou, 2010; K. Tsitselikis, 2012).

On July 27, 2010 Amnesty International raised particular concerns on the poor treatment of asylum-seekers and irregular migrants in Greece, with the detention of unaccompanied minors.<sup>27</sup> On September 22, 2010 Human Rights Watch qualified the delay of the Greek government to implement relevant legislative reforms as “unacceptable”, creating “urgent need for the UN High Commissioner for Refugees and the European Commission to intervene”.<sup>28</sup> Also the United Nations High Commis-

23 Communication d’informations sur l’exécution de l’arrêt de la CEDH rendu le 21.1.2011 sur la requête n° 30696/09 (affaire de *M.S.S. c. Belgique et Grèce*) ainsi que des arrêts de la CEDH sur les affaires incluses dans le groupe de *M.S.S. c. Grèce* ; 13/11/2013, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2391979&SecMode=1&DocId=2074912&Usage=2> .

24 See among others, Head of Greek Police: “Make their life intolerable, Orders”, 20/12/2013, <http://tvxs.gr/news/ellada/arxigos-tis-elas-gia-metanastes-kante-toys-bio-abio> ; Efimerida ton Syntakton, “Make their life intolerable”, 20/12/2013, <http://www.efsyn.gr/?p=160671> [in Greek].

25 Ministry of Public order and Citizen Protection, Greek action plan on asylum and migration management, Executive summary progress report, January – May 2013, [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dv/p4\\_progressreport\\_/p4\\_progressreport\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/p4_progressreport_/p4_progressreport_en.pdf)

26 For example, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Convention of the Rights of the Child, the Convention on the Legal Status of Migrants, the European Convention of Human Rights, the Social Charter.

27 Amnesty International EU Office, Press Release, 27.7.2010, available at [http://www.amnesty.eu/en/news/press-releases/eu/asylum-and-migration/detention-of-minors-in-greece-shows-failings-of-eus-immigration-policy-0463/#.Uzh6tPI\\_stE](http://www.amnesty.eu/en/news/press-releases/eu/asylum-and-migration/detention-of-minors-in-greece-shows-failings-of-eus-immigration-policy-0463/#.Uzh6tPI_stE)

28 Human Rights Watch, Greece, *Asylum reform delay unacceptable*, <http://www.hrw.org/news/2010/09/20/greece-asylum-reform-delay-unacceptable>

sioner for Refugees declared the situation in Greece a “*humanitarian crisis*”<sup>29</sup>, adding that Greece’s lack of a functioning asylum system had “*important implications for the wider EU*”. On October 20, 2010 the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, after a fact-finding mission, highlighted the inhuman detention conditions<sup>30</sup>.

There is an urgent need for further legislation aligning with rule of law and the standards that have been elaborated at a European level (Council of Europe 2011) to address a host of immigration-related issues, which include, but are not limited to, unfair and unjustified detention under degrading conditions; unregulated processes of extradition/deportation; degrading treatment of immigrants by the police and public administration in general; a tendency by the courts to exhaust and exceed legal limits during criminal proceedings against foreign defendants; inadequate protection of workers’ rights; difficulties in the implementation of special rights (e.g. family reunification); the lack of dialogue with and participatory mechanisms for aliens with regard to political decisions which concern them; the persistence of these legal problems vis-à-vis second-generation immigrants; lack of special protection for undocumented migrants in vulnerable position (such as victims or witnesses of racial violence), after the abolishment of the category ‘humanitarian protection’ according to Law 4251/2014 and ineffective safeguards for assuring the right of access to health care, education, and shelter. Substantive as well as declarative respect for human dignity is missing from both discussion and practice (Tsitselikis 2013: 431).

## **Bilateral Policies: Immigrants’ Kin-states**

Alien immigrants obviously have a direct legal link through citizenship to their respective state of origin. Despite this link, they represent an ambivalent political agent for their countries. The countries of origin have rarely shown an interest on the conditions of living in Greece or their legal status. In some cases, immigration is a result of policies of the respective kin-state which facilitated migration through bilateral arrangements. Such agreements were intended to control emigration flows in the state of origin and satisfy labour market needs in Greece. The case of Egyptian workers hired in Greece since the 1980s is one of the most important. Thanks to a bilateral Greco-Egyptian treaty signed in 1984, Egyptian workers could be hired in Greece. This arrangement originally aimed at satisfying the need for manpower in the textile industry. This gradually covered the needs of the fishery and the commercial fleet of Greece.

Kin-states may also serve the opposite function by seeking to control immigration and hamper the flow of immigration. Irregular immigration has been one of the main preoccupations of the Greek government since 1991 and an issue put forward by Greece in the general context of West European/EU debates on migration. Beyond the European context, Greece has attempted to tackle illegal immigration through a series of bilateral inter-state agreements. The first major attempt by Greece in recent years to prevent irregular migration, through regional treaties was the 1996 Tirana Agreement of Co-operation between Greece and Albania (ratified in Greece by Act 2568/1998). The most important bilateral treaty thus far has been the Greco-Turkish Agreement of 20 January 2000 which aims at ‘combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration’ (ratified by Act 2926/2001). The Greco-Turkish Readmission Protocol was finally signed in Athens on 8 November 2001 (ratified by Act 3030/2002). Neither the Greco-Turkish Agreement nor the relevant Protocol included any express clause providing for the respect by both state parties of international human rights obligations and especially the obligations emanating from the 1951

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29 UNHCR says asylum situation in Greece is ‘*a humanitarian crisis*’, <http://www.unhcr.org/4c98a0ac9.html>

30 UN Office of the High Commissioner for Human Rights (OHCHR), UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, 20 October 2010, <http://www.refworld.org/docid/4d871d202.html>

Geneva Convention on the Status of Refugees (Sitaropoulos, 2003). Thus, Turkey played the role of supervisor of irregular migration to the European Union affecting the flow of Muslim immigrants (mostly from Iran, Iraq, Turkey, Pakistan, Somalia and Bangladesh) to Greece – although it has not been successful in this capacity according to the targets laid out by the agreements.

## Escaping Temporariness

Temporariness through the view of legal status can be upgraded to semi- or full permanentness in very limited cases, under strict legal conditions. The most rigid threshold that guarantees full scale permanentness is the acquirement of citizenship. The long-term stay permit which can be renewed is another status that puts an end to temporariness, especially as far as migrants children are concerned. Last, the status of refugee results in a legal security and guarantees a long term legal stay.

## Access to citizenship

Possessing citizenship in the state of one's residence unquestionably constitutes a fundamental factor for social integration. Not being a citizen, on the other hand, becomes a potential factor for social exclusion. Thus, the legal norms regarding the acquisition or the loss of citizenship, including dual citizenship or statelessness, take on major importance for social inclusion. The choice by the state to permit or to prevent dual (or multiple) citizenship is essentially political in nature, regulated by law, and conditioned by historical factors. In this context, *ius sanguinis* and *ius soli* offer legislators a series of options embedding ideological stances *vis-à-vis* the nation and the state.

What seems to be an important factor for the inclusion of immigrants is acquisition of Greek citizenship, as Greek law tolerates dual citizenship. The division between 'omogeneis' (of Greek descent) and 'allogeneis' (of non-Greek descent) automatically places most of immigrants in the second category. Citizenship facilitates access to the labour market and political participation which is a key element for the integration of those migrants that will permanently reside in Greece. Furthermore it gives access to political life and decision-making procedures. In the past, applicants for Greek citizenship declared themselves to be Christian Orthodox in order to be seen as of kin culture or of Greek origin.

The new law on citizenship has liberalised the conditions for granting citizenship and except of the issue related to the second generation about 700 *allogeneis* migrants become Greek citizen every year. The Code of Citizenship (Act 3838/2010, FEK A 49) rendered naturalisation by far more reasonable for those immigrants with sustainable ties to the country (requiring legal residence of 7 years). A special committee per Region examines the applicants' knowledge on Greek history, language and the grade of integration. Although the law did not abolish the division between *omogeneis/allogeneis*, the law of citizenship for the first time introduced *jus soli* elements and thus triggered reactions from the nationalist political circles asserting that the *pure character of the nation is under threat*. A fierce public debate surrounded the new citizenship law, especially regarding the naturalisation migrants' children and vote for migrants, and involved representatives from all positions of the political spectrum. This debate was carried out through the web, in the media and at public events and has highlighted the issue of citizenship and national identity as a continuously contested ground (Christopoulos 2011). The so-called 'second generation' of immigrants (immigrants' children) according to the law would have access to citizenship through objective parameters of residence and school attendance and the immigrants' right to participate in local authorities' election brought the Greek citizenship law closer to a paradigm favouring inclusive policies. However the step forward lasted only a year: In 2013 the High Administrative Court ruled that the new citizenship law (on voting and children's rights) contradicts the Constitution.

## The migrants' children

Thousands of migrants have brought to Greece their children at an early age. In most of the cases, migrants' children were born in Greece. These children are not migrants themselves, though their legal status and social position is linked to their parents' status. Therefore, legally, politically and socially they are seen as part of the migration question. Greek migration law places the children dependent on their parents' legal status. On the other hand they have an independent right to education and attend Greek schools (Mavrommatis & Tsitselikis 2004; Tzortzopoulou & Kotzamani, 2008). Through Greek schooling they have an expectation to follow and terminate their studies. In most of the cases, these children are Greek by culture and education. Therefore, for them the road to integration through permanent ties with the country is a given fact and procedure. It was not a surprise that there was a major concern by the Greek legislator to grant Greek citizenship to these children and secure their legal status in permanence within the Greek legal order. However, strong xenophobic reactions and the change of the political climate along with the economic crisis resulted in the fall of the new regulations on migrants' children citizenship.

The new regulations on the acquisition of Greek citizenship by migrants' children (and the right to vote in local elections) was challenged before the High Administrative Court which ruled that *jus sanguinis* prevails in the Greek Constitution (StE 350/2011, 4<sup>th</sup> Section, and 460/2013, plenary) and in practice the new regulations were not implemented but for a year or so. Up to date (summer 2014) the law of citizenship is not amended and tens of thousands of 2<sup>d</sup> generation of immigrants, yet adults, are in a very difficult situation. Fully integrated, not immigrants themselves, are being entrapped in a limbo situation. Finally, Act 4251/2014 (the new code on immigration) provided for an *interim status* offering a 5-years renewable stay permit, but no access to citizenship.

## Granting the status of refugee

Traditionally, in the context of the Greek legal order, asylum was perceived as a primarily security issue strictly related to state sovereignty. This trend is clearly reflected in the choice of public authorities competent for the examination of asylum claims and the attribution of refugee status: until 2013 the examination of asylum claims in Greece at first and second instance was the privilege of the police and their supervising Ministry of public order, with the exception of the appeals committees in force since presidential decree 114/2010.

For years official statistics revealed a total minimum percentage in positive decisions, while at the same time the average European rate amounted to almost 20 per cent. Even after 2001 and wars in Afghanistan and Iraq, recognition rates were constantly close to 0.3 per cent<sup>31</sup>. Hence the Greek asylum system systematically left the population in need literally without any protection and exposed to *refoulement*. Particular reference should be made to the high recognition rate for the status of refugee in 2010 at second instance (85.3% according to UNHCR<sup>32</sup>), which should be considered as a mere exception to the rule of mass rejections. In fact this rate is due to an extremely limited number of examined appeals throughout 2010, concerning serious cases of Afghan and Iranian refugees following a series of protests and hunger strikes that took place as a reaction to the dysfunctional and unfair Greek asylum system.

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31 See official statistics by the Greek Police for years 2005-2012 <[www.astynomia.gr/images/stories/2012/statistics2012/06032012-apotelesmata.jpg](http://www.astynomia.gr/images/stories/2012/statistics2012/06032012-apotelesmata.jpg)>; See UNHCR Office in Greece, statistical information on asylum in Greece: 1997-2010, <[www.unhcr.gr/genikes-plirofories/statistika.html](http://www.unhcr.gr/genikes-plirofories/statistika.html)>.

32 UNHCR, *Op. cit.*

**Table 10** Asylum seekers in Greece per country of citizenship<sup>33</sup> (7.6.2013-31.3.2014)

| Country      | Number of applications | Percentage of success: status of refugee or subsidiary protection (1rst grade) |
|--------------|------------------------|--------------------------------------------------------------------------------|
| Afghanistan  | 1225                   | -                                                                              |
| Pakistan     | 1007                   | 2.7                                                                            |
| Albania      | 665                    | 0                                                                              |
| Georgia      | 472                    | 0                                                                              |
| Syria        | 414                    | 99.4                                                                           |
| Bangladesh   | 356                    | 1.4                                                                            |
| Egypt        | 339                    | 2.6                                                                            |
| Nigeria      | 309                    | -                                                                              |
| Iran         | 224                    | 70.8                                                                           |
| Eritrea      | 195                    | 86.8                                                                           |
| Congo        | 167                    |                                                                                |
| Sudan        | 146                    | 84.3                                                                           |
| Iraq         | 141                    |                                                                                |
| China        | 129                    |                                                                                |
| Somalia      | 113                    | 80.8                                                                           |
| Other        | ---                    |                                                                                |
| <b>Total</b> | <b>7,578</b>           |                                                                                |

The extremely long time for the process of claims, the mass rejection rate and the systematic detention of individuals in extremely poor conditions, as described above, discouraged the genuine beneficiaries of international protection from applying. At the same time it became the ideal attraction in the eyes of irregular migrants seeking to benefit from the prolonged procedures in order to acquire the so called ‘pink card’, a document delivered to asylum seekers which allowed them to remain and work legally in the country without risk of expulsion (Nikolopoulou, 2014). By 2010 pending asylum claims were estimated to be more than 47,000<sup>34</sup> creating a huge backlog in the process and leading the –already failed- asylum system to a complete breakdown. This backlog included pending appeals due to the abolition of the appeals committees in 2009. Act 3907/2011<sup>35</sup> provides for the establishment of an Asylum Service based in Athens (autonomous civil organisation) and 13 Regional Asylum Offices in other locations across Greece competent for the registration of asylum applications, their accurate examination by qualified personnel in due time, the provision of adequate interpretation, and fair and fully reasoned decisions<sup>36</sup>.

## Long term residents

Migrants who finally managed to stay as documented ones always aim at regulating their legal status as long as possible. Most migrants of this category have settled for more than 10 years themselves, have a family and in many cases children at school. Already EU Directive No 2003/109 incorporated into the Greek law<sup>37</sup> gave this opportunity. However, in practice it was not implemented. Instead, a 10-years stay, and a ‘stay of unlimited time’ permit was provided with no right to circulate within the EU countries.

The new law on migration (Law 4251/2014) reintroduces what was not implemented and covers

33 According to the Asylum Service, 20.5.2014, <[www.yptp.gr/images/stories//2014/prokhrukseis14/Greek%20Asylum%20Service%20statistical%20data%207.6.13-31.3.14\\_gr.pdf](http://www.yptp.gr/images/stories//2014/prokhrukseis14/Greek%20Asylum%20Service%20statistical%20data%207.6.13-31.3.14_gr.pdf)>

34 Source: UNHCR Greece, <[www.unhcr.gr/genikes-pliροφοries/statistika.html](http://www.unhcr.gr/genikes-pliροφοries/statistika.html)>

35 Act 3907/2011 on the establishment of an Asylum Service and a Initial Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals, published in the Greek Government Gazette on 26 January 2011. See also Presidential Decree 114/2010 that bears transposition of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

36 On the results of the first year of operation of the Service see <[www.yptp.gr/asylo.php?option=ozo\\_content&perform=view&id=3474&Itemid=465%20&lang=&lang=>](http://www.yptp.gr/asylo.php?option=ozo_content&perform=view&id=3474&Itemid=465%20&lang=&lang=>)>

37 By Presidential Decree 150/2006 “Legal Status of third country nationals long term residents”.



also children of migrants who in theory would have right to citizenship, according to Law 3838/2010 but remained inactive after the Council of State found as contradicting the Constitution (see above, Section 7.a). Renewable 5-year stay permit is granted under conditions such as previous regulated stay of at least 5 years, knowledge of Greek language and civilisation, a minimum income. The long stay permit offers also the right to circulate, stay and work within EU borders.

Today documented migrants are holders of a 2 years stay, which by 2015 will become 3-years stay permit, renewable in condition of a stable work. In other cases, migrants are holders of the ‘old’ 10-year stay permit or the ‘unlimited stay permit’. Partly they will acquire the long term stay permit, and for them temporariness and uncertainty will end. For others unemployment will have a critical result on their life as they will not have access to any regularization. Short term stay permit for exceptional or humanitarian reasons will keep them in a fragile social and legal limbo. For many migrants, especially in times of socio-economic crisis, the prospect of permanent stay will drop to severe uncertainty and eventual re-emigration or repatriation. What would be seen as a regular and permanent stay will become a temporary situation.

## Conclusions and Recommendations

Often, immigrants are defined in Manichean terms as legal or illegal on the one side while substantive understandings of what constitutes legal or illegal status are in a state of constant evolution. This has created considerable ambivalence after 1990, resulting in a limbo-like state for the persons and rights involved. The liminality and exclusion of migrants, along with the criminalization of support and solidarity from ordinary citizens towards undocumented immigrants, has led to the increased securitization of the social arena. In this regard, policies that aim at the criminalisation as ‘clandestine’ (*lathraioi*) of all immigrants, even comprising the documented ones, creates more risks than it obviates. The vast majority of people who, from a legal perspective, live for years in a grey zone as ‘undocumented’ have limited access to a series of social goods and services. This situation is characterised by a deep uncertainty that affects the whole society. In effect the migrants’ “temporariness” undermines the whole society’s “permanence”.

Immigrants in Greece face serious social uncertainty with regard to unemployment, health care, insurance, legalisation of their status, and housing, which regulates permanentness/temporariness. Entering Greece illegally renders the process of social integration more difficult and complex, and normalisation remains a very difficult endeavour for immigrants. Labour exploitation and high rates of unemployment – especially in times of socio-economic crisis – fuels anger and insecurity within the migrant workforce and triggers hostility and fear among the majority. Public policies in the past 15 years have been shaped on this hostility. These policies shaped public discourse through the Media which show, as an average, soft or hard anti-migration attitude. On the other hand, scientific literature has dealt with the above mentioned questions, comprising monographs, collective volumes and reports. Although themes and disciplines are various, often carried out through a multidisciplinary cooperation. The mainstream lines of the research discuss state policies and migrants’ integration within the Greek society. In most of the cases exert an over or covert critique of the state policies and practices that fail to achieve social cohesion and integration, and to observe human rights law.

From the perspective of setting up an institutional apparatus governing migratory flows, it is not time-functions, such as temporariness or permanentness, which are relevant but rather warranty of sojourn and of basic human rights. It is not then temporariness itself as restricted time span but precariousness and vulnerability of the immigrants’ condition that matters here. Securing warranted staying and rights, even for a restricted period is ensuring both recognition and a space of individual freedom for immigrants. It also promotes the rule of law onto a social domain addicted to ad hoc decisions of security officials. Drawing a recommendations list will necessarily evolve around empowering

immigrants with statuses securing recognition, certainty and protection of human rights. Yet, realistic policy planning is forced to take in account reasonable security concerns of national states.

Most importantly, recommendation drawing for migration policy needs to address the complex relations established between national legal orders and EU law after the inclusion of migration issues in the competences of the freedom, security and justice area. It is not just that the increasingly harmonized regulation of migration and asylum issues set effectively important limits to national legislators. EU migration and asylum policies rest upon a common latent political understanding of European governments which prioritizes strict control of migratory influxes in the EU, through a complex institutional machinery of visa requirements, border controls and intense coordination among member states for securing uniform granting of asylum and provision of residence entitlements. This political entente animating actual regulation of migration issues has been expressed more adequately by the European Pact on Migration and Asylum. Besides the concern for the integration of regular migrants and the efficient protection of refugees, the thrust of the Pact was the ending of the massive regularizations for which individual members opted for freely up to then. Greece, as it has been mentioned above has sought temporary relief to this means four times in the past. The idea was (and remains) that no third country national would be admitted on EU soil without paperwork. With the important exception of those entitled international protection, the “sans papiers” should face return procedures.

Despite expectations, this strategy of blocking push factors didn't significantly curb migratory flows. This failure has been signalized by the death-toll of those insisting crossing sea borders. Yet, the real problem is that the issue of “sans papier” (“lathrometanastes” in Greek), which had been “suppressed” by the Pact, is re-emerging at EU level now. The case of Greece as well as of each Southern or Southern-Eastern member state is embedded in the network of flows targeting the EU in toto and, preferably, its' Northern and Northwestern members. Much of what seems problematical in the Greek case is due to specific Greek factors, such as disorganized administration or incompetent personnel, nationalistic attitudes etc. Yet, these are parasitic upon the assignment of receiving first the mixed migratory flows, especially from the East and the South, to the whole of EU. Any recommendations for the case of Greece by consequence will have to assume a level of their compatibility with the European framework where, if implemented, they are to be inserted and function.

#### *The need for a shift in European migration policy*

As some recent moves of the European parliament on the issue of life-saving responsibilities in high seas show, a vast re-examination and re-discussion of European migration policies with a more realistic and inventive eye is not out of question. Such discussions may shift attention from neutralizing pull factors strategy to a strategy to accommodate the migratory phenomenon within a frame, which secures democratic liberties and individual rights and allows for reciprocal benefit for all, immigrants included. This would also require realizing that migration policy cannot function on menu-type selection of who is to be allowed to enter EU soil. It should rather be concerned with how to select among those that are already here in hundreds of thousands in each member state and grow in numbers as days go by. Actual EU law contains legal resources for extensive quasi-regularizations for those irregular immigrants whose return is not forthcoming for any reason. Protracted irregularity can be curbed only through some passage to regularity. Yet, it would be preferable for such an issue to be dealt with normatively through some specific legislative instrument such as a special Directive. Such an instrument would effectively determine a common framework for residential or working rights and suggest innovative schemes and incentives for cyclical migration or wilful returns. Moreover, such effective policy shift would allow also the set up and functioning of mechanisms of real burden sharing among, allowing e.g. for the relocation and sharing of excessive irregular populations, without prejudice to Dublin regulations or Shengen Treaty. Finally, the task of closely following and

controlling adhesion of national institutions to human rights standards should increasingly lie with European bodies. Asylum procedure, return procedure and administrative detention of immigrants should not be left at the hands of national institutions unless accountable to European judges.

### *Redirecting national policies to warranting residential status and the rule of law*

At national level, migration policy of Greece, as it has been noted above is in pressing need of drastic reshaping and redirection. Such reshaping should be aiming at (1) enhancing the reflective capacity of the state agencies involved in migration regulation (2) maximizing residential security in clearly defined terms (3) intensifying integration process leading to citizenship acquisition (4) restoring efficient asylum procedures (5) promoting resurfacing of irregular populations in mainstream social life (6) ensuring conformity of detention and return procedures with human rights standards.

#### *1. Getting the picture right/Make policy planning possible*

- Assessing qualitative and quantitative characteristics of migration in Greece that are for long unknown: how many migrants are in Greece, for how long they stay, under which legal status, under which social situation.
- Assessing migrants' mobility, in and out the country.
- Launch, support or encourage demographic and socioeconomic research on irregular immigrants residing in the country

#### *2. Warranting secure residence and rights*

- Taking in account the influence of the economic crisis in all economic or social security requirements for granting residence permits
- Facilitating mobility and re-migration taking into consideration the will of the migrants.
- Introducing multiple visas system and provide for flexible time-validity of permits
- Improving administrative procedures related to migrants, through the reduction of bureaucracy and through the recruitment of staff properly trained.
- Carrying out training programmes for administration staff, Greek police and coast guard officers in handling relevant migrants' questions.
- Examining possible legal modalities for bilateral agreements between Greece and Asian labour-export countries on the legal occupation of workers for a set period of time in areas, which are not covered by the local labour force.
- As an ultimate security net for regular migrants, introducing a permanent and decentralized mechanism of recuperation back to regularity of all those that lost their permits for reasons related to need or to maladministration. Setting or supporting permanent legal-aid structures for that purpose.

#### *3. Integration*

- Exploring legal modalities for migrants to participate in the economic, social and political life. Restoring the right to vote in local elections and reinstating special naturalization procedures from birth or adequate schooling for 2<sup>nd</sup> generation migrants. Facilitating and speeding up acquisition of citizenship by 1<sup>st</sup> generation immigrants through ordinary naturalization.
- Promoting long-term residence permits and facilitates access to such.
- Taking measures, at central and local level, towards the facilitation of migrants' integration,

especially into Greek health and pension programmes.

- Setting up specialized agencies at municipal and/or regional level for the provision of services and counselling tailor made immigrants' needs
- Promoting, eventually through funding as well, social or/and economic activities that bring together immigrants and local population. Prioritizing forms of cooperative entrepreneurship between immigrants and Greeks. Turning development in general into an integration tool.
- Observing strict antidiscrimination policies in all provision of public services.
- Combating xenophobia, Islamo-phobia and racism in the public discourse.

#### *4. Restoring Asylum Procedures*

- Improving the performance of Greece vis-à-vis asylum-seekers, through the newly established Asylum Service.
- Liberally supporting the new Agency

#### *5. Making irregulars emerge in social life*

- Deploying a country-wide mechanism for registration of all undocumented immigrants, without direct involvement of police or other security agency.
- Extensive use of legal tools providing for temporary but secure residence such as postponing of return, in case the later is not forthcoming
- Providing for a restricted right to work for the above mentioned population
- Examining a constant legal framework of regularisation based on objective social integration factors. Children should have a special protection.

#### *6. Human Rights Protection*

- Systematically investigating violations of human rights and ensure that all persons intercepted have access to individualised procedures to apply for international protection and access to an effective appeal against an expulsion decision.
- Setting up courts for examination of detention liberally subsidize litigation as a means for combatting fascism.
- Restricting administrative detention to cases of imminent return or ascertained threat to public order and security
- Imposing strict controls against refoulement practices

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## 4.5 TEMPORARY MIGRATION IN HUNGARY

Ágnes Hárs

### Introduction

#### Historical background of migration movements and policy responses in Hungary

##### *Migration movements prior 1989*

In the beginning of the 20<sup>th</sup> century Hungary was an emigration country sending masses of poor peoples, mostly young males overseas, mainly to America.<sup>1</sup> In the first one and a half decades of the 20<sup>th</sup> century about 1.5 million persons migrated from the Hungarian Kingdom to America, due to economic reasons.<sup>2</sup> According to research about 30 per cent of the overseas emigrants returned, however (Puskás, 1996). Net emigration loss of Hungarians was about 6-7 per cent of the population. The 1<sup>st</sup> World War and the US quota system of the 1920s cut the strong emigration flows while political emigration of persons mainly of Jewish origin emerged. That has coupled in the 1920s and 1930s with strict passport regulations that were introduced to control migration with the neighbouring countries. (Bencsik, 2002)

In addition to migratory movements the reshaping of the borders influenced migration drastically. Until 1920 the Kingdom of Hungary has been part of the Austro-Hungarian Monarchy, a multi-ethnic country where the largest ethnic group was the Hungarian with approximately half of the total population (Census 1910). As a result of the peace treaty concluding World War I, the territory of Hungary has changed considerably and got the present shape in 1920. Compared to the former size the population was reduced from 20.8 million to 7 million and the land decreased by 72 percent. The ethnic composition of the country changed essentially and turned to ethnically homogenous with only 10 per cent of minorities.<sup>3</sup>

A significant Hungarian minority remained on the territories that were assigned by the peace treaty to the neighbouring states, numbering 3,318,000 in total (based on Census 1910). Half of them lived in Transylvania (Romania), 27 percent in Upper Hungary (Slovakia), 13 percent in Vojvodina (Serbia), 5.5 percent in Transcarpathia (Ukraine) and the rest in Croatia, Slovenia and Burgenland (Austria).<sup>4</sup>

Following the new status quo various population movements came about. The share and number of non-Hungarian nationalities decreased in the next decades in Hungary: the main reasons of this process were spontaneous population movements (following the changing borders), assimilation and ethnic cleansing policy of the state and some migratory movements. Considerable ethnic amendments came about after World War II, as well.<sup>5</sup> Some 300.000 members of the Hungarian minorities were

1 Emigration data are limited. Official statistical data on emigration exists since 1899 on those emigrated legally, with passport. Passport was, in fact, not used before. (Bencsik, 2002; Puskás, 1982)

2 Hungary has been a multiethnic country that time and only one third of the emigrants were ethnic Hungarians while the majority of them were non-Hungarian nationals from the poor regions who were, in fact, more affected by emigration.

3 6.9% were German (551,211), 1.8% Slovak (141,882), 0.3% Romanian (23,760), 0.5% Croatian (36,858), 0.2% Serb (17,131), 0.3% other Southern Slavic dialects (mainly Bunjevac and Šokac (23,228) and some 7,000 Slovenes. (Census 1920 measured by minority languages as mother tongue)

4 The share of Hungarian minorities was 30% in Slovakia (885,000 persons), 32% in Transylvania, Romania (1,662,000 in persons), 28% in Vojvodina, Serbia (420,000 persons), 30% in Transcarpathia, Ukraine (183,000), 3.5% in Croatia (121,000 persons), 1.6% in Slovenia (20,800 persons) and 9% in Burgenland, Austria (26,200 persons).

5 About 200,000 Germans were deported from Hungary to Germany according to the decree of the Potsdam Conference. Forced exchange of population took places between Czechoslovakia and Hungary. The houses of those expelled from Hungary were filled with ethnic Hungarians expelled from the neighbouring countries and a considerable number of persons were fleeing voluntarily. Emigration was compensated by immigration flows. (Valuch, 2005)

involved. (Bencsik, 2002; Münz, 1992, Dövényi–Vukovich, 1994)

The post-war turbulence resulted in emigration of stateless war refugees returning home or moving for third destinations overseas (USA, Canada, Australia or Israel, etc), nazi-collaborant emigrants fleeing mainly for Southern America. Emigration due to fear of communist takeover was also reason of emigration. Passport obligation and strictly controlled travelling was introduced soon, by late 1946. Issuing of passport was centrally controlled based on successive decrees. Finally, following the Communist takeover in 1948, the state prohibited migration. (Bencsik-Nagy, 2005; Bencsik, 2002)

During the decades of the communist regime Hungary was a closed country, with limited and state-controlled inward and outward migration. The borders were opened temporarily in 1956 as part of that year's uprising against the communist government. During the aftermath of the failed revolution; in 1956 about net 200,000 persons left the country through the provisory open borders. (Unpublished... 1991) First destination was Austria where the emigrants took off for other European vs. overseas destinations. Harsh repression followed and the Hungarian border was sealed again. Since 1962 the repression has been eased and the border has been gradually opened with controlled passport regulations. In the 1980s passport regulations became more liberal coinciding with continuously increasing emigration. Estimations are various regarding the number of (mostly illegal) emigrants of these decades.<sup>6</sup>

Not only emigration but immigration was controlled during the communist decades. There was hardly any immigration, except for two politically motivated ones, i.e. groups of Greek<sup>7</sup> and Chilean<sup>8</sup> communists were given asylum in the early 1950s and 1970s, respectively. In addition, students (from Comecon<sup>9</sup> or Comecon-supported countries) and some small size channelled labour shaped immigration.

All in all, prior 1989 considerable emigration waves directed to more developed Western Europe and to overseas. As a result, considerable emigrant population lived outside Hungary. In 1990 45 per cent of total emigration stock (born in Hungary) lived in North America (31 per cent in the USA, 14 percent in Canada), 7 per cent in Australia and over 4 percent in Israel while 40 per cent was in Europe. At the same time immigration concentrated to Europe: in 1990 over 90 per cent of Hungarian immigrants were born in Europe, at a large share of ethnic Hungarian origin from the adjoining countries. (See Table 11)

### *The history of migration after 1989*

The late 1980s and the early 1990s was evidently a turning point in the history of the Hungarian migration with an increasing inflow of foreign citizens. While emigration remained stable and relatively moderate, since the late 1980s growing number of people have arrived at sudden from the adjacent countries. The overwhelming majority of them were ethnic Hungarians fleeing from the still communist Romania. The inflow has continued by the collapse of the Ceausescu regime in Romania. The originally refugee-type migration turned gradually to labour migration. A second large inflow has emerged as a consequence of the war in the former Yugoslavia, the southern neighbour of Hungary, in the early 1990s. The large share of immigrants, particularly from the ex-Yugoslav regions returned home or left for a third destination. Nevertheless, data are inaccurate concerning the process of return-

<sup>6</sup> In the period of 1963-1979 about 20 thousand Hungarians emigrated legally and an estimated 50 thousand illegally (Juhász, 1996), between 1980 and 89 the number of emigrants was about 125 thousands with about 60 thousand immigrants (including returning nationals and foreigners), according to mirror. (United Nations, 2002: 66)

<sup>7</sup> Following the Civil War of 1946-49 in Greece several thousand communist refugees (of which about 2 thousand were children) arrived to Hungary (similar to some other communist countries of that time). Most of them returned home in several waves but the younger generation remained and assimilated. According to Greek organisations about 4-5000 is the size of the assimilated Greek community in Hungary.

<sup>8</sup> Following 1973 about 1000-1500 Chilean communist refugee was accepted who are assimilated in Hungary or left for third country.

<sup>9</sup> COMECON is a Council for Mutual Economic Assistance (of the Soviet-Block countries).

ees versus those leaving for a third destination.

In addition to the regional turbulence and migration during the transition period of the communist regime, new immigrant groups arrived to Hungary (as well as to other countries in the Central and Eastern European region), mostly from the Far East. In Hungary, Italy and partly in Slovakia the Chinese have formed the largest Asian community, while in other countries (Poland, Czech Republic, partly Slovakia or East-Germany) the Vietnamese. There were a considerable number of Vietnamese guest workers in Poland, GDR or the Czech part of Czechoslovakia. In Hungary the presence of Vietnamese was marginal. On the other hand, in 1987 a small group (335 persons) of metal workers spent a year in Hungary and formed the roots for the following migrants. (Nyíri, 1995; 1997) A considerable share of the present Chinese immigrants arrived in the early days to Hungary. Chinese migrants were qualified or even highly qualified: senior officials, managers, etc., escaping from China in large numbers. (Nyíri, 2001)

On 1<sup>st</sup> May 2004 Hungary joined to the European Union. Previously modest and stable emigration got an impetus by free mobility of labour. Emigration has had a take off since late 2007, however, with some time lag comparing to emigration of most of the other new member countries, following the worsening economic situation in Hungary. (Hárs, 2014) Destination of Hungarian (temporary) emigration was overwhelmingly the EU region. At the same time, immigration remained stable. Following the early period of immigration the trend has slowed down, corresponding to the Hungarian migration policy as well as the worsening economic and labour market situation.

Since 1989 the overall Hungarian migration has focused to Europe. Compared to 1990, the share of immigrants of European origin somewhat decreased (91.3 and 85.8 in 1990 and 2013 respectively) while the share of overwhelmingly Asian immigration increased. As for emigration, the European Union is particularly important outnumbering any other destination regions. As a consequence, the share of total Hungarian-born emigration in Europe increased sharply, by 25 percentage points between 1990 and 2013 while the overseas emigrant population was aging and diminishing both in number and in share. Today there is a sizeable emigrant Hungarian population which is about 5 per cent of the national's residents in Hungary. The share of immigrants who were born outside Hungary is of about the same share (cf. Table 11).

**Table 11** Emigrant and immigrant stock of foreign born Hungarian population and its breakdown by geographic regions, % (Source: UN online data on migration stock by place of birth by sending and destination countries)

| <b>Emigrants</b>                 |        |        | <b>Immigrants</b>                |        |        |
|----------------------------------|--------|--------|----------------------------------|--------|--------|
|                                  | 1990   | 2013   |                                  | 1990   | 2013   |
| Persons (thousands)              | 407611 | 528184 | Persons (thousands)              | 347510 | 472798 |
| Share in national population (%) | 4,1    | 5,3    | Share in national population (%) | 3,5    | 4,7    |
| AFRICA                           | 0,1    | 0,1    | AFRICA                           | 0,4    | 1,3    |
| ASIA                             | 4,2    | 3,0    | ASIA                             | 3,7    | 7,7    |
| <i>of which</i>                  |        |        | <i>of which</i>                  |        |        |
| Israel                           | 3,8    | 2,4    | China                            | 0,3    | 2,5    |
| EUROPE                           | 40,7   | 65,3   | EUROPE                           | 91,3   | 85,8   |
| <i>of which</i>                  |        |        | <i>of which</i>                  |        |        |
| Eastern Europe                   | 9,3    | 8,1    | Romania                          | 55,9   | 49,2   |
| UK                               | 3,1    | 9,7    | Russian F                        | 11,0   | 1,0    |
| Austria                          | 3,5    | 7,5    | Serbia                           | 13,2   | 5,7    |
| Germany                          | 12,5   | 19,9   | Germany                          | 5,3    | 7,2    |
| LATIN AMERICA                    | 2,7    | 1,0    | LATIN AMERICA                    | 0,3    | 0,7    |
| NORTHERN AMERICA                 | 45,1   | 25,7   | NORTHERN AMERICA                 | 0,9    | 2,2    |
| <i>of which</i>                  |        |        |                                  |        |        |
| Canada                           | 13,9   | 10,1   |                                  |        |        |
| USA                              | 31,2   | 15,6   |                                  |        |        |
| Australia and New Zealand        | 7,1    | 4,9    | Australia and New Zealand        | 0,2    | 0,3    |



### *Policy responses to migration*

By the second half of the 20<sup>th</sup> century after the extensive population movements an ethnically highly homogeneous population has been created on the territory of present Hungary. At the same time an ethnically mixed population with considerable Hungarian minorities has emerged in the adjacent countries. This characteristic feature has remained until today with strong effects onto the migration patterns and migration policy of contemporary Hungary. Brubaker (1998) points to the important ethnic peculiarity of Hungarian migration essential in any migration context: “Unlike ethnic Germans, scattered over vast areas far from Germany, ethnic Hungarians are concentrated in states adjoining Hungary, especially in Romania, Slovakia, rump Yugoslavia and Ukraine and, within this states, in territories formerly belonging to Hungary but ceded after World War I. [...] In proportion to the population of Hungary (about 10 million) this is a much larger pool of potential ethno migrants than exists in the German case.” (Brubaker, 1998: 1054) Large ethnic Hungarian minority across and over the borders of Hungary is an important source of immigration as well as has major influence on migration politics and policy. In case of Hungary, instead of a conceptually “pure” labour migration, ethnicity plays a crucial role in engendering, patterning and regulating immigration flows. (Brubaker, 1998: 1049)

During the democratic transition, at the turn of the late 1980s and early 1990s immigration turned to be a hot issue. Diaspora driven uncontrolled refugee-type migration of ethnic Hungarians from Romania increased at sudden. The policy of Diaspora migration has remained a major topic for Hungary. The origin of the Chinese community in Hungary has rooted in the same period. It has been supported by the liberal immigration policy and it was fuelled by the Chinese political and economic circumstances in the wake of Tiananmen in 1989. Hungary offered an attractive destination with a newly freed market economy, forecasts of rapid economic developments and, above all, a newly signed treaty abolishing the visa requirement for citizens of China (Nyíri, 1997). The flourishing period of the Chinese community was short, however. Hungarian immigration and economic policies deeply affected the situation of the developing Chinese community. The tightening of immigration in 1991, strict and offensive regulations in line with the generally restrictive immigration policy mainstream and the introduction of visa obligations for Chinese citizens resulted in a drop of the total number of Chinese, as well as a reduction in the rate of new immigrants

The Hungarian migration policy of the post-transition epoch can be divided into several periods differentiated by the migration policy regimes. (Tóth-Sik 2003, 2014) The period of 1988-1989 can be referred to as the years of “innocence”. There was neither emigration nor immigration related bureaucracy developed during the previous decades of state socialism. Therefore, when the first wave of immigration appeared in the late 1980s Hungary was not prepared for the strong inflows. A spontaneous and very liberal immigration policy emerged and was backed with the solidarity with mostly ethnic Hungarian immigrants of that period. The next period of the early migration history in 1991-1993 was the “loss of innocence”, the period when the legal and administrative frame of reception was established and previous very liberal immigration policy turned into a more rigorous one.

The following period lasted from 1994-2003, that was the period of pre-EU membership, the preparation and adjustment to the adjoining to the EU in 2004. During this decade the adoption of the *acquis* readmission agreements, safe country position and adoption of the Geneva Convention in full has been part of the process. Preparation to Schengen regime and correspondingly adjusting kin-state preference to compensate for the visa, entry and residence restrictions for kin-minorities was essential part of the process. (See Tóth, 2000; 2003) In May 2004 Hungary has joined the EU with full adoption of the EU regulations.

Continuous deterioration of Hungarian economic and social situation during the 2000s coinciding with restrictive immigration policy has resulted in stagnating immigration while emigration, in line

with the economic deterioration and the crisis of national and global economy had a takeoff since the late 2007. (Hárs, 2012)

Since 2010, Hungarian migration policy has been reshaped. On the one hand sharply restrictive irregular alien policy regulation has been formulated on the other hand a well defined Diaspora policy with accelerated naturalisation of ethnic Hungarians and descendents expatriated nationals without residence (including extended voting rights) emerged.

## An introduction to the characteristics of temporary transnational migration

When trying to identify temporary migration we can hardly find any discussion or national discourse on the issue. For statistical definition staying less than one year in the country is considered temporary, nevertheless statistics is inappropriate to describe temporary character of mobility. As for the *perception* of temporary migration in Hungary, not much effort has been done to differentiate permanent and temporary migration; the issue is not in the focus of dialogues. Literature is rather limited and problem is not fundamental in general migration debate. All in all, knowledge on temporary type immigration is not very detailed. The major exception is the regional migration, mainly ethnic Hungarian (labour) immigration from the adjoining countries, in fact the majority of Hungarian immigration (Fox, 2007; Kiss, 2007; Brubaker et al., 2006 etc). This type of migration is beyond the scope of the present project, however.

Other strand of literature extensively discusses the transnationalism of the Asian, particularly the Chinese communities and its circular and/or transnational character (Nyíri, 2005; 2007; 2010; Várhalmi, 2010a; 2010b). There is no clear distinction between temporary, circular and transnational character of this migration. “There is a [...] migrant career path defined as transnational in the literature. In this case the migrant’s life is not simply embedded in the locality of the receiving country but moves turbulently between the sending and the receiving countries and this physical mobility turns to be part of the global system which is fastened by economic, financial and personal networks.” (Örkény, 2011: 166)

Literature makes a clear distinction, referring to the section of ethnic Hungarian vs. Asian immigrants (and also some other non-European communities) as transnational and temporary in various aspects. Hungarian migration has the sharp difference by the main immigrant communities from the adjoining countries with large Hungarian ethnic minorities and from the non-EU regions, mainly from Asia. The EU-15 (EEA) is also largely involved in migration; nevertheless it is less relevant in the context of the Transeuropean temporary migration.<sup>10</sup>

When discussing and conceptualising the migration characteristics in Hungary, an important ambiguity has to be underlined. Hungary has strong ethnic migration from the adjacent countries and also a vital and distinctive Asian–Chinese trans-national migrant community. Difference is essential. “Asian ethnic preferences are more instrumentally integrated into larger policy objectives than those practices in Western Europe, and specifically they are geared toward economic development, utilizing skills and investment preferences. In contrast, the European policies, especially the strong moves toward ethnic preference in Eastern Europe, have been mostly expressions of ties or efforts at protection. Rather than tools for economic development, European preferences are a kind of protective or expressive nationalism”. (Skrentny et al., 2007: 816-817)

To conclude, temporary transnational immigration will be defined in a relatively loose form. Based on state-of-the-art knowledge on migration in Hungary we suggest considering migration temporary if *the foreign person intends to leave the country with the purpose of returning home or to a third country or with the purpose of circular mobility*

<sup>10</sup> Romania, as a neighbouring country and being far the largest sending country to Hungary with joining the EU in 2007 altered the categories and requires careful presentation. In statistics we put Romania to EU-12, although regulations differ considerably according to the precise date.

As for emigration, temporary character of the mainly labour mobility has been identified in various ways in the more relaxed period of emigration of the 2000s. (Illés-Kincses, 2009; 2012; Hárs, 2009; 2014) More recently migration with a strong focus to Europe is increasing; nevertheless temporary character regarding the definition of migration intentions is obvious.

## The Current State of Research on (Temporary) Migration

Both Hungarian emigration and immigration is concentrated to Europe. Due to the geopolitical position of Hungary being a member country of the European Union on the Eastern border the focus on Europe is particularly strong. For the large ethnic Hungarian population in the adjoining countries which are partly members of the EU (eminently Romania but also Slovakia) partly third member countries bordering the EU and the Schengen region Hungary is a strong magnet of immigration coinciding with intensive Diaspora politics. Diaspora migration is a key topic in Hungarian migration research and outnumbers other relevant research directions. The emerging outflow of Hungarians in the last decade aims at the European Union (or more broadly to the EEA region) since emigration due to free mobility and free migration of labour is a strong pull to this region.

Transeuropean (temporary) migration issues need some farther clarification. We focus on both, Transeuropean (Asian-European) migration and immigration from non-EU third countries in Europe. There is an extensive research on Chinese immigration that has been a new pattern of migration since the early years of transition. Research on various transit flows of immigration through European countries bordering Hungary and connected to Asian or Balkan transit routes is mainly connected to the strand of security studies (Çaglar- Gereöffy, 2008; Perrin, 2010; ICMPD, 2013). Nevertheless, this type of migration is connected to European region (Ukraine, Poland, Bulgaria, Romania, Balkan countries, etc.)

Research identifies characteristic differences among immigrants (of third country nationals) in Hungary. Zatykó-Schumann (2009) proved these differences, based on life path interviews.<sup>11</sup> Immigrants of ethnic Hungarian origin respectively those with good knowledge of Hungarian and having an extensive contact network could get easily integrated while those with poor knowledge of the language or without speaking it had difficulties. Large share of immigrants of the latter group (without language knowledge) have had family members or friends already upon arrival to Hungary who were helping them while others, mainly refugees or sheltered persons were lacking these help and remained marginalised. Considerable differing from these patterns, Chinese or Vietnamese immigrants are integrated without developing strong contacts to the receiving society.

The life path interviews revealed the *transitory vs. permanent migration expectation* of migrants from various backgrounds. According to the suggested definition that migrants with temporary migration intentions are temporary, a considerable share of non-Hungarian speaking immigrants proved to be temporary migrants. Reasons are various. The administrative burden of getting the permanent settlement permit would push those migrants to move on who are unconcerned about the destination country. Some other migrants used Hungary as an entry to the EU. The highly qualified employee of the multinational company moves on for a new and more challenging country. Asian migrants have a long term plan to return home after children have completed school somewhere in Europe and they'll become retired. Hardly any non-Hungarian speaking interviewed migrant had the definite plan of permanent stay in Hungary.

A recent study addressed the labour market integration of various third country nationals and reveals temporary character of labour migration.<sup>12</sup> (Juhász et al., 2011) Corresponding to our interpre-

11 30 life path interviews have been conducted settled with third country national migrants from various economic and regional background characteristic of the immigrant population. 2/3rd of them have stayed for less than 10 years while the others somewhat longer in Hungary. Most of them are economically active 5 out of the 30 are students and 5 are looking for a job.

12 The survey has been conducted Sept. 2010-Apr 2011, and covers 444 immigrants (third country nationals) reached by snowball

tation of temporariness, according to this definition more than half of the given sample is temporary migrant. Differences by sending regions are remarkable. European labour migrants (mainly ethnic Hungarians from the adjoining countries) are on the one hand short term migrants (often of seasonal or commuter type) on the other hand considerable share has the plan to stay over one year and half of these migrants intend to settle for good. Trans-European migrants (Chinese, Vietnamese, Mongolians or Arabs) intend to stay longer, over one year but mostly not with the plan to settle for good (about 20-25%).

Labour market insertion of immigrants is segmented by sending regions. Correspondingly, research evidences are remarkable when looking the migrants' temporary versus permanent intentions to stay according to their employment. Non-manual administrative or independent workers intend to stay for good at a larger share than any others (nearly 70% as opposed the 35-40% of the others). Managers intend to stay rather stable, mostly for over one year but some for several months only with somewhat lower intentions to settle. Some of the unskilled and semi-skilled labourers expect to stay for short term (likely seasonal or irregular workers from the neighbouring countries).

The research provides some farther evidence on remittances which is relevant, regarding the existing transnational network. Non-European migrants send remittances home at a higher share than Europeans (who intend to settle at a high share) while the transmitted amount is somewhat lower (possible due to the differences in income levels across the regions).

Important strand of research focuses on Asian immigrant entrepreneurs, on the emerging community of the Chinese entrepreneurs and their economic role and social position in Hungary. More recently new Asian sending countries (e.g. Vietnam) have been added to the research. As it has been summarised by Nyíri (2007), in Eastern Europe and in other transitional peripheries Chinese migrants are entrepreneurs who display a particularly intense transnationalism that is manifested in very high levels of international mobility and economic dependence on China. Chinese migrants follow the model of "transnational middleman minorities": their ethnic networks serve the flexible mobilization of labour, capital and business information in order to provide goods and services at a low price otherwise not accessible for the large share of the population. In the receiving CEE countries the position of these transnational middlemen minorities is not really accepted as a mainstream carrier, consequently they are inclined to take positions (and remain competitive in their business) in economic roles and methods that are seen as deviant (e.g. sweatshops, flea markets). This led to an increased fear of the entire group, although Hungarians meet Chinese daily in the shops, market places, restaurants, etc. Locals perceive the Chinese migrants as useful and exotic but potentially threatening aliens.

The transnational and in various ways temporary migration is proven by various research. Chinese entrepreneurs consider Hungary a base from where they re-export their goods to Eastern Europe and sometimes to farther destinations. Chinese immigrants aim at creating chains of stores by contracting with Hungarian retailers for exclusive distribution of their goods. Such chains appear to be the key to successful business. The Chinese community in Hungary is extremely mobile in a transnational space and to the business partners. Nevertheless, Chinese are deeply rooted in their home community in China. (Nyíri, 2007; 2010)

Remarkable, the community survived in spite of restrictive migration and economic policy. In the early history the immigration of the Chinese to Hungary developed similarly to the Italian community. Still, the Hungarian community stopped increasing soon, in contrast to that in Italy. (Pieke et al., 2004) The reason for the difference is the structure of the economic and policy circumstances. The

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technique. Although the sample is carefully selected in some way the sample is somewhat distorted: high share of migrants (2/3rd) are highly educated; concentrated in the Capital city (although concentration in total is also characteristic). In spite of the education level of the sample the employment structure is well structured although it comprises employees and entrepreneurs as well (11% unskilled, 18% semi-skilled, 26% skilled manual, 9% administrative, 20% independent non-manual, 4% manager and 8% entrepreneurs).



Italian confection industry largely depends on the small scale of Chinese workshops and illegal immigration to these industries. It has resulted in a policy of repeated regularisations of illegal migrants in Italy. (Reyneri, 2008) In Hungary, in contrast, without considering the economic gains of the new immigrant community, the government strongly hindered the activity of the Chinese businesses and even re-introduced visa obligations in 1992. As a response, some members of the Chinese community spread out to the neighbouring countries while others remained.

In spite of the long-lasting stay of Chinese in Hungary, integration is limited since they exist in their transnational ways and spaces. As shop-keepers they are connected with the native population, they even employ the relatively cheap native labour or ethnic Hungarians in their shops. Nevertheless, the Hungarian government insists on integrating the Chinese community, which would rather turn to their home country and integrate in the transnational Chinese community. At the same time, the Chinese immigrant population appreciates the life in Hungary and prefers to keep residence here. (Nyíri, 2005) To conclude, a permanent migration community seems to be permanently temporary among the obstructing policy circumstances.

An important strand of literature at the intersection of educational and migration studies comes to valuable achievements. With increasing migration schooling of immigrant children became an unexpected task at sudden. Problems were diverse. Hungarian schools and its readiness to adapt to the special needs and special treatment of the immigrant children has been a challenge for the Hungarian educational system. (Feischmidt-Nyíri, 2006) Immigrant population covers a big range of people from different social and economic background: from the refugee children who are mostly supported by civil organisations (Illés et al., 2010) to the children of the elite of the transnational bodies and business who also find the gradually mushrooming schools for their need.

Vámos (2011) presents the new strata of schools next to the national educational system. As a result of transnational migration, a separate group of students has been formed – those who study not in local authority schools, but in schools run by the state, international organisations or the private sector. As a parallel development, the national elite's preference of particular secondary schools was similar. These mushrooming schools do not attract their students exclusively through the use of foreign language or dual Hungarian-foreign language teaching – but, rather, via their network of international relations, their mobility and their intercultural openness, and not least through the high level of services they give their student–parent client group. Finally, the polarisation of Hungarian society has led to the emergence of a demand for this kind of fee-paying education, which is more relating to the social group to which the student belongs and not his/her citizenship; provides a constant environment for international education for a specific social group and gives the additional possibility that Hungarian citizens do not necessarily need to travel abroad to get this kind of education.

In this process remarkable case of a "NATO school" has been studied by Vámos (2011). There is the obligation to set up school in the countryside near to the base for the children of NATO air base staff. The paper examines how an appointed local primary school is trying, as a local government-funded institution, to satisfy the demands of families moving internationally, while abiding by the requirements of an international contract and yet operating within the framework of Hungarian public education. It is in the interests of the Hungarian state to create and maintain this kind of unique international institute and to require that the institutes that offer education to foreigners abide by international rules. Other case or the Primary School of Dual Hungarian-Chinese Language teaching attracted particular interest with the teaching and social experience. Vámos (2006) articulates the particular problem and possibilities of education among these circumstances. Ágoston (2009) presents the unique model in the framework of Hungarian public education with particular social and economic advantages related to the existence of the school and the Chinese-Hungarian relations. The paper considers the school as being on the border of two cultures with the hope to help the integration of immigrant children in group.



Sarkar (2011) in a comparative study analyzes the determinants of human trafficking on micro level. The paper concludes that migration pressure is the key driver of human trafficking. Determinants of migration do not differ much from the determinants of trafficking. The comparison of two different countries, Hungary and India suggests that it is difficult to identify other socioeconomic drivers of human trafficking than migration prevalence. The paper finds that victims of human trafficking appear to be various groups from urban vs. rural regions that can be richer or poorer. Indicators of poverty, regional crime, regional development, etc plays little role but risk perceptions and the relative role of illegal migration matters human trafficking.

Illés-Kincses (2009; 2012) made some effort to discuss the circular character of Hungarian emigration. Based on officially registered entries and applying the definition of circulation as "...a hetero-space and discrete-time spatial mobility system containing at least three inter-linked individual moves in which two have return character" (Illés-Kincses, 2012: 202-203) presented evidences on temporary vs. circular migration in a very limited section of a rather long term migration. Hárs (2009) surveyed Hungarians on the Austrian labour market with the clearly temporary labour migration. Based on the data of Labour Force Survey (LFS) more generally the return character of labour migration has been identified for the last decade (Hárs 2011; 2014). Nevertheless, circular migration is mainly focused to Western Europe.

There has been a remarkable unique emigration process different from other in CEE post-communist period. The migration of the poorest strata of the society, the Roma challenged migration and refugee system. The case study of Hungarian Roma emigration to Canada has the important lessons of temporary migration of the poorest. From CEE countries with considerable Roma migration – Hungary but also the Czech Republic and Slovakia – two waves of Roma migration occurred before and after EU accession. Migration had the peculiar form of both asylum seekers and labour/economic migration. In the pre-accession period emigration into EU countries primarily took the form of asylum seeking and with, basically, only negative results. In contrast, the asylum seekers in Canada had a better chance of receiving a positive verdict. After accession, economic migration to the EU replaced asylum seeking, although it is estimated that the volume of this type of migration has been rather limited. (Vidra, 2013b: 5).

Vidra (2013b) made theoretical model of the remarkable migration process by applying de Haas' migration system model: "...this migration displays similar, but sometimes differing, trends and patterns than other migrations. In regards to the similar trends, we observed that the ways in which this migration developed was very much like a 'classic' labour migration process: transnational networks were formed and functioned over space and time, remittances were sent (thus, generating more migration), migrant clusters were established in the destination country, etc. On the other hand, there were important differences that are worth pointing out. Most importantly, the way migration started was influenced both by the existence and influence of the migrant networks and by the fact that welfare was provided for refugees in Canada. This meant that wider social stratum – including lower status, underprivileged migrants who could not have been able to undertake other forms of migration – had the opportunity to participate in the process. All in all, it can be argued that the relatively low costs and low risks of migrating to Canada spurred old, and motivated new migrants alike to leave their home country. (Vidra, 2013b: 18)

In fact, the major incentive for migration could be summarised as searching for a better life. What each migrant meant by better life was different. There were various strategies and migration plans listed by the migrants. Settling down in Canada was among the plans but having examples of returnees and having only vague ideas about what they should expect there, the most common aim of migration was not to permanently leave. The goal was rather to save up some money and return and with the money saved improve the life of one's family at least for a while. The prospects for improving one's living standard were nonetheless very modest given the fact that the resources and possibilities

these people generally have are very limited. [...] More than that was hoped only among those with a somewhat higher social status who planned to provide a better education for their children when they returned. [...] ... the migration plans of these people were doomed to failure, giving them no better life either in Canada or back at home. Only a few things were found among the positive outcomes, such as some of the experiences they went through: the realization or crystallization of their humiliating situation, the fact that they had not been treated as human beings in Hungary, the admiration for how children were handled in Canada and the rights women had there.” (Durst– Vidra, 2013: 156-158)

## National Policies and Practices on (Temporary) Migration<sup>13</sup>

### Regulations and laws focusing on (temporary) migration management

Connected to the historical past and geopolitical position of the country Hungarian migration policy fits principally into the EU law and partly serves Diaspora policy as an instrument of nation building. (Tóth-Sik, 2014) Hungarian immigration policy regulation framework has been largely shaped by the harmonization process and transposition of EU Directives and various EU laws. According to Diaspora preferences foreigners who are ethnic Hungarians receive preferential treatment under the law.

Two basic laws shape and regulate migration according to the EU legislations regarding persons with the right of free movement in the EU versus those third country nationals without the right of free mobility in the EU.

The acts are the following: Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence (*FreeA*) and the Act No. II of 2007 on the Entry and Stay of Third-country Nationals (*ThirdA*). Farther details are in lower level Decrees available like Ministerial Decree No. 25 of 2007 of the Ministry of Justice and Law Enforcement (*ImpMinDec*) and executive rules to the *ThirdA* in Government Decree 114 of 2007, 24 May) (*GovDec*).

Remarkable, Diaspora preferences intercept the scopes of these laws. There have been exceptions and distortions which have continuously formed the characteristics of Hungarian migration regime. While the exceptions had strong preferences and correspondingly support in relation to migrants of ethnic Hungarian origin, those under the scope of the law without the ethnic preference had to face with strong ignorance and intolerance regarding minimum conditions for immigrants.

*Corresponding* laws outlines various types of immigration from third member countries. There are three different levels to enter the country as immigrant in correspondence with the system of Schengen visas for (i) stays of less than three months, (ii) visas and residence permits for longer than three months and (iii) settlement permits.

Visas for stays are (1) *short-stay visas* (for single or multiple entry and stays not exceeding three months in a six month time period); (2) for stay exceeding a three-month period are *seasonal employment visas* (granted for a period of three to six months); (3) *long-term visas* (granted for a maximum period of one year). In correspondence with the ethnic preference of the Diaspora policy there are (4) the *national visas* (issued under international agreements to encourage cultural contacts with the kin-state).

As a general rule, *immigration* to Hungary (for longer than 3 month) involves two steps: 1) a *long-term visa* is issued for a *specific purpose*; 2) before it expires, the foreigner applies in-country for a *residence permit based on the same grounds*. As a matter of fact, long-term visas may be considered as immigration visas because obtaining a long-term visa is one of the initial steps of the immigration procedure. Visas and resident permits are granted for specific purposes. Entry is allowed for particular purposes: *employment, seasonal work, study, research, medical treatment, official visitors, volun-*

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<sup>13</sup> The chapter has been largely based on Tóth (2009), Tóth -Sik (2014) and corresponding reports of the European Migration Network.

teers, visits (upon letter of invitation), family *unification*, and for *kin-minority* (for the purpose of maintaining ethnic and cultural ties).

Applicants for long-term visas must meet various strict conditions: possession of a *valid travel document*; *justification of the purpose* of entry and stay; adequate *accommodation* in Hungary; *sufficient means of subsistence*; and *health insurance coverage or sufficient financial resources for healthcare* services. In addition, applicants may not be subject to expulsion or a ban on entry, and no alert may have been issued under the SIS system.

Although classified as a permanent permit the temporary residence permit is granted for five years and is subsequently renewable in various cases. Temporary residence permits are issued to third-country nationals in possession of EC long-term residence permits issued by another country and who seek residence in Hungary for study, employment or another documented purpose. It is also granted to the family members of an EC long-term residence permit holder already residing in Hungary

Regulations differentiate migration by *the length of stay* which is essential from the temporary vs. permanent migration approach. As has been mentioned above, (i) *short-term visa holder* is granted entry, transit or stay in the country for up to three months within a period of six months; (ii) a foreigner who is issued a visa for stay is allowed (multiple) entry and stay in the county for up to one year, unless an international treaty regulates otherwise (for example, the validity of the visa would be no more than five years in the case of the ‘neighbourhood visa’). A visa for stay is issued for a determined purpose. Upon its expiration, long-term visa holders and national visa holders may apply for a *temporary residence permit* on the same grounds for which their visa was issued. As a general rule, a temporary residence permit is granted for a maximum period of *two years* and may be extended for two further years.

Definition of temporary migration would be difficult using the formal categories. Following official statistical definition temporary migration would last for less than one year. Considering the given regulations the only exceptional category is seasonal employment that would fit into the category. Official statistics are based on the above mentioned resident permits; no data on flows, lengths on real stay of foreigners are available. Resident permits are given for various reasons, however, that may help to identify temporariness more precisely by reasons.

## Regulations and conditions for types of immigration

### *Employment, economic activity*

Legal immigration to Hungary is at a large share for the purpose of employment. As a general rule, employment of third country nationals requires resident and work permits and the procedure is complicated and cumbersome. The work permit was valid for one year and in 2008 has been extended to a period of 2 years and should be applied by the employers. According to official opinion “the main reason of the amendment was to make the rules more flexible and to reduce the administrative burden of employers” (Ács, 2010b: 17). In 2014 the amendment of the law has changed the procedure with some simplification. Nevertheless, access to the labour market has not changed, in fact.

Foreign seasonal workers have to meet the visa and labour authorization requirements in accordance with *ThirdA*, *EmployA* and *PermitD* in order to obtain a seasonal labourer visa. Accordingly, a seasonal worker can stay and work from three to six months per year in Hungary

Exceptions from work permit obligations are available for those having the right of free mobility, third country nationals having the (preferential) right to work in Hungary without work permit, the immigrant/settled foreigners (stayed for a definite long period in the country) and the refugees, sheltered persons. Migration legislation among few migration policy elements has references to highly qualified employment of third country nationals. Various highly qualified professionals (researchers, professors) are also free of regular work permit obligations. Blue card holder qualified professionals

have a more favourable procedure. Blue Card Directive allows derogation from the main scheme in terms of the salary threshold laid down for specific professions where it is considered that there is a particular lack of available workforce regarding different types of health personnel. These health occupations being de facto the focal points of policy-making in clear connection with the evaluation of the acute Hungarian (and global) problem of the shortage of health personnel. Other groups are also subject of simple work permit (without labour market control) like key staff of foreign ventures and 5 per cent of the employees of majority foreign owned companies, posted worker, diplomatic or consular employees (in case of lacking other bilateral regulation), spouses or widows of refugees and sheltered persons, etc.

According to Act IV of 1991 on Employment (*EmployA*), the Minister responsible for employment and labour, in agreement with other Ministers concerned, may create a decree that specifies the preconditions and procedure of labour permit authorization for third-country nationals; the highest number of foreigners to be employed in individual occupations in any county, the capital city and in Hungary as a whole at any time; and the occupations in which no foreigner may be employed due to the then current trends and structure of unemployment.

An individual work permit can be issued if the employer duly indicates its request for a worker and if, prior to filing the workforce request, no Hungarian worker was available for the position in question, nor any nationals of the European Economic Area or any relatives of such nationals who are registered as a job-seekers. However, in certain cases the assessment of the labour market situation can be set aside. Health requirements and qualifications for the given job shall be met by the foreign applicant, and the remuneration stated in the labour contract shall not be below 80 per cent of the national average in the given branch of economy or occupation (and must be over the lawful minimum wage). The employer may not be under a labour inspection procedure or have had a fine imposed on him within the past year, if it has been paid, or within three years otherwise. In addition, there cannot have been significant lay-offs at the employer's establishment within the preceding year, or an ongoing strike at the time the application is submitted. After being granted a work permit, the foreigner has to apply for a long-term visa for the purpose of gainful employment. The further temporary residence permit granted for the same purpose shall not exceed three years but may be renewed. In any case, the duration of the long-term visa and residence permit shall correspond to the duration of the work permit. Previously the *EmployA* detailed the professionals exempted from work permit obligations. More recently *Governmental Decree*<sup>14</sup> detailed the list while *EmployA* regulates the strict labour market control regulations.

In April 2009 Hungary adopted the Strategy of the Cooperation in the Area of Freedom, Security and Justice for Hungary with some reference also to migration issues, emphasising that Hungary must seek to promote the entry and stay of legal migrants in line with the needs of the economy and science and also of the national labour market. The strategy states that in the field of legal migration the circular migration of highly skilled migrants needs to be encouraged for the benefits of the Member States and third countries and that of the migrants themselves. Furthermore, the document emphasises the importance to promote the adoption of legislation that makes the international mobility and employment of persons working in scientific positions possible without barriers. The recently elaborated migration strategy has not much development in this, rather general EU concept of labour migration. (EMN, 2013: 8)

### *Studies and training*

Regulations regarding free mobility of students are in full capacity transposed in Hungarian regulation. Free mobility of students has been regulated by *ThirdA*. A residence permit may be issued on

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14 445/2013. (XI. 28.) Governmental Decree



grounds of pursuit of studies to third-country nationals accepted by an establishment of secondary or higher education accredited in Hungary and admitted to the territory of Hungary to pursue as his/her main activity a full-time course of study, or to attend a course in an establishment of higher education which may cover a preparatory course prior to such education. The validity period of a residence permit issued on grounds of pursuit of studies shall correspond to the duration of training, if it is less than two years, or shall be at least one year or maximum two years if the duration of training is two years or more, and it may be extended by at least one or at most by two additional years at a time.

Although a number of Member States have introduced measures in their national legislation facilitating the job search for third-country national graduates, in Hungary non-EU nationals having a residence permit for the purpose of study have to leave the country when their residence permit expires. They are subject of the general procedure without encouraging highly graduated foreigners to stay. In case they would like to work in Hungary they must apply as all other third-country nationals pursuant to the relevant general rules. (Ács, 2010a)

EMN report on Hungarian educational mobility underlined „Notwithstanding the fact that we can find some good sounding objectives laid down in Hungarian policy papers, Hungary has no special strategy for attracting non-EU students.” (Ács, 2010a: 18-19) There is no particular preference for non-EU students. In the lack of international agreement or reciprocity third-country nationals are always subject to pay tuition fees for higher education. (Ács, 2010a)

In case of Hungary third-country nationals with a residence permit issued on grounds of pursuit of studies may engage in gainful employment during their term-time for maximum twenty-four hours weekly, and outside their term-time for a maximum period of ninety days or sixty-six working days yearly. (Ács, 2010a)

According to the recently changed law on higher education<sup>15</sup> each Hungarian citizen has the right, specified by law, to pursue studies of higher education with the support of full or partial state scholarship or funded individually. This right is also extended to persons enjoying the right to free movement and stay; refugees, exiles, persons with temporary and subsidiary protection status, persons with tolerated stay status, and persons holding permanent resident status; foreigners under the same legal standing as Hungarians. Foreign students attending courses in foreign languages have to pay a tuition fee in each semester. (Zámbó, 2012)<sup>16</sup>

All in all, Hungarian universities and colleges offer a wide range of educational programmes, specifically in English and German, and the ratio of foreign students studying at Hungarian universities and colleges increase annually. A special strategy targeting foreign students has not been elaborated so far. As a general principle, foreign students pay tuition fee for their study without exemptions or scholarships. Education and training is rather separated from the national in foreign language. Correspondingly, with the lack of preferential encouragement of foreign students to stay and work in Hungary upon having completed the study, student migration remains simply business. With the insufficient budget of universities foreign students are considered to support the budget. In this sense student migration is a poorly temporary type of migration to Hungary.

The strategy of national policy involves an action plan aiming at strengthening the education of ethnic Hungarians living outside the territory of Hungary. The Hungarian State highly promoted education of ethnic Hungarians in their mother tongue in the past 20 years. The strategy of national policy envisages primarily an Educational Area of the Carpathian Basin and the promotion of education of Hungarians living beyond the borders.<sup>17</sup> Zámbó (2012: 12) Not much has changed in the concept of the recently announced migration strategy either. (Migration strategy, 2014)

<sup>15</sup> Article 39 (1) of NHE

<sup>16</sup> As for tuition fees amounts are determined by the institutions themselves in line with the relevant government decree: amount an average to 1.200 €/1.500 \$ per semester whilst at medical faculties between 3.000 and 5.000 €.

<sup>17</sup> Based on Hungarian National Doctrine /www.kormany.hu/



### *Humanitarian migration*

There has been an institutional culture developed at the executive level, putting a disproportional emphasis on refugee affairs, mainly in the context of danger and fear. The reasons are manifold. Primarily, Hungary's migration policy has developed on the foundations of an asylum system in the early stage of transition: the first major wave of immigrants into the country was that of asylum seekers, the legal and institutional structures developed in reaction to a mass influx in the late 1980s and early 1990s. Secondary, the role and financial impact of the UN Refugee Agency was substantial throughout the 1990s and the early 2000s. Similarly EU accession funds were mainly channelled towards the asylum system in the same period – apart from a few technical developments in the field of border-monitoring and administration. Governmental and NGO projects developed in the field of asylum increased the visibility of the sector. Finally, EU funds (structural and specific) after the country's accession were mostly channelled towards the asylum sector, (e.g. European Integration Fund). When talking about integration it is solely refugee-related activities that government agencies and NGOs can present. (IDEA, 2009)

Hungary transposed the asylum acquis of the European Union, thus brought into line its national legislation with the relevant EU asylum legislation in a number of important respects. Act LXXX of 2007 on Asylum (*Asylum Act*) and Government Decree 301/2007. (XI.9.) on the implementation of the *Asylum Act* on Asylum (*Government Decree*) are fully conform to the EU rules on reception conditions. Importantly, however practice is not satisfying and provides only a minimum service at a very poor level, according to signals and criticism from relevant international and civil society organizations. The establishment of comparable reception conditions at EU level is needed, which provides sufficient and appropriate quality for applicants for international protection and responds to their needs. (EMN, 2013)

Hungary is a country on the front line of the Schengen Area that makes the country attractive for asylum seekers or other foreigners. Yet, the treatment of asylum seekers gradually lost the image of the early 1990s. The circumstances are in contrast to the early period of the humanitarian regime. The Hungarian humanitarian system provided little monetary or housing support for asylum seekers. On the basic principle and perception of migration being considered as danger and retaining, asylum-seekers have been detained along with immigrants who crossed Hungarian borders illegally. It has been repeatedly criticised (by the UNHCR, Amnesty International, and etc). Protests of asylum seekers were alarming on increasing hopelessness for integration prospects in Hungary and the possibility of being placed in homeless shelters and separated from the children once they have to leave the reception centres. The treatment kept the number of asylum seekers rather low.

In 2012, Hungary's detention of asylum seekers was found to be in violation of Article 5(1) of the European Convention of Human Rights by the European Court of Human Rights. Provisory halt of the detention of asylum seekers resulted in a jump from approximately 1,000 to more than 18,000 asylum seekers in 2012-2013 and Hungary reinitiated its detention policy. According to the opinion of the co-chair of the Helsinki Committee the detention of asylum-seekers is legal under a new EU directive but it is meant to be used as a last resort. In Hungary 30 per cent of asylum-seekers are in detention. The motivation was, in fact, to deter people from coming to Hungary. In January 2014, Hungary announced a comprehensive new immigration policy, though things appear to be improving, many concerns remain - especially over the issue of detention. The asylum regime corresponding with the migration policy of the country prefers the migrants to leave. In this sense asylum seekers but also refugees are temporary in Hungary.

### *Irregular migration, human trafficking*

The policy against irregular migration has not much changed in the last decades of the new free-mi-

gration regime. According to an early migration policy paper has been identified that irregular and uncontrolled immigration poses an ever growing challenge on the public order and security, therefore an effective legal regulation is needed to combat illegal immigration, as well as human smuggling and trafficking. (Tóth, 1995) Policy has not much changed in this respect. The recently announced migration strategy (Migration Strategy, 2014) follows the same concept with a large weight on the security aspect of migration. While the strategy dedicates one page to legal migration irregular migration and its security aspect are presented five times longer.

According to the IOM report “Foster and Improve Integration of Trafficked persons (FIIT project), Country Report” not too many cases can be identified. Most of the cases are intra European with only a very few trans-European cases of human trafficking identified. Hungary did transpose the EU directive on providing residence permits to those victims who cooperate with the authorities and the reflection period for them to make a decision on whether or not they would like to use the opportunities provided by this legal instrument, however, no third country national has yet benefitted from this. If investigation is launched the victim/witness is obligated under the law to testify.

In case of a system, where asylum seekers are detained along with illegal immigrants and treated among circumstances below the minimum justness, asylum seekers turn to become irregular migrants. In this case, supposing the minimum treatment provided, migrants will be expelled and will possible return to the country again. In this process, according to expert opinions, irregular border crossing and irregular migration will increase and provide a relatively high number of irregular migrations as compared to the real process.

#### *Family-based migration*

Family reunification is one of the main reasons of migration, according to the residence permit statistics. According to EMN (2012) report on misuse of the right of family reunification misuse has not been identified

Third-country nationals, who are holders of a long-term visa, temporary residence permit, national or interim permanent residence permit or an EC long-term permit are benefitted from family reunification. A residence title for the purpose of family reunification may not exceed the period of validity of the sponsor’s long-term visa or residence permit. A residence permit is usually issued for three years with a right to renewal. A national permanent residence permit may be granted to: minor children or dependent direct relatives in the ascending line of a sponsor holding a permanent residence status who have been living in the same household for at least one year preceding the submission of the application; and the spouse of a sponsor holding a permanent residence status provided that the marriage was contracted at least two years before the application was submitted.

The spouse of a sponsor holding a permanent residence permit obtains a labour permit without investigation of the local labour market supply if he or she has been living together with the sponsor in Hungary for at least one year prior to the submission of the application. The same provision applies to the spouse and descendents of a migrant worker who has been employed in Hungary for at least the preceding eight years, if they have been living together in Hungary for at least the preceding five years. A labour permit requiring a bureaucratic investigation of the labour market needs and supply (economic test) is necessary in all other cases.

#### **Inclusion of temporary residents**

There has been neither a formal requirement nor substantial criteria relating to the integration of migrants into Hungarian society and economy. Self-subsistence is the major principle for foreigners to enter and stay in Hungary.

It has been formulated in detailed conditions of visa and resident permanent policy based on obli-

gation to prove sufficient resources for living and health care. Remarkable, the level of self-subsistence has been set above the level of corresponding national population. Third country national has not been subject of unemployment benefit system until recently and had, in fact, to leave the country in case of becoming unemployed. According to the more recent regulations of labour market, the new Labour Code of 2012 provides equal treatment in labour conditions regardless of citizenship. Correspondingly, Employment Act regulates the equal access to unemployment benefit system upon 6 month employment in Hungary. Remarkable, however, the changing labour market regulations became rather strict with short benefit period (of 3 months) and public work obligation.

Insertion programs for foreign citizens has not been formally organised and not much happened on nongovernmental base either. In this regard, there is no difference according to the length of immigration or the migrants' expectations to stay temporary or permanently. The only exceptions are sporadic non-profit initiations. Even language training programs were not effective.

Migration policy in general shows rigid characteristics, such as the minimalist transposition of EU law and human rights to the national rules. As the authors summarised "... the regulations in place form an amalgam of public order restrictions, such as: detention of irregular migrants and asylum seekers, a scarcity of international human right obligations [...] and fragmented provision on integration. (Tóth-Sik, 2014: 175) The *ThirdA* regulating the entry, residence and removal of third country nationals provides wide discretionary power to the authorities with regard to employment, social allowances, housing or entrepreneurship which are severely restricted since legal provision entitles public authorities to deny their applications.

## Reintegration of returnees vs. repatriates

Migration integration has been driven by Diaspora preference since the early period of immigration and gradually developed the kin-state migration regime. The early decade of the immigration and refugee flows of overwhelmingly ethnic Hungarians turned into institutionalised kin-state policy in 2001 by the Act on (ethnic) Hungarians Living in Adjacent States. With Hungary' joining to the EU had to adjust the regulations to the EU law. Nevertheless, the main principle of preferences was preserved by compensation visa and immigration policy. More recent steps resulted in accelerating preferences of Diaspora policy. Steps are: national visa and national residence permits for cultural and educational purpose of the national language and cultural identity, eased settlement regulations regarding the length of stay, successive preferential naturalisation regulation. More recent amendment of citizenship Act offered naturalisation without permanent residence available for both adjoining county nationals and overseas.

Particular reintegration program has not been initiated, nevertheless the preferential treatment of ethnic Hungarians in contrast to immigration policy in large is evident. In addition, educational support is available for those from the Diaspora.

For reintegration of highly qualified returnees, mainly top researchers a particular program has been launched with the aim to encourage them to return (e.g. Lendület/Impulse program).

Voluntary Return and Reintegration (AVRR) Pilot Programme for Hungarian Romas has been initiated by the destination country of Canada with a unique experience.<sup>18</sup>

## The relationship between temporary and permanent migration

The official national concept on temporary or circular migration considers that there is no relevant definition on temporary vs. circular migration in Hungary. According to the country report prepared for the European Migration Network: "...these definitions have not yet been defined and laid down in the Hungarian legislation and policy making. As in Hungary precise national definitions with mini-

<sup>18</sup> <http://www.canada.iom.int/canada-avrr-pilot-programme>

imum or maximum duration of time are at the present unavailable, temporary and circular migration cannot be nationally defined. Due to this fact the national understanding of these categories can only be the existing frameworks for seasonal workers, researchers and students.” In addition to the definition deficiency, Hungary does not even have a labour migration strategy or any regulation reflecting clear preferences on how to facilitate circular and temporary migration in the labour market (with the exception of Hungarian minorities from the neighbouring countries). (Ács, 2010a) In January 2014 Hungary announced a comprehensive new immigration policy. (Migration Strategy, 2014) Nevertheless, in the formalised document previous scarcities were hardly answered.

Regarding the applied definition of the report, migration policy and preferences will be defined as the readiness of migrants to consider staying for long or moving for other destination, return or will become temporary. Turning points are vague. Particularly carefully designed answer will be needed in case of the subjective definition of intentions to move or stay. Nevertheless, turning points strongly connected to the *message* of migration policy.

In the report the main policies, regulations and practises have been summarised. From the outlined picture the message of the migration policy regarding the migrant’s intention to stay or live are the following.

According to immigration the policy is principally defensive supposing that immigration is dangerous and threatening. E.g. in case of labour migrants the precondition of self sufficiency considering income, accommodation and healthcare, in case of student migrants the tuition fee payment obligation without preference to stay may result in temporariness. More sharply has been outlined in case of humanitarian migration the lack of minimum support to encourage asylum seekers to relay on authorities to stay. The message of the policy in these cases is ignorance with the lack of any support. In addition, procedures are bureaucratic and impersonal with the deficiencies of an integrative system. The lack of any affirmation likely results in temporariness, particularly supposing the definition of intentions to leave. That is likely corresponding with the intentions of most of the migrants.

As for emigration policy, for various reasons there has not been any supportive measure to potential temporary emigration including the low level of language training and the low share of nationals speaking languages. At the moment of emerging emigration, the policy made efforts at sudden to stop emigration. The fear of labour shortage of particular groups like skilled labour of particular skills, doctors and IT professionals, etc. raised public debates and policy decisions. (E.g. wage increase among doctors, particularly resident, university educated to repay the free education fees, etc.) The effect is uncertain. Policy steps may result in double effect to increase and decrease temporariness of migration. Turning point of emigration depends largely on the push effects which are connected to national economic and migration policies.

The outcome is a generally low level of immigration and emigration with a considerable ignorance of the policy regarding migration and migrants. The particular exemption is the Diaspora migration with supportive policy background.

## **Public Discussion in Hungary**

### **Public discourse and discussion on (temporary) migration**

Reviewing the roots and the history of migration and migration policy in Hungary a comprehensive migration interpretation has been outlined: the overwhelming majority of ethnic migration and pro-Diaspora mainstream discussions coinciding with the EU-conform set of regulations and policy.

The discussion about migration and migration policy as well as collecting and improving the quality of data, understanding migration drivers of both inflows and outflows have not been in the forefront of the policy and turned out to be a rather marginal topics for Hungary. Research and statis-

tical data collection in the field of migration has been considered as topics with minor importance and focus while some new development has emerged when increasing emigration raised heated political debate in press on the size and temporary versus permanent character of emigration

Hungarian immigration has not even been present in the public debates, according to Tóth-Sik (2014) “As the representation of migrants in the media, unlike most other EU countries, in Hungary it is the Roma minority and not the migrants that are at the core of media interest. Migrants were more or less invisible even in the media of those communities where their proportion is the highest in contemporary Hungary. In the electronic media the visibility of migrants is also low. Moreover, [...] migrants, if mentioned in the media at all, are often reported as criminals or homeless, while their personal life stories, which would be crucial for the public understanding of the issue of immigrants, hardly appear in the media. “(p 182)

Not only the invisibility of migrants is important for the Hungarian discourse but the level of xenophobia has risen sharply to a high extent coinciding with other forms of prejudices like anti-Roma, anti-democracy feelings, etc. Among these circumstances the debate on migration is not in the core of the government policy. Although researchers and practitioners dealing with international migration have emphasised the importance of formulating and applying an overarching migration policy framework for a long time and the debate has been urged in the 1990s already (Sik-Tóth, 1997) neither political nor professional debates have taken place with the government nor its administrative structure has been set up. Although there has been an Inter-ministry Committee on Migration since 2004, with the declared task of strategic guidance for and coordination between responsible ministries, not much has changed.

Finally a migration strategy has been formulated and passed by the government in 2013.<sup>19</sup> The formulated strategy has been a step forward in a comprehensive migration policy; nevertheless not much has changed against the previous period regarding the perception and the concept towards migration. Public debate failed, however, in formulation of the strategy.

Tóth-Sik (2014) considers some important steps forward. The impact of the EU membership in migration law and in the minimum guarantee for persons in need had the important effect. “However, certain changes in principles (such as subjective rights instead of discretionary power in giving or not giving support by the migration authority, pro-migration policy on the grounds of labour force demand instead of dominant public order approaches) have not yet taken hold in Hungary.” (p 182)

Debates of involved researchers and practitioners partially replace public debates. Tóth (2010) comes to the surprising conclusion that research in the field of migration policy, regulation and law outnumbers other seminal and essential research outcomes of migration studies in Hungary. The reasons are various but the core of the problem is the unsettled government policy approach regarding migration. As a consequence, there is no comprehensive migration policy planted in various policies. Migration research is a set of sporadic research evidences of various fields (labour market and economic effects, education, integration, xenophobia, etc) and clarification of the role of migration and migrants are the core outcomes of migration research.

There is an agreement among researcher about the main policy issues articulated in Hungarian migration research of the last two decades. Somewhat surprisingly, core problems have hardly changed during the two decades of the history of post-communist free-migration regime. Tóth (2010) summarises the problems as follows: The role of ethnicity, criminalisation of migration, considering migration as a short term question without comprehensive migration strategy, lack of government coordination, deficiency of basic research in migration.

There has not been a thorough investigation of labour market or economic needs but rigid and hardly corroborated arguments of refusal have been formulated regarding labour migration. Hungar-

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<sup>19</sup> 1691/2013. (X. 2.) Government decree



ian labour market has been characterised by low participation rate and low labour market activity. The most common official argument sounds: "... there is a considerable reserve of native labour force, which should be able to meet the demands of the labour market." (Ács, 2010b: 3) The common and repeatedly echoed argument continues as follows: "...the number and proportion of immigrants is low [...].The reason of this lies in the fact that Hungary is a small country and is not a main destination country for immigrants but rather a typical country along the migration routes towards the Western countries of the European Union" (Ács, 2010b: 5)

Researchers have sharply criticised the arguments for a long time: Hungary faces the same developments noted in other EU countries: ageing and decline of the population and the labour force. This poses serious threats to the country's continued economic growth. In the near future this threatens a labour shortfall and a lack of funds to pay pensions to the country's inactive population, which will grow proportionately. [...] There is clearly demand-driven labour migration to Hungary, especially from the Hungarian-speaking Diaspora in the surrounding countries, sensitive to economic changes in the region. There are signs of return migration by ethnic Hungarians to Romania as well as changing migration preferences [...] Circular migration involves mostly ethnic Hungarians in the informal economy, helped by tolerant and ambiguous policies. However, Hungary would need a more active labour migration policy, instead of politically heated debates between the Government and opposition. But we can say that so far Hungarian migration policy has been, rather typically for Europe, "labour market resistant" and "politics-responsive" (Hárs-Sik, 2008: 104-105).

Mapping the state-of-the-art knowledge and the state of affairs regarding statistics and data collection we face also deficiencies. Ács (2009: 24) also stresses the data shortage. In accordance with the non-proactive but casual steps in the Hungarian migration policy, the current situation shows that there is a shortage of information about third-country nationals staying legally in the country, with particular emphasis on their geographical distribution, their educational and professional background and skills as well as the reasons that brought them to Hungary. Further research should be undertaken and the statistical systems should be further improved.

To conclude, it is hard to identify debate on temporary versus permanent migration in Hungary where even discussion on migration is missing. Implicit policy decisions or lack of pro-active decisions would result however in temporary character of types of migration like educational migration or irregular labour migration and defence policy. As a general rule, migration policy intends to keep migrants outside the county or let them leave supposing to give the minimum support.

## Actors facilitating temporary transnational migration

Office of Immigration and Nationality (OIN) is responsible for alien policing, asylum and naturalization affairs, subordinated by the Ministry of Justice and Law Enforcement<sup>20</sup>. In addition, the Hungarian Border Guard Services, as of 1 January 2008, have become an integral part of the Police service. The issuance of residence permits, as well as the withdrawal, invalidation, alteration, or prolongation of these documents, falls within the competency of the OIN and its regional units. In the case of applications for settlement permits, consultation with the Security Service is necessary. Permits for members of the Foreign Service are in the competence of the Ministry of Foreign Affairs. The issuance and prolongation of labour permits falls within the competence of the regional unit of the Labour Office in the location of the applicant's employer

The administrative roles and competences related to migration have been scattered among several ministries with professional debates or applied research activities which usually deal with technicalities belonging to particular segments of public administration. (Hárs-Kováts, 2005; Hárs et al., 2009; IDEA, 2009; Tóth, 2010) Government actions and the values that have been followed have been

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<sup>20</sup> Present status of the ministry is not clear yet.

usually hidden in various policies without being openly formulated in an all-inclusive migration policy. While urging a comprehensive migration policy researchers with the lack of a migration policy or strategy document conclude from these scattered policies to the concept of a national migration policy. (Tóth, 2010)

There are civic organisations and/or economic and social networks perpetuating the temporary mobility of various groups of migrants. The civic organisations of various immigrant groups are active and strongly support the communities. The Chinese community has strong self-organisations.

## Conclusion

In the report we argued that temporary migration is not a core topic for Hungary. One can hardly identify the issue of ‘temporary migration’ in national policy discussions or in any kind of national discourse. Immigration policy has been largely influenced by the harmonization process with the EU Directives and Laws while Diaspora policy with preferential treatment of ethnic Hungarians received important policy emphasis.

Corresponding with the main policy focus, research identifies characteristic differences among various immigrant groups. Those of ethnic Hungarian origin and even those with good knowledge of the language and extensive contact network could get easily integrated while those with poor knowledge of the language or without speaking it had difficulties, particularly refugees or sheltered persons without networks and help remain marginalised. The patterns of Chinese (and also Vietnamese) immigrants, who are sizeable, are principally different being integrated without developing strong contacts to the receiving society. Labour market insertion of immigrants is also segmented, according to the above outlined differences by sending regions. Research revealed the transitory or permanent migration expectation of migrants from various backgrounds.

In Hungarian context a precise understanding of temporary transnational migration needs a loose definition. Based on the state-of-the-art knowledge on migration we suggested considering migration temporary if the migrant intends to leave the country with the purpose of returning home or to a third country or with the purpose of circular mobility.

A considerable share of non-Hungarian speaking immigrants proved to have temporary migration intentions and they are in this regard temporary migrants. Reasons are various from the administrative burden of getting the permanent settlement permit to entering the EU and moving to another EU country, or to move across multinational companies. Asian migrants have the peculiar long term plan to return home after children have a future in Europe and they’ll become retired. Hardly any non-Hungarian speaking migrant had the definite plan of permanent stay in Hungary.

The message of the migration policy regarding the migrant’s intentions to stay or leave is clear. According to immigration the policy is principally defensive supposing that immigration is dangerous and threatening. E.g. in case of labour migrants the precondition of self sufficiency considering income, accommodation and healthcare, in case of student migrants the tuition fee payment obligation without preference to stay may result in temporariness. More sharply has been outlined in case of humanitarian migration the lack of minimum support to encourage asylum seekers to relay on authorities to stay. The message of the policy in these cases is ignorance with the lack of any support. In addition, procedures are bureaucratic and impersonal with the deficiencies of an integrative system. The lack of any affirmation likely results in temporariness, particularly supposing the definition of intentions o leave. That is likely corresponding with the intentions of most of the migrants.

As for emigration policy, for various reasons there has not been any supportive measure to potential temporary emigration including the low level of language training and the low share of nationals speaking languages. At the moment of emerging emigration, the policy made efforts at sudden to stop emigration. The fear of labour shortage of particular groups like skilled labour of particular skills,

doctors and IT professionals, etc. raised public debates and policy decisions. (E.g. wage increase among doctors, particularly resident, university educated to repay the free education fees, etc.) The effect is uncertain. Policy steps may result in double effect to increase and decrease temporariness of emigration. Turning point of emigration depends largely on the push effects which are connected to national economic and migration policies.

As discussed and underlined in the report, debate on migration in general is not in the core of the government policy. Although researchers and practitioners dealing with international migration have emphasised the importance of formulating and applying an overarching migration policy framework for a long time and the debate has been urged in the 1990s already neither political nor professional debates have taken place with the government nor its administrative structure has been set up.

Migration policy in general shows rigid characteristics, such as the minimalist transposition of EU law and human rights to the national rules. Nevertheless, the predominance of public order and security issues over the prioritisation of the integration of migrants (for example migration policy is an implicit security policy) fits very well into the general EU trend, as Tóth-Sik (2014) state with some sarcasm.

There has been neither a formal requirement nor substantial criteria relating to the integration of migrants into Hungarian society and economy. Self-subsistence is the major principle for foreigners to enter and stay in Hungary. It has been formulated in detailed conditions of visa and resident permanent policy based on obligation to prove sufficient resources for living and health care. Remarkable, the level of self-subsistence has been set above the level of corresponding national population.

Insertion programs for foreign citizens has not been formally organised and not much happened on nongovernmental base either. In this regard, there is no difference according to the length of immigration or the migrants' expectations to stay temporary or permanently. The only exceptions are sporadic non-profit initiations. Even language training programs were not effective.

As a matter of fact, there has not been any debate on broader economic or social policy relevance of migration, particularly temporary migration in this context. Migration has been sharply restricted that has resulted partly in low level of migration and partly in irregular migration. Although present stage of economic position of the country has only limited pull effect on migrants, medium and long term perspective of labour market and social benefit found balance needs careful consideration of a more open and selective migration policy for the future.

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## 4.6 TEMPORARY MIGRATION IN INDIA

S. Irudaya Rajan

### Introduction

India has always been a treasure land for scholars working on migration for its centuries old legacy of moving beyond boundaries in search of fortunes. Migration is a phenomenon as old as human civilisations itself and has undergone tremendous changes from time to time. India is the best source to understand these intricacies involved with human mobility for the variety of trends it exhibits from North to South. Migration and development are synonymous in this nation where remittances form the building blocks to prosperity. With the global economic transformations, internal economic reforms and the socio political ambiance across the globe migration patterns tend to change sometimes for good and sometimes with hard setbacks. Still, given all this, India is among the top human resource exporters in the world.

The objectives of this paper are as follows: (a) to provide the historical background of migration movements in India; (b) to evaluate the current status of research on temporary migration; (c) to assess migration to and from India; and (d) to assess the migration policy changes, if any. Analysing the overall migration trends and policy responses on temporary migration require a careful study of data from across regions, times and sources. This report has been prepared on the basis of data collected from many sources. Every data set has its own relevance, characteristic features and hence need to be properly understood for one to comprehend what they imply.

**Government of India's data on labour migration:** The Government of India through its office of Protector General of Emigrants (PGE) of the Ministry of Overseas Indian Affairs compiles data on emigrant clearances (those who have not completed ten years of schooling but would like to work at Emigration Clearance Required (ECR) to about 18 countries in the world) and publish it annually along with states of origin as well as the countries of destination. This data just provides some indications of labour flows to about eighteen countries in the world (more details, see Krishna Kumar and Irudaya Rajan, 2014).

**The National Sample Survey Organization rounds:** The National Sample Survey Organisation/Office (NSSO) established in 1950 is an organisation under the Department of Statistics which is the largest organisation involved in conducting massive socio-economic surveys across the country. The study here has made use of data available from its 49<sup>th</sup> and 64<sup>th</sup> rounds of studies. NSS 49<sup>th</sup> round (January to June, 1993) included a section on migration and collected some characteristics of households with migrants. Similarly, the situation of employment and migration particulars in India was carried out during NSS 64<sup>th</sup> round (July, 2007 to June, 2008).

**India Human Development Survey:** The India Human Development Survey (IHDS) is a nationally representative, multi-topic survey of 41,554 households in 1503 villages and 971 urban neighborhoods across India and also canvassed the question on migrant households. The first round of interviews was completed in 2004-05. IHDS has been jointly organized by researchers from the University of Maryland and the National Council of Applied Economic Research (NCAER), New Delhi. Funding for this survey is provided by the National Institutes of Health with additional funding from the Ford Foundation.

**Other Published data sources:** In addition, we have used extensively the Eurostat Database of the European Commission, OECD database, UNESCO database, India Tourism statistics, European Travel Commission data, Census of India, World Bank database, Reserve Bank of India, Bureau of Immigration, Government of India and UN population division.

## Introducing the Current Stock of Emigration

The World Bank classifies India as one of the top emigrating countries where migration is a reality for a large section of population: stock of 11.4 million Indians from India in 2010 (World Bank, 2011). Additionally, India figures in three of the top five migration corridors in the South Asian region - India–United States, India–Saudi Arabia, India–United Arab Emirates<sup>1</sup>. India also ranks first in the list of top remittance receiving countries with \$69.8 billion followed by China (\$66.3 billion), and Philippines with US \$ 24.3 in 2012 (World Bank, 2013). With a favourable demographic pattern, IOM (2010) predicts that India is likely to emerge as one of the largest migrant-sending countries by 2050. (IOM, 2010).

According to the World Bank (2011), the United Arab Emirates (UAE) registered the highest migrant stock, followed by the United States of America and Saudi Arabia. About twelve countries globally registered their Indian migrant stock at about 2 lakhs. Most Gulf countries figure in this list, along with the United Kingdom, Canada and Australia (Table 12). On the other hand, the refugee population in India continues to rise, with the Bangladesh-India border<sup>2</sup> considered one of the most active cross-border corridors for immigration into India. Among the European Union, only United Kingdom is represented in the list provided in Table 12, with 657,792.

The Centre for Development Studies, Kerala, has placed the Indian migrant stock at 12 million in 2011 based on earlier work conducted at the time of the financial crisis in Gulf and South Asia (Rajan and Naryana, 2012) and later revised to 14 million in 2014 (Rajan, 2014). As of now, the Gulf region accounts for 7 million or 50 per cent of the Indian temporary emigrants.

**Table 12** Estimated Indian migrant stock, 2010 (Source: World Bank, 2011)

| Destination Countries    | Number     |
|--------------------------|------------|
| Australia                | 209,908    |
| Qatar                    | 250,649    |
| Sri Lanka                | 336,352    |
| Kuwait                   | 393,210    |
| Oman                     | 447,824    |
| Canada                   | 516,508    |
| United Kingdom           | 657,792    |
| Nepal                    | 831,432    |
| Bangladesh               | 1,052,775  |
| Saudi Arabia             | 1,452,927  |
| United States of America | 1,654,272  |
| United Arab Emirates     | 2,185,919  |
| All Other Countries      | 1,371,256  |
| Total                    | 11,360,823 |

## Understanding India's international migration through historical perspectives

The emigration of Indians can be broadly classified into three major streams—pre-colonial, colonial, and that following the abolition of the colonial government's indenture system in 1917. Colonial emigration from India, which was a result of the abolition of slavery<sup>3</sup> across the British Empire in 1834 (Vertovec 1995), constituted mostly indenture—*kangani*<sup>4</sup> and *maistry*<sup>5</sup> labor migrants, as opposed to

1 The major destinations of migrants from India are: the United Arab Emirates, the United States of America, Saudi Arabia, Bangladesh, Nepal, the United Kingdom, Canada, Oman, Kuwait and Sri Lanka.

2 The World Bank estimates 3.3 million migrants cross the Bangladesh-India corridor (2011: 6).

3 Vertovec (1995:57), in which Vertovec refers to Higman (1984) and says: "The British government passed the Act of Emancipation in 1833 and declared it law in the following year, freeing a slave population of around 665,000 in the British Caribbean. In the years to follow, slavery was similarly abolished in the French (1848), Danish (1848) and Dutch (1863) Caribbean."

4 The term *kangani* refers to the headman or leader of a group of 25-30 persons, armed with a license to recruit laborers for a plantation.

5 The *maistry* system is similar to the *kangani* system, but was used to distinguish emigration to Burma, which entailed a large Telugu population.

free or passage<sup>6</sup> migrants (Tables 13 and 14). Emigration to colonies such as Malaysia, Burma and Sri Lanka continued under the *maistry* or *kangani* forms even after 1917.

Indians began emigrating to the West for academic purposes as early as 1900. However, the outward flow, especially to the United States, picked up after the passing of the 1965 Immigration Act. Emigration to countries such as the United Kingdom and France took place even earlier, due to the colonial connection with these countries; for instance, emigration to France from erstwhile French colonies such as Pondicherry and Yanam.

**Table 13** Indentured Indian migrants (*Sources*: Roberts and Byrne (1966); Singaravelou (1990); Tinker (1974); Gillion (1962))

| Colony         | Period     | Immigrants  |
|----------------|------------|-------------|
| Mauritius      | 1834- 1871 | > 5,000,000 |
| Natal          | 1860- 1911 | 152,189     |
| Fiji           | 1879- 1916 | 60,965      |
| British Guiana | 1838- 1917 | 238,909     |
| Trinidad       | 1845- 1917 | 143,939     |
| Guadeloupe     | 1854- 1889 | 42,326      |
| Jamaica        | 1854-1885  | 36,420      |
| Dutch Guiana   | 1873-1916  | 34,304      |
| Martinique     | 1854-1889  | 25,509      |
| French Guiana  | 1856-1877  | 6,551       |
| St Lucia       | 1858- 1895 | 4,354       |
| Grenada        | 1857-1885  | 3,200       |
| St Vincent     | 1860-1880  | 2,472       |
| St Kitts       | 1860-1865  | 337         |
| St. Croix      | 1862       | 321         |

**Table 14** Estimated total migration to and from India, 1834-1937 (in thousands) (*Source*: Davis (1951))

| Year      | Emigrant | Returned Migrants | Net Migrants |
|-----------|----------|-------------------|--------------|
| 1834-40   | 250      | 194               | 56           |
| 1841-45   | 240      | 167               | 73           |
| 1846-50   | 247      | 189               | 58           |
| 1851-55   | 357      | 249               | 108          |
| 1856-60   | 618      | 431               | 187          |
| 1861-65   | 793      | 594               | 199          |
| 1866-70   | 976      | 778               | 198          |
| 1871-75   | 1,235    | 958               | 277          |
| 1876-80   | 1,505    | 1,233             | 272          |
| 1881-85   | 1,545    | 1,208             | 337          |
| 1886-90   | 1,461    | 1,204             | 257          |
| 1891-95   | 2,326    | 1,536             | 790          |
| 1896-1900 | 1,962    | 1,268             | 694          |
| 1901-05   | 1,428    | 957               | 471          |
| 1906-10   | 1,864    | 1,482             | 382          |
| 1911-15   | 2,483    | 1,868             | 615          |
| 1916-20   | 2,087    | 1,867             | 220          |
| 1921-25   | 2,762    | 2,216             | 546          |
| 1926-30   | 3,298    | 2,857             | 441          |
| 1931-37   | 2,755    | 2,848             | -93          |
| Total     | 30,192   | 24,104            | 6,088        |

In a generalised sense, Indian emigrant stock consists of People of Indian Origin, on one hand, and Indian expatriates who left India after independence in 1947—the old and the new diasporas (Bhat and Bhaskar 2007). Estimates of the numbers of people in the diaspora vary. It is believed to constitute some 30 million people, mostly residing in the United States and the Gulf. However, the first holistic attempt to estimate the diaspora was made in 2001, by the High Level Committee (HLC) on the In-

<sup>6</sup> Free or passage migration is when a prospective migrant pays for his passage on the ship.



dian Diaspora of the Indian government in 2001. The HLC reported that the diaspora constituted 16 million. Table 15 reflects the HLC's estimates.

**Table 15** People of Indian origin and non-resident Indians worldwide, 2001 (Source: High Level Committee Report 2001)

| Region/Countries             | PIOs       | NRIs<br>(Indian<br>Citizens) | Total      |
|------------------------------|------------|------------------------------|------------|
| Africa                       | 1,182,493  | 83,350                       | 1,265,843  |
| Asia and Pacific             | 4,920,362  | 174,349                      | 5,094,711  |
| Australia                    | 160,000    | 30,000                       | 190,000    |
| Central and South America    | 1,115,151  | 7307                         | 1,122,458  |
| Europe                       | 404,456    | 163,831                      | 568,287    |
| Gulf and Neighboring nations | 200,305    | 3,299,060                    | 3,499,365  |
| Canada*                      | 851000     |                              | 851,000    |
| South Africa*                | 1,000,000  |                              | 1,000,000  |
| United Kingdom*              | 1,200,000  |                              | 1,200,000  |
| United States of America*    | 1, 678,765 |                              | 1,678,765  |
| Total                        |            |                              | 16,470,429 |

\* Denotes PIOs + NRIs.

The Ministry of Overseas Indian Affairs (MOIA)<sup>7</sup> estimates that there are currently just over 21.3 million overseas Indians. This includes 11.5 million People of Indian Origin (PIOs) and 9.7 million Non-Resident Indians (NRIs).<sup>8</sup> Other estimates indicate that there are nearly 25 million Indians overseas, with a little over 10 million NRIs and nearly 5 million that stay in the Gulf. The Ministry's annual report (2010) estimates the Indian diaspora to be 25 million across 189 countries.

## Key destinations

The major destinations are the United Arab Emirates, the United States, Saudi Arabia, Bangladesh, Nepal, the United Kingdom, Canada, Oman, Kuwait and Sri Lanka. Similarly, immigration to India amounted to 5.4 million, of which 2.9 per cent constituted refugees. Countries from South Asia constitutes the top source of immigration to India mostly from nations like Bangladesh, Pakistan, Nepal, Sri Lanka, Myanmar, China, Malaysia, the United Arab Emirates, Afghanistan and Bhutan.

The United Kingdom has long been a prime destination for Indian emigrants due to the colonial linkages, and it has become a destination of permanent residence. Next in desirability are the United States, Australia, and Canada (Khadria 2009), which mostly attracts professional Indian emigrants (Table 16). According to Kapur (2010) states, the post-1990s period saw the large scale emigration of skilled professionals to destinations such as "Australia, Canada, New Zealand and Singapore—English-speaking industrialized countries whose higher-education systems are an important mechanism to attract and screen potential immigrants". The flow of Indian nationals into OECD countries increased from 73,455 in 1998 to 159,174 in 2008 (Khadria, 2009). However, most of the Indian emigrants live in the US and GCC countries, especially the United Arab Emirates and Saudi Arabia.

**Table 16** Immigration trends in industrialised countries, 1951-2001 (Source: Deepak Nayyar (1994) and www.migration-information.org)

| Immigration to     | 1951-60   | 1961-70   | 1971-80   | 1981-90   | 2001 (total) |
|--------------------|-----------|-----------|-----------|-----------|--------------|
| United States      |           |           |           |           |              |
| From India         | 2,120     | 31,214    | 172,080   | 261,841   | 12,84,000    |
| From all Countries | 2,515,000 | 3,322,000 | 4,493,000 | 7,338,000 | 318,11,000   |
| India's Share (%)  | (0.1)     | (0.9)     | (3.8)     | (3.6)     | (4.0)        |
| Canada             |           |           |           |           |              |
| From India         | 2,802     | 25,722    | 72,903    | 79,304    | 3,22,215     |
| From all Countries | 1,374,841 | 1,409,677 | 1,440,338 | 1,336,767 | 56,47,125    |
| India's Share (%)  | (0.2)     | (1.8)     | (5.1)     | (5.9)     | (5.7)        |
| United Kingdom     |           |           |           |           |              |
| From India         | n.a.      | 1,25,600  | 83,040    | 51,480    | 4,67,634     |
| From all Countries | n.a.      | 6,350,000 | 7,32,900  | 5,16,870  | 48,96,581    |
| India's Share (%)  | n.a.      | (19.8)    | (11.3)    | (10.0)    | (9.6)        |

7 PDF entitled NRISPIOS-Data.pdf at <http://moia.gov.in/services.aspx?ID1=300&id=m8&idp=59&mainid=23> (data noted on 24 Nov 2010).

8 Specifically, a total of 21,313,601, made up of 11,585,601 POIs and 9,728,000 NRIs.

According to Bhaskar (2000), the migration of Indians to the US occurred in several phases, although the majority emigrated after 1965 when the Hart-Celler Act came into effect. Apart from abolishing the quota system, the act facilitated emigration under various categories that included family reunion. However, Indian emigration occurred on a large scale when Sikhs working on the British regiments migrated from the United Kingdom to North America after attending the Queen Victoria's Diamond Jubilee celebrations in 1897. Currently, there are 2.2 million<sup>9</sup> Indians in the US.

Migration to the Gulf took off also in the 1970s and has gained momentum in the decades since. Gulf-based Indians now number nearly 5 million. Most are in United Arab Emirates (UAE), Saudi Arabia and Kuwait and work in the construction, oil and natural gas, trading, and financial sectors. Although the majority of them are laborers, the presence of professional emigrants is noteworthy. The Indian expatriate population in the Middle East increased from 0.2 million in 1975 to 3.3 million in 2001 (Lal 2006), and reached the near-6 million mark in 2010 (Rajan and Narayana, 2010).

Given the historical connections that India had with its neighbors, migration within the Indian sub-continent, prior to the independence of countries such as Pakistan and Bangladesh, is self-explanatory. According to estimates, there are 150,000 Tibetans in India, 60,000 Afghans (since the Soviet-Afghan war), and 3.3 million Bangladeshis. Migration to Sri Lanka had its origins in colonial times, as Indians were taken to work as laborers on the coffee, tea and rubber plantations during the 19<sup>th</sup> and 20<sup>th</sup> centuries. Indian Tamils, or Hill Country Tamils as they are often called, constitute the majority at 1.6 million. Although many of them repatriated in 1964, their descendants remain in Sri Lanka (Valatheeswaran and Rajan, 2011).

## Informal and unrecorded outward migration

Immigration to India from South Asian countries constitutes mostly informal and unrecorded movements. It is estimated that there are over 20 million irregular migrants in India. This is more than the number of irregular migrants in both the European Union (EU) and the US. India's open borders with Bangladesh and Nepal have put the country in a difficult situation, as immigrants enter the country easily.<sup>10</sup> Bangladesh reports nearly 500,000 Indians staying in the country illegally after their tourist visas expired, working in business establishments.<sup>11</sup> The UNHCR reports that there are 185,323 refugees and 5,441 asylum seekers in India, while the refugees and asylum seekers originating from India constituted 24,236 as on Jan 2010.<sup>12</sup> India is yet to sign the International Convention on Refugees due to concerns about national security (Valatheeswaran and Rajan, 2011).

## Migration trends in destinations, routes, and regions

As outlined in the previous section, Indian emigration can be understood in the context of the three historical stages with specific motivations, destinations and corridors (Table 17). As noted earlier, the World Bank estimates that India has 11.3 million emigrants abroad and 5.4 million immigrants from other countries to India. Source countries for these immigrants include Bangladesh, Pakistan, Nepal, Myanmar, Sri Lanka, China, Malaysia, the United Arab Emirates, Afghanistan, and Bhutan — most notably nearby countries of South Asia (Rajan and Prabha, 2008). The Census of India (2001), also reports “there were 6,166,930 foreign-born, and 5,155,423 people having their last residence as outside India” (Khadria, 2009). Among the stock of foreign immigrants in India by country of last resi-

9 PDF titled NRISPIOS-Data.pdf at <http://moia.gov.in/services.aspx?ID1=300&id=m8&idp=59&mainid=23> (Website visited on 24 Nov 2010)

10 Report of an address by G. Gurucharan to the National Stakeholder's Workshop for Prevention of Irregular Migration. Details about the news coverage can be read at <http://ibnlive.in.com/news/india-has-20-million-irregular-migrantsgovt/115298-3.html?from=tn>

11 [http://www.thefinancialexpress-bd.com/more.php?news\\_id=74259](http://www.thefinancialexpress-bd.com/more.php?news_id=74259)

12 <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4876d6>

dence, Bangladesh (30,84,826), Pakistan (9,97,106), Nepal (5,96,696), Sri Lanka (1,49,300), Myanmar (49,086), UAE (29,823), China (23,721), Saudi Arabia (16,395), Malaysia (13,946) and Kuwait (10,473) constitute the top ten (Khadria, 2009; Rajan, 2004; Rajan and Prabha, 2008).

**Table 17** Trends in overall migration from India (Source: Irudaya Rajan and Bhaskar, 2014)

| Time-period                      | Category of Emigrant                              | Destination for Indian Emigrants                                       |
|----------------------------------|---------------------------------------------------|------------------------------------------------------------------------|
| Pre-Colonial                     | Religious/Trade                                   | West Asia, South and South East Asia & Africa                          |
| Colonial                         | Indenture                                         | West Indies, South Africa, Fiji, Mauritius and several other colonies  |
|                                  | Kangani                                           | Malaya and Ceylon                                                      |
|                                  | Maistry                                           | Burma                                                                  |
|                                  | Free /Passage (merchants and other skilled labor) | To colonies outside the British India                                  |
| Post India's independence (1947) | Professional                                      | Prominently to USA, Europe, Australia and Gulf                         |
|                                  | Professional, Skilled , Semi & Unskilled workers  | Prominently to GCC countries and Malaysia                              |
|                                  | Family reunion (dependents of emigrants)          | To all destinations as permitted by both India and receiving countries |
|                                  | Students                                          | Australia, UK, USA, and Russia                                         |

The quantum of workers that emigrated from India as contractual employment workers over the last several years is presented in Table 18. The number is very small when compared to the total emigrants reported earlier because many emigrants do not require emigration clearance from the Government of India. In India, 17 categories of persons have been exempted from emigration clearance and are placed under the 'emigration clearance not required' (ECNR) category, as per the Emigration Act 1983). Official figures only capture the flow of temporary migrant labour that fall within the ECR category (Rajan, Varghese and Jayakumar, 2011). The initial flow of contractual temporary labour from India started with a low profile with just 0.16 million in 1985, later reaching a peak of 0.44 million in 1993 and then slowly declining. It is currently witnessing an upward surge with 0.37 million in 2002, reaching a peak of 0.9 million in 2007 and currently hovering around 0.6 million since the global economic crisis and picking up again to the pre-global crisis level of 0.75 million.

We can divide the migration outflows from India into five phases based on the emigration clearance data. The first phase covers the period between 1985 and 1991, which witnessed an annual volume of emigration ranging between 0.11 million to 0.20 million. The second phase is the first half of 1990s (1992-97) when the annual flow of labour was more than 0.40 million. The third phase starts after 1998 when a heavy fall in emigration took place. The last phase sets in at the beginning of the 21st century when the annual flow has been on a steady increase, reaching close to 0.9 million in 2007 (Rajan and Kumar, 2010) and finally saturating at around 0.6 million during the last 2 years and moving to pre-global crisis level of 0.8 million in 2013.

**Table 18** Trends in workers emigrated from India, 1985-2013 (Source: Compiled by the author from various Annual Reports of the Ministry of Labour and Ministry of Overseas Indian Affairs, Government of India)

| Year                    | 1985        | 1986        | 1987        | 1988        | 1989        | 1990        | 1991        | 1992        | 1993        |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Emigration (in million) | 0.16        | 0.11        | 0.13        | 0.17        | 0.13        | 0.14        | 0.20        | 0.42        | 0.44        |
| <b>1994</b>             | <b>1995</b> | <b>1996</b> | <b>1997</b> | <b>1998</b> | <b>1999</b> | <b>2000</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> |
| 0.43                    | 0.42        | 0.42        | 0.42        | 0.37        | 0.20        | 0.24        | 0.28        | 0.37        | 0.47        |
| <b>2004</b>             | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> | <b>2010</b> | <b>2011</b> | <b>2012</b> | <b>2013</b> |
| 0.47                    | 0.55        | 0.68        | 0.81        | 0.84        | 0.61        | 0.64        | 0.63        | 0.75        | 0.82        |

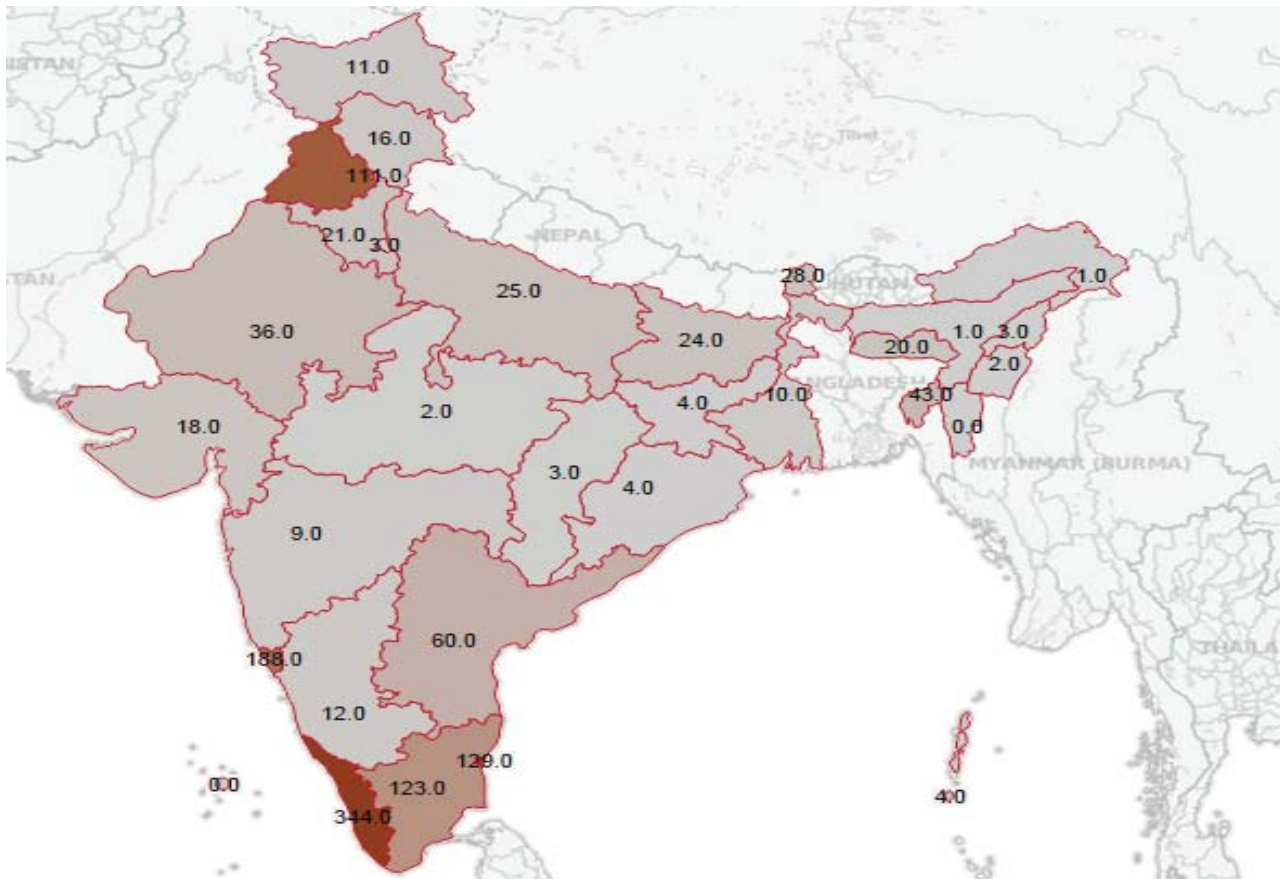
**Table 19** People exempt from emigration clearance in India, 2010 (Source: MOIA annual report 2011-2012)

|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1</b>  | All holders of Diplomatic/Official Passports.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>2</b>  | All Gazetted Government servants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>3</b>  | All Income-tax payers (including agricultural income-tax payers) in respect of their individual capacity                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>4</b>  | All professional Degree Holders, such as Doctors holding M.B.B.S. degrees or Degrees in Ayurveda or Homoeopathy; Accredited Journalists; Engineers; Chartered Accountants; Lecturers; Teachers; Scientists; Advocates etc.                                                                                                                                                                                                                                                                           |
| <b>5</b>  | Spouses and dependent children of category of persons, listed from (2) to (4).                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>6</b>  | Persons holding class 10 qualification or higher degrees.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>7</b>  | Seamen who are in possession of Continuous Discharge Certificate (CDC) or Sea cadets, Desk cadets (i) who have passed final examination of three years B.Sc. Nautical Sciences Courses at T.S. Chanakya, Mumbai; and (ii) who have undergone three months Pre-Sea training at any of the Government approved Training Institutes such as T.S Chanakya, T.S. Rehman, T.S Jawahar, MTI(SCI) and NIPM, Chennai after production of identity cards issued by the Shipping Master, Mumbai/Kolkata/Chennai |
| <b>8</b>  | Persons holding permanent Immigration visas, such as in UK, USA and Australia.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>9</b>  | Persons possessing two years' diploma from any institute recognized by the national Council for Vocational Training (NCVT) or State Council of Vocational Training (SCVT) or persons holding three years' diploma/equivalent degree from institutions like Polytechnics recognized by Central/ State Governments.                                                                                                                                                                                    |
| <b>10</b> | Nurses possessing qualification recognized under the Indian Nursing Council Act, 1947.                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>11</b> | All persons above the age of 50 years.                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>12</b> | All persons who have been staying abroad for more than three years (the period of three years could be either in one stretch or broken) and spouses.                                                                                                                                                                                                                                                                                                                                                 |
| <b>13</b> | Children below 18 years of age                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## Stock of Migration from India Based on NSS Rounds and IHDS

A state-wise analysis of households with at least one migrant member has been reported by both NSS rounds 49 and 64 as well as the IHDS. Though they both pertain to the same regions and handles the same variables, differences could be spotted between the figures they project. The differences may be due to the sample sizes they consider, analytical differences etc. However both these sources are inevitable to any scholar in the country and it also sheds light on the mismatches between data brought out by different agencies which warns the researchers on being cautious of the data they rely upon. This also indicates the insufficiency of migration data in India.

Data on out migration of individuals from the households in India is drawn from the various National Sample Survey (NSS) rounds on migration in India. According to NSS - "Any former member of the household who had left the household, any time in the past, for stay outside the village/town, was considered as out-migrant, provided he/she was alive as on the date of survey" (NSSO, 1993; 2008).

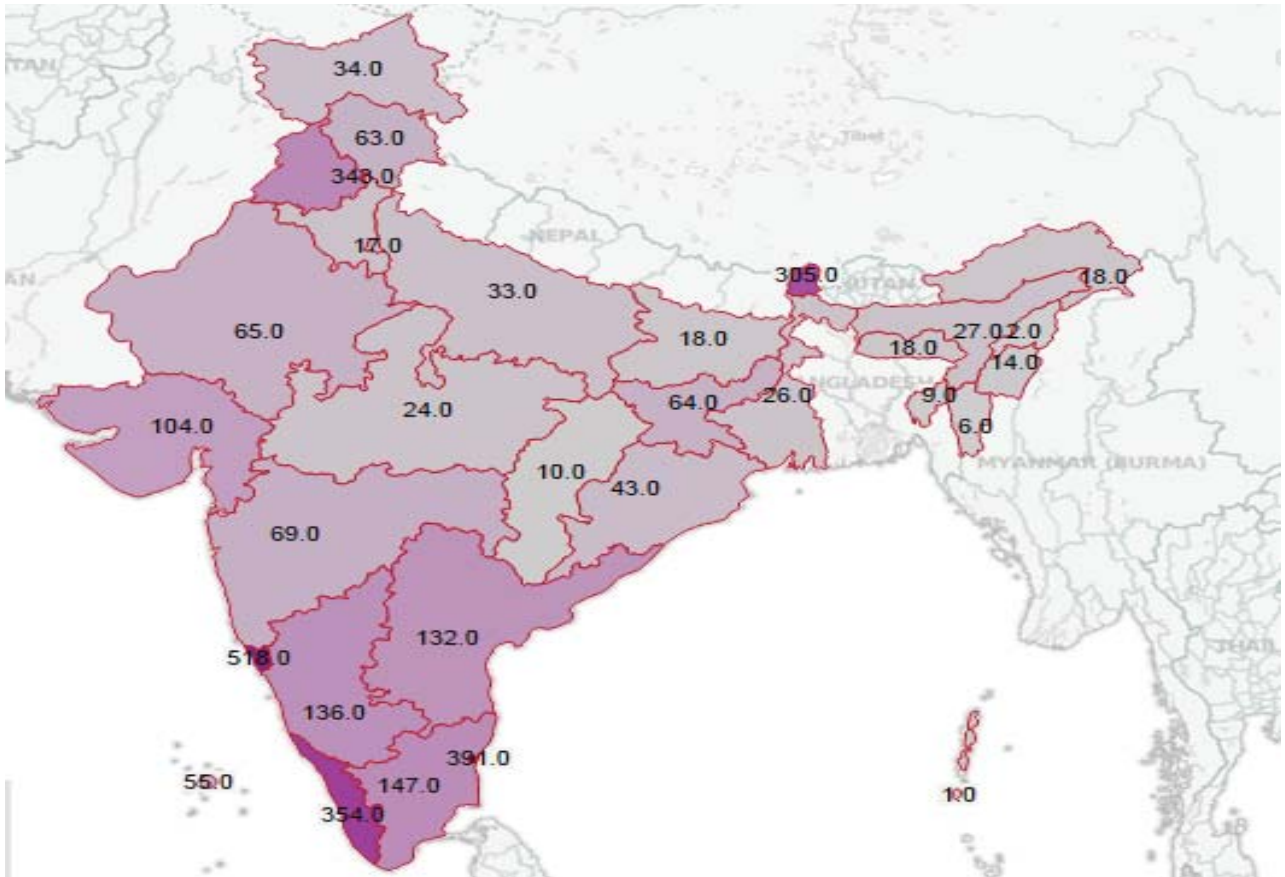


**Figure 3** International emigrant households in Indian states per 1000 rural migrant households as reported by the NSS 64<sup>th</sup> round (2007-08) (Source: Calculated by the author based on the individual files from the National Sample Survey 64th round conducted during 2007-2008. Note: High intensity of colours show high concentration of emigrant households in the region)

NSS (2007-08) data shows that rural households from states such as Kerala (344), Punjab (253) and Goa (188) participate extensively in the international migration. At the same time there are states like Orissa, Jharkhand, Chattisgarh and Madhya Pradesh have less than 5 international migrant households per 1000 rural households. Among Union Territories Chandigarh (111) Daman and Dui (373) and Pondicherry (129) also have high international migration than most of the states (Figure 3). North-eastern states have limited participation in international migration with exception of Tripura which has 43 international migrant households per 1000 rural migrant households.

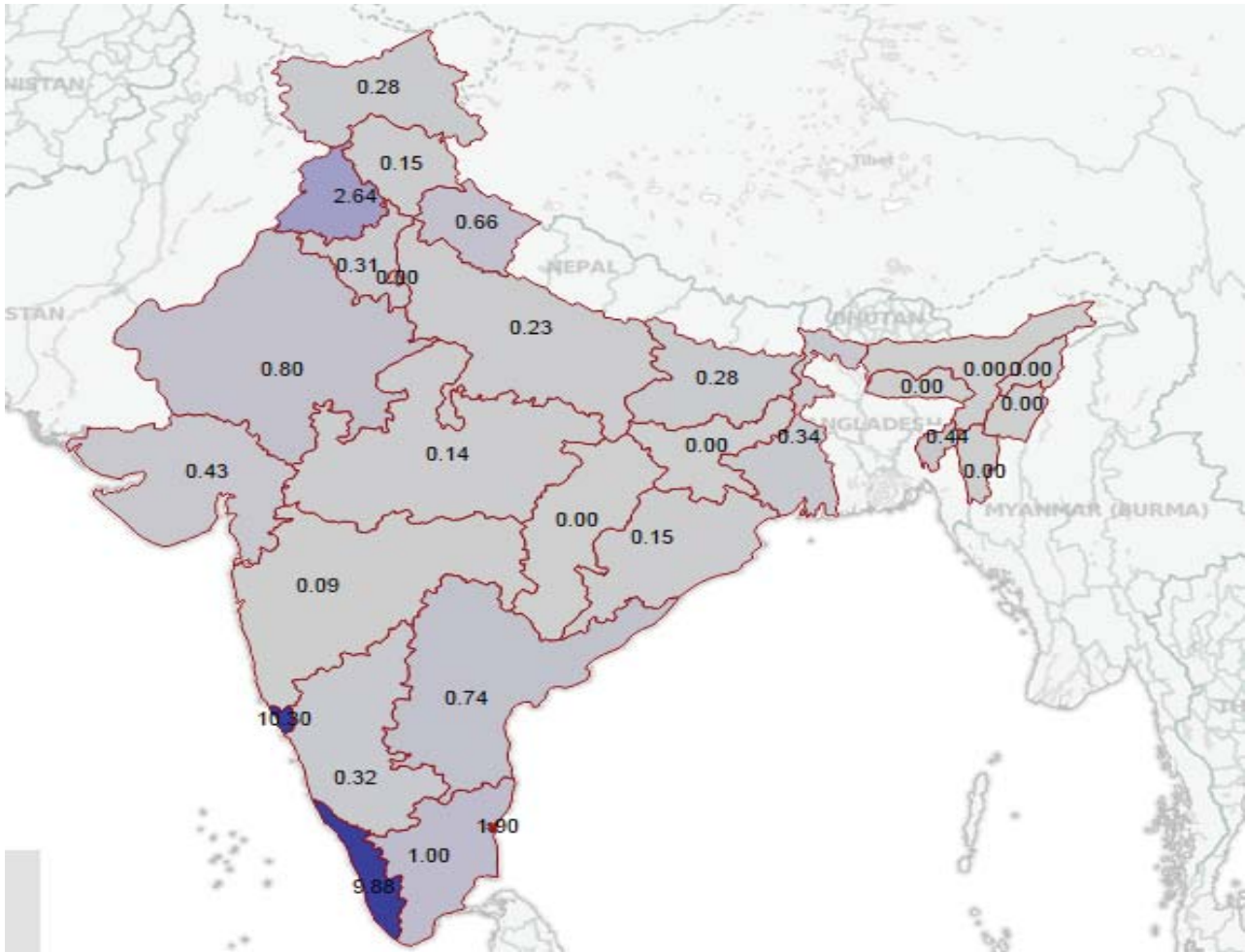
It is also evident from the NSS data (2007-08) that there is greater participation of urban households in the international migration than their rural counterparts across most of the states. But the overall scenario still remains the same with Kerala (354) Goa (518) Sikkim (305) and Punjab (153) leading the race (Figure 4). Again among Union Territories Chandigarh (343), Daman and Diu (356) and Pondicherry (391) have higher international migrant households per 1000 out-migrant households.





**Figure 4** International emigrant households in Indian states per 1000 urban migrant households as reported by the NSS 64th round (2007-08). Note: High intensity of colours show high concentration of emigrant households in the region (Source: Calculated by the author based on the individual files from the National Sample Survey 64th round conducted during 2007-2008)

The IHDS data shows similar scenario of international migration in India with respect to NSSO 64th round (2007-08). The quantum of migration intensity shown by IHDS data is lesser than that of NSS data. Still it shows that states such as Kerala Punjab and Goa does have higher concentration of international emigrant households than any other states in India (Figure 5). IHDS data complements NSS data reemphasizing the fact that not all regions of the country evenly participate in the international labour migration process.



**Figure 5** Distribution of international migrant households across states in percentage as reported by IHDS 2005 (Source: Calculated by the author based on the individual files from the 2005 Indian Human Development Survey) Note: High intensity of colours show high concentration of emigrant households in the region.

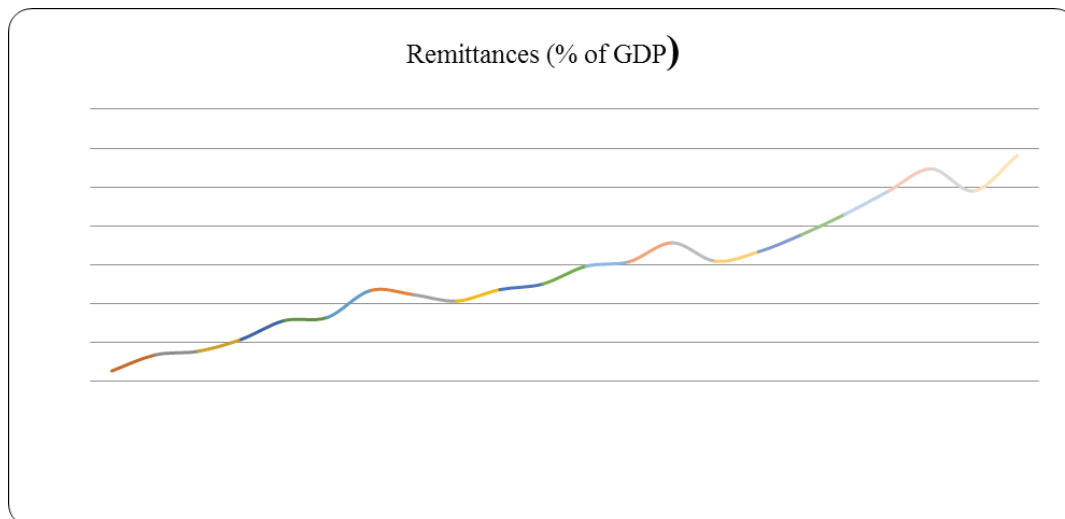
## Remittances

Remittances constitute a major source of external financing for India; these flows are far in excess of external sector aid and foreign direct investment (FDI) flows and a major factor accounting for the improvements in India's balance of payments. The most crucial factor as can be seen, has been Private Transfers to India, in other words, remittances from Indians working abroad sent to their families in India. These have been steadily and in fact exponentially growing over the last two decades. Remittances as a percentage of GDP (factor cost) in India has been growing, and was around 5.5 per cent in 2011, which is a significant figure, (Figure 6) showing that the Indian economy is benefitted to a large extent by the remittances it receives from its citizens working abroad. In fact, India is now the top recipient of migrant remittances in the world, accounting for US \$63 billion in 2011 (World Bank, 2011) and close to \$70 billion as migrant remittances in in 2012, followed by China with \$66 million (Table 20).

**Table 20** Remittance flows to India, 1990- 2012 (Source: Hand book of Indian Economy RBI and World Bank)

| Year    | Foreign Direct Investment (Inflow) US \$ mn | NRI Deposits US \$ mn | External Assistance (Inflow) US \$ mn | Private Transfers (Inflow) (Remittances) US \$ mn | Remittances % of GDP |
|---------|---------------------------------------------|-----------------------|---------------------------------------|---------------------------------------------------|----------------------|
| 1990-91 | 107                                         | 2,136                 | 3,397                                 | 2,083                                             | 0.75                 |
| 1991-92 | 147                                         | 5,77                  | 4,367                                 | 3,798                                             | 1.29                 |
| 1992-93 | 345                                         | 2,163                 | 3,302                                 | 3,864                                             | 1.25                 |
| 1993-94 | 651                                         | 1,171                 | 3,475                                 | 5,286                                             | 1.61                 |
| 1994-95 | 1,351                                       | 986                   | 3,191                                 | 8,112                                             | 2.29                 |
| 1995-96 | 2,174                                       | 948                   | 2,933                                 | 8,540                                             | 2.24                 |
| 1996-97 | 2,864                                       | 3,305                 | 3,056                                 | 12,435                                            | 3.14                 |
| 1997-98 | 3,596                                       | 1,153                 | 2,885                                 | 11,875                                            | 2.82                 |
| 1998-99 | 2,518                                       | 960                   | 2,726                                 | 10,341                                            | 2.27                 |
| 1999-00 | 2,170                                       | 1,540                 | 3,074                                 | 12,290                                            | 2.59                 |
| 2000-01 | 4,031                                       | 2,317                 | 2,941                                 | 13,065                                            | 2.62                 |
| 2001-02 | 6,130                                       | 2,728                 | 3,352                                 | 15,760                                            | 3.04                 |
| 2002-03 | 5,095                                       | 2,976                 | 2,878                                 | 17,189                                            | 3.08                 |
| 2003-04 | 4,322                                       | 3,641                 | 3,326                                 | 22,182                                            | 3.68                 |
| 2004-05 | 6,052                                       | -962                  | 3,785                                 | 21,075                                            | 3.20                 |
| 2005-06 | 8,962                                       | 3,719                 | 3,607                                 | 24,951                                            | 3.47                 |
| 2006-07 | 22,826                                      | 4,321                 | 3,747                                 | 30,835                                            | 3.90                 |
| 2007-08 | 34,844                                      | 179                   | 4,217                                 | 43,508                                            | 5.30                 |
| 2008-09 | 41,903                                      | 4,289                 | 5,159                                 | 46,903                                            | 5.27                 |
| 2009-10 | 37,746                                      | 2,922                 | 5,846                                 | 53,636                                            | 5.45                 |
| 2010-11 | 32,902                                      | 3,239                 | 7,806                                 | 55,618                                            | 5.31                 |
| 2011-12 | 46,552                                      | 11,920                | 5,576                                 | 66,129                                            |                      |

NRI Deposits in India have been showing a gradually rising trend since 1990s though with some minor fluctuations, which can possibly be attributed to changes in exchange rates due to which people prefer to invest more in gold rather than deposits during such periods. Net Foreign Aid to India has also been more or less fluctuating and not been significantly high in any period.

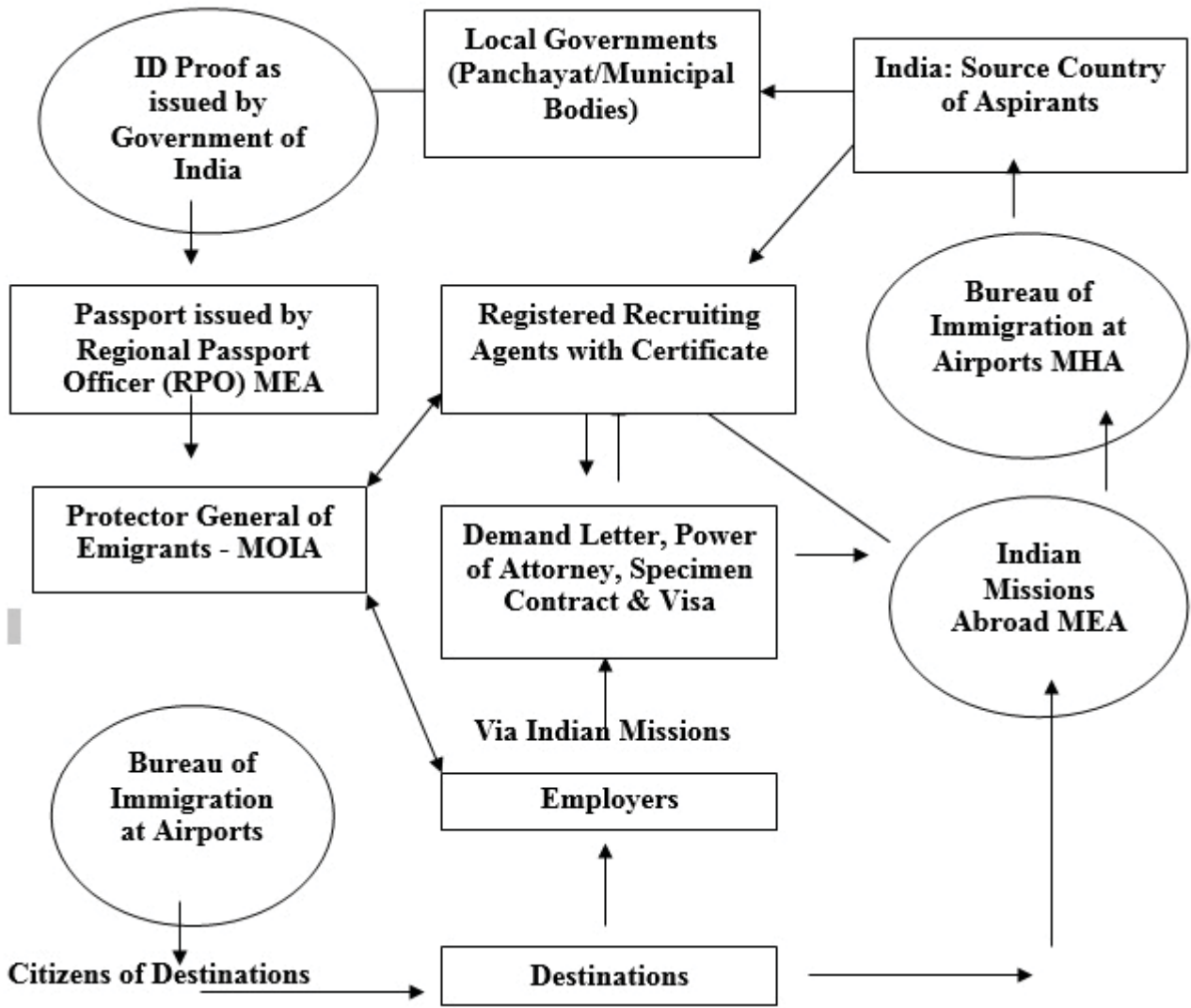


**Figure 6** Remittances as a percentage of GDP (Source: Hand book of Indian Economy RBI)

Traditionally, it has been held that the Gulf countries and North America were the two dominant sources in terms of region, with Europe following as a distant third. In 2008-09 for example, the Reserve Bank of India has estimated, based on a survey of remittance-receiving households, that close to a third (30.8 per cent) of total foreign remittances came from the Gulf countries, 29.4 per cent from North America, and 19.5 per cent from Europe.

## **The Regulatory Framework Surrounding Migration: Existing Laws, Regulations and Documentation**

Emigration from India involves a series of expensive and loaded document processes. It is mandatory for the intending migrant to possess certain documents at each stage of the process that ultimately culminates in the boarding of the aircraft to leave the home country. This elaborate procedure has resulted in the emergence of a chain of middlemen and unregistered agents who charge fees for facilitating the issue of necessary certificates and related documents. The overload of documentary requirements has also resulted in players selling fake documents for a price. In a way, the intending migrants have to pass through what can be termed “zones of unnecessary excitement”. The holding of the Indian passport issued by the Ministry of Home Affairs is, of course, a requirement for Indian citizens to travel overseas; for an aspirant migrant, securing a passport is tedious, time-consuming and, with the procession of middlemen, financially hazardous.



**Figure 7** Map of institutional migrant governance. Note: Diagram developed by the authors.

The applicants for foreign migration range from unskilled, skilled and semi-skilled laborers to professionals, diplomats, and family members of the migrants. Apart from the mandatory valid visa, the documentation requirements for exit are different for the various worker categories and depend also on norms laid down by destination countries. These include insurance papers, medical reports, etc. Moreover, Indians with ECR passports require additional approval of the relevant Protectors of Emigrants for work in certain designated countries,<sup>13</sup> listed by the Indian government as:<sup>14</sup> the UAE, the Kingdom of Saudi Arabia (KSA), Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan, Yemen, Sudan, Brunei, Afghanistan, Indonesia, Syria, Lebanon, Thailand, and Iraq. Figure 7 presents it in detail.

<sup>13</sup> The number of countries was reduced to 18 from 153 with effect from December 2006, and to 17 with effect from August 12, 2008.

<sup>14</sup> However, the Ministry of Overseas Indian Affairs (Emigration Policy Division) has allowed ECR passport holders travelling abroad for purposes other than employment to leave the country on the production of a valid passport, valid visa, and return ticket at the immigration counters of international airports in India with effect from October 1, 2007. Refer: <http://www.immigrationindia.nic.in/ecnr-ecr-poe2.htm> 25 Dec 2010



## Bilateral and multi-lateral agreements on manpower exports

Welfare and the safety of Indian workers, who constitute a large segment of emigrants, is of utmost importance to the MOIA and is pursued through what the ministry calls policy intervention and bilateral cooperation with destination countries. Joint Working Groups (JWG) have been instituted to ensure proper implementation of memorandums of understanding (MoUs) signed to avoid and resolve labor issues, thereby protecting the welfare of workers.<sup>15</sup> So far the MOIA has:

- Concluded labour welfare and protection agreements with Gulf countries (UAE Dec 2006; Kuwait Apr 2007; Qatar Nov 2007;<sup>16</sup> Oman Nov 2008; Bahrain June 2009<sup>17</sup>), and Malaysia Jan 2009;
- Signed a Labor Mobility Partnership<sup>18</sup> with Denmark and begun talks for similar arrangements with Poland, Czech Republic, Norway, Switzerland, Hungary, Sweden, and France.
- Entered into bilateral Social Security Agreements (SSAs) with Belgium, France, Germany, Switzerland, Luxemburg, Netherlands, Hungary, and Denmark, and begun negotiations with other countries in Europe, North America and Asia Pacific<sup>19</sup> for the benefit of Indian professionals abroad.

The Indian Council of Overseas Employment (ICOE),<sup>20</sup> an initiative of the MOIA, will assist the ministry in studying the labor markets and identifying newer destinations for mobility, design skill enhancement programs to suit the requirements of the employers and thereby develop a pool of skilled, trained and qualified workers, organize pre-departure training programs, and coordinate with employment promotion agencies. The studies taken up by ICOE will assist the government in framing appropriate bilateral agreements.

## Migrant welfare funds

There is growing alarm in India over the exploitation of Indian workers abroad, and this prompted influential bodies to seek intervention from the government through Indian foreign missions. Prime Minister Manmohan Singh stated in a 2010 speech that “The Ministry of Overseas Indian Affairs (has) also established the Indian Community Welfare Fund (ICWF) in 17 countries in which there is a significant overseas Indian workforce”. These funds support on-site welfare measures including food, shelter, repatriation assistance and emergency relief to overseas Indians in distress. The MOIA has extended this facility to 42 countries with a considerable presence of Indians, especially to provide immediate legal and financial assistance for Indians overseas. Now, the scheme is extended globally. Although there is no mention of the budget allocated to the Indian Missions, reports state that it varies from mission to mission. The MOIA also provides “legal and financial assistance through Indian Missions to Indian women deserted or divorced by their overseas Indian spouses”—of up to US\$1,500.<sup>21</sup>

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15 MOIA Annual Report, 2009/2010: pp. 5.

16 An additional protocol was added to the existing labor agreement.

17 The MoU with the government of Bahrain ensures authentication of the work contract between employer and employee by the labor ministry of Bahrain (MOIA Annual Report 2009/2010: pp. 31).

18 LMPs are designed to maximize benefits from labor mobility and minimize the risks, thereby developing and implementing good practice in labor migration (MOIA Annual Report, 2009/2010: pp. 19).

19 The MOIA Annual Report (2009/2010: pp. 21) states: “Similar agreements have been finalized with Norway, Canada and the Republic of Korea, and are expected to be signed shortly. Negotiations are in progress with Bulgaria, Austria, Cyprus, Finland, Greece, Italy and Australia. Two rounds of exploratory talks have been held with the USA.”

20 MOIA Annual Report 2009/2010: pp. 22.

21 MOIA Annual Report 2009/2010: pp. 14.

## Transfer of pension and health benefits from abroad

The Social Security Agreements (SSAs—referred to in the section on bilateral country agreements above) facilitate the transfer of contributions made to Social Security under the laws of destination countries, upon completion of the contract. Furthermore, “periods of employment in both the countries will be totalized in order to determine the eligibility for pension”.<sup>22</sup> As mentioned, India has signed SSAs with Belgium, France, Germany, Switzerland, Luxemburg, Netherlands, Hungary, and Denmark, and is taking steps to do so with more countries.

## Government support for returnees

Returnees usually try to join local industries or establish their own businesses with their savings. However, if they have established some business or bought assets, shares, securities or even investments during their overseas stay, they are allowed to hold those under Reserve Bank of India Rules, and can even repatriate the assets and have them managed by RBI-approved agencies or dealers through a Resident Foreign Currency (RFC)<sup>23</sup> account. According to the Indian Investment Centre (IIC),<sup>24</sup> in its section on Facilities to Returning Indians, “Effective 17th July, 1992, the Central Government has granted exemption from the surrender requirement to persons who return to India after a continuous stay abroad of one year”, and they need not apply for an approval from RBI. The worker also can transfer his health and pension benefits to the RFC account if he has stayed overseas for more than one year and have earned through employment or consequent investments in business or assets.

The Bureau of Immigration (BoI) controls the entry of Indian citizens and foreign nationals. The entry rules for People of Indian Origin (PIOs), who are citizens of other countries, but holders of the Overseas Citizenship of India<sup>25</sup> (OCI) card, have been simplified and they no longer need to register with the FRROs on arrival in India. The card entitles a multiple entry, multipurpose long-term visa for visiting India, but it does not confer any political rights and is not equivalent to dual citizenship. Operational since January, 2006, a total of 5,52,335 PIOs have registered for the OCI. Similarly, those with the People of Indian Origin<sup>26</sup> (PIO) status do not have to register with the FRRO on arrival if their stay in India does not exceed 180 days.<sup>27</sup> For all other kinds of arrivals, it is mandatory, as per the BoI rules, to register the entry with the FRRO/FRO within 14 days of their first arrival, irrespective of the duration of their stay in India. FRROs/FROs grant landing permit to transit passengers (for 72 hours), those who have arrived due to an emergency (for 15 days), and to those where there is a technical lapse of Indian visa except for nationals of Sri Lanka, Bangladesh, Pakistan, Iran, Afghanistan, Somalia, Nigeria, and Ethiopia. The BoI has also laid down specific rules for entry and exit of Afghans and Tibetans.<sup>28</sup>

22 MOIA Annual Report, 2009/2010: pp. 21.

23 Resident Foreign Currency (RFC) account scheme is one approved by the Reserve Bank permitting persons of Indian nationality or origin, who have returned to India on or after April 18, 1992 for permanent settlement (Returning Indians), after being resident outside India for a continuous period of not less than one year, to open foreign currency accounts with banks in India for holding funds brought by them to India. Persons who have returned to India before April 18, 1992 may also open RFC accounts if (a) they are holding foreign currency assets abroad with Reserve Bank's permission or (b) they are in receipt of pension or other monetary benefits from their erstwhile employers abroad.

24 [http://iic.nic.in/iic5\\_a05.htm](http://iic.nic.in/iic5_a05.htm) (Nov 25, 2010).

25 MOIA Annual Report, 2009/2010: pp. 8 states that, “...the Overseas Citizenship of India (OCI) Scheme was launched in August 2005 by amending the Citizenship Act, 1955. The scheme provides for the registration as Overseas Citizens of India (OCI) of all Persons of Indian Origin (PIOs) who were citizens of India on or after 26th January, 1950 or were eligible to become citizens of India on 26th January, 1950 and who are citizens of other countries, except Pakistan and Bangladesh”. The card provides several benefits on parity with NRIs, including practice of various professions in India.

26 Launched in 2002, the PIO card is a MHA's scheme vide Notification No.26011/4/98-F.I dated 19.08.2002. PIOs of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka can benefit from this scheme.

27 PIO Card holders have to register with FRRO/FRO within 30 days of the expiry of 180 day limit, if their stay in India exceeds beyond 180 days.

28 India has not signed the International Convention on Refugees 1951 and the Refugee Protocol 1967. However, it provides rehabil-

Nationals of Singapore, New Zealand, Japan, Finland and Luxembourg can avail of the Visa on Arrival facility at four designated international airports in India New Delhi, Mumbai, Chennai and Kolkata. This facility is extended to five<sup>29</sup> more countries from 1 Jan 2011 that includes Cambodia, Philippines, Vietnam, Laos and Myanmar. The T-VoA facility is only for purposes of tourism in India and the validity of visa is for 30 days.

## Mechanisms for monitoring migration

The process of recording migration in India makes the available data on migration difficult to analyze both for policymakers and researchers. Proper recording of data gathered through departure and arrival cards maintained by FRROs could actually result in reliable information on both emigration and immigration in India. However, detailing in terms of variables that are useful for policy and research are not captured in full as India does not have a policy for making it mandatory for every Indian citizen leaving its borders to register departure in detail. But, details on the emigration of Indians migrating as laborers to ECR destinations is thoroughly documented through the eight Protector of Emigrant (PoE) offices located across India.

At times, migration data has to be obtained either from the Indian Missions overseas or from the census reports of destination countries. But again, we do not have a uniform data to carry out comparisons as each country follows a different method of recording and classifying Indians in some categories. The lack of definite legislative frameworks for the recording the migration of students and skilled migrants to non-ECR destinations, and other categories of migrants poses difficulties for both policy makers and researchers and impedes their efforts to examine the process thoroughly.

## Policy changes proposed in managing migration

Migration management in India is in need of a central system, an authority, to register and monitor movement of every Indian citizen, thus making the migration process safe and legal. It should be mandatory for every citizen leaving the border to compulsorily register with the migration management authority. The authority shall outline procedures for such registration based on the purpose of migration, while abolishing the existing classification of ECR and ECNR passports and emigration clearances system and prioritizing the protection of Indian citizens. Protection by better management of migration shall assist several stakeholders such as the government, employers, recruiting agents and the migrants. Firstly, the employers shall register with Indian Missions who perform the due diligence and give accreditation and enlist them on the central server. In the process the employers shall submit all the details about manpower and skills requirement along with details on salary and contract terms. Secondly, the registered recruiting agents in India shall be given access to this central database of accredited employers and manpower requirement for processing recruitment. Thirdly, mandatory documents of the recruited persons will be scanned and uploaded along with details of the accredited employer and registered agent for the migration management authority either to authorize the recruitment or reject it. Finally, the authorization form can be printed and a copy of it can be carried along with the passport. The whole process would run on the efficient handling of the stakeholders – employers, registered agents, workers and the government – that constitute the management and information system. For all other kinds of migrants where recruitment is not involved, systems will be put in place, both online and at departure points, to compulsorily register the departure. Overall, the migration management authority shall have enough authority to control and monitor migration.

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itation benefits as temporary refugees to Tibetans who entered India up to 1959 and to children born to them up to 1987.

29 Ref. <http://timesofindia.indiatimes.com/articleshow/7086454.cms?frm=mailtofriend> (Dec 25, 2010).

## Current Status of Research on Temporary Migration

Based on the premise that the international migration is a clearest manifestation of globalization, the articles summarized below discuss in detail the phenomenon of temporary migration. The number of Indian migrants as well as student and skilled migrants has been steadily increasing for several years. Lowell and Findlay (2002) deals with the migration issues in the western hemisphere. The magnitude of the educational losses coupled with the theoretic and empirical evaluation of economic impacts, make adverse brain drain all too likely a reality for some developing nations. It is also quite possible for a nation to benefit economically from its skilled emigrants, but to experience significant losses in other fields such as its artistic endeavors or scientific advances.

Khadria (2002) discusses the impact of highly skilled labor emigration – comprising both professional and students from India and analysis the existing policies and policy options aimed at reducing the negative effects and of consolidating the positive effects of brain drain. Amongst the major positive impacts has been the rapid increase in the inward remittances from Indians abroad, but economic costs of remittances are often high. Remittances from the highly skilled Indian emigrants seem to be declining over time. More over a high proportion of remittances are supposedly flowing back to the developed countries as education fees paid by the large number of students going abroad for higher studies. The impact of the brain drain of IT professional and students is anticipated to be negative on technological development in India because of imminent shortages.

Khadria et.al (2006) examines issues related to international migration in a global perspective and covers wide range of issues crucial for migration policy. Assuming that migration is a process and requires multi level planning not only by the individual migrants but also by family, the community and the government, the paper discusses the several important areas of migration cycle. It argues that migration policy can't be formulated in isolation from the changes and developments taking place across the global socio economic spectrum and need to be in harmony with international law while acknowledging the rights of all migrants. Major migrants were classified as economic migrants' family migrants, political migrants, student migrants and undocumented migrants.

Buga and Mayer (2012) critically examines that even with a high number of Indian talents abroad, India – as well as destination countries takes advantage of the resources generated by this population. Traditionally, the flows of Indian professionals have been directed towards United States, Canada, the United Kingdom and other similar destinations. Recently, however, Western European countries are being selected as migration options. The growing diversification of receiving countries is explained as a consequence of European immigration policies focusing on highly skilled migrants, demographic trends which raise several questions related to labor shortages and finally the effect of the global economic crisis on mobility. The migration of highly skilled Indians is analyzed and put in the context of globalization and the intensification of the knowledge based economy. The paper shows that what has happened in India might stand as a win-win scenario with wider application where a brain drain may be converted into brain gain. Torkington (2012) throws light on the International lifestyle migration which is a rapidly growing worldwide phenomenon. Within Europe, increasingly large numbers of northern Europeans are moving south in search of what they perceive as a better quality of life. The typical representation of this form of migration suggests that it is consumption-led, tourism-related and leisure-based; it is to be located within late modern, global, elitist, borderless and highly mobile social practices. The question arises as to the role of local place in this type of migration process and in the construction of individual and collective social identities.

Benson and Reilly (2009) explore in detail a series of mobilities that share common relative affluence and this search for a better lifestyle. They also attempt to define the limits of the term lifestyle migration, characteristics of the lifestyle sought, and the place of this form of migration in the contemporary world. They map the various migrations that can be considered under this broad rubric,

recognizing the similarities and differences in their migration trajectories. Schiller, Basch and Blanc (1995) argue contemporary immigrants cannot be characterized as the uprooted. Many are transnational-migrants, becoming firmly rooted in their new country but maintaining multiple linkages to their homeland. The authors explored the reasons for and implications of transnational migrations on capitalism.

Jeffery (1976) assesses the major causes of medical emigration from India and noted 'medical dependency' that distorts India's medical policies and provisions to suit the interests of consumers of health services in the developed countries (notably Britain and the United States) and in India (where such consumers are the urban middle classes). It concentrates instead on the changes in size and direction of medical emigration from India. In the short term these are largely affected by the employment prospects for medical graduates. After a brief consideration of some general features, the paper deals with the supply of doctors, the employment opportunities for doctors and the demand for doctors' services. It then considers the recent history of medical emigration, and the prospects for the immediate future. The major conclusion is that there will be increasing tendency for emigration among Indian doctors - as employment opportunities deteriorate rapidly over the next few years. There is little sign too that the government policy will radically change except in response to changing circumstances in the countries which receive Indian doctors.

Mukherjee and Chandra (2012) address the issue of student mobility between two key stakeholders- India and Europe. In particular, it analyses the trends in student mobility from India to three important markets in Europe- the United Kingdom, Germany and France. The paper identifies various factors which motivate Indian students to pursue higher education abroad, in addition to market features of the host countries which attract them. The paper also identifies the constraints faced by the Indian students studying in these countries and concludes with recommendations which, if implemented, can further facilitate the flow of Indian students going to Europe for higher education.

Brezis and Soueri (2011) explore the elements affecting students' decision on migration. The two main elements affecting migration are wages, and quality of education. It should be stressed that the countries with the highest-quality education are not necessarily those with high wages. Therefore there is a need to explore whether it is quality of higher education or wage levels that determine the direction of student flows. In the first step, individuals decide where to study (i.e., in country of origin or in a foreign country); and in the second step, they decide where to work. The study concludes by disclosing that concentration of students is higher in high income countries with high quality education and not in high wages countries.

Dzvimbo (2003) discusses the phenomenon which is popularly and erroneously referred to as the "brain drain" in the literature and the discourse practices about the movement of skilled personnel from one country to the other. The focus is on the causes, magnitude and policy options available to African governments and the destination countries on how to manage the international migration of skilled human capital from Africa to the developed world. The international migration of skilled human capital is a symptom of deeper problems in African and developing countries in general. The paper concentrates on the international migration of skilled human capital (IMSHC) rather than the more popular term: the "brain drain" because the IMSHC incorporates: the brain drain, optimal brain drain, brain waste, brain circulation, brain exchange, brain globalization, and brain export. (Lowell and Findlay, 2001)

Khoo, Hugo and McDonald (2008) argue that most countries of destination of temporary migrants expect them to return home, it is likely that some temporary migration will become permanent if the migrants decide that they would like to remain longer or indefinitely for various reasons. They examine the factors associated with temporary migrants' decision to become or not become permanent residents and the reasons for their decision, using survey data on skilled temporary migrants in Australia. It also looks at whether temporary migration facilitates or substitutes for permanent migration and



discusses the likely effectiveness of temporary migration programs that assume temporary migrants will return home.

Bhaskar (2006) focuses on the skilled migration and student mobility as an important variant from India to United States in a global recessionary backdrop. The emphasis is on assessing immigration barrier like HIB visa restrictions, limit on outsourcing of Indian workers in the United States, as also prospects of remittances' income for India in a period of financial crisis. Skilled migration of human resources has been traditionally designated as brain drain, but the present trends of globalization has ensured innovation in information technology, rise of multinationals, globally recognized qualifications and brain circulation. The study concludes by revealing that however, improving standard of higher education in India at least in some sectors and growth of economy has ensured reverse migration of skilled persons to India in recent decades. In a market driven system, it seems implausible to prohibit people to migrate abroad and suggest that the improvement of domestic condition in the long run is the answer.

Gmelch (1980) discloses that the migration was largely a one-way movement with major streams of migrants leaving Europe and Asia for North America. It was generally assumed that those who left the Old World never returned. Many migrants returning about the same time will have a greater impact than if the same number were to trickle home over a long period of time. The duration of the migrants' absence may also be a factor. Migrants who have been away a short period of time will not have experienced enough of the host culture to have much of an effect at home. At the other extreme, those who have been away for a long period may be alienated from their home society or may be too old to care or exert much influence. The social class of the migrants may have an effect in that returning professional people or graduate students are more likely to be listened to and held in high esteem than returning laborers. Finally there is the nature of the acquired training and skills. The chances for innovation will be greater among migrants who have learned general skills.

Iredale (2000) assesses the increase in population movement in the Asia-Pacific region in the last decade and focused on the increase in contract labor migration, mostly for unskilled work. The movement of skilled migrants, either temporarily or permanently, has also increased significantly. The major trends and patterns are examined within the various policy frameworks that enable such movements to occur. Issues of transferability of skills and protection of jobs for nation also are examined within this context. Regional agreements and the possible creation of a regional labor market under APEC are discussed. Some of the movement of skilled labor is closely related to the movement of capital and trade, and much of this movement tends to be temporary. The movement of capital and this form of skilled labor are largely unimpeded. However, restrictions may apply to skilled migration of a more permanent nature. Finally, the issues facing policymakers in sending and receiving countries and the need for greater regional dialogue and cooperation are canvassed.

Siddiqui and Tejada (2014) examine the role of the factors on an individual and structural level which are responsible for skilled Indian migrants' interests in their home country's development. It also examines the extent to which returnees actually perceive themselves as agents of development at both a collective and an interpersonal level. The authors apply logistic regression to a primary data-based survey on skilled Indians in Europe and returnees in India. They find that both familiarity with the contemporary Indian situation as well as disadvantaged identities drive skilled migrants' interests in home-country development. Disadvantaged identities also affect returnees' own recognition of their role as agents of development and change. Other factors bearing this agency role include membership of cultural, religious, or political organizations, professional field, and level of education.

International migration has intensified and become more complex in the current globalized setting (Docquier and Rapoport 2012; Özden et al., 2011). In recent discussion of migration and development nexus, skilled migrants are increasingly seen as possessing the potential to provide benefits to their developing countries of origin. India represents a good case in point in this context because of

the significant presence of Indian skilled professionals in western countries, which often feeds into national pride, but also creates many concerns. In recent years, India's gains in the form of reverse flows of expertise, investment and business leads, knowledge and technology, and the world's highest financial remittances have resulted in a more positive view.

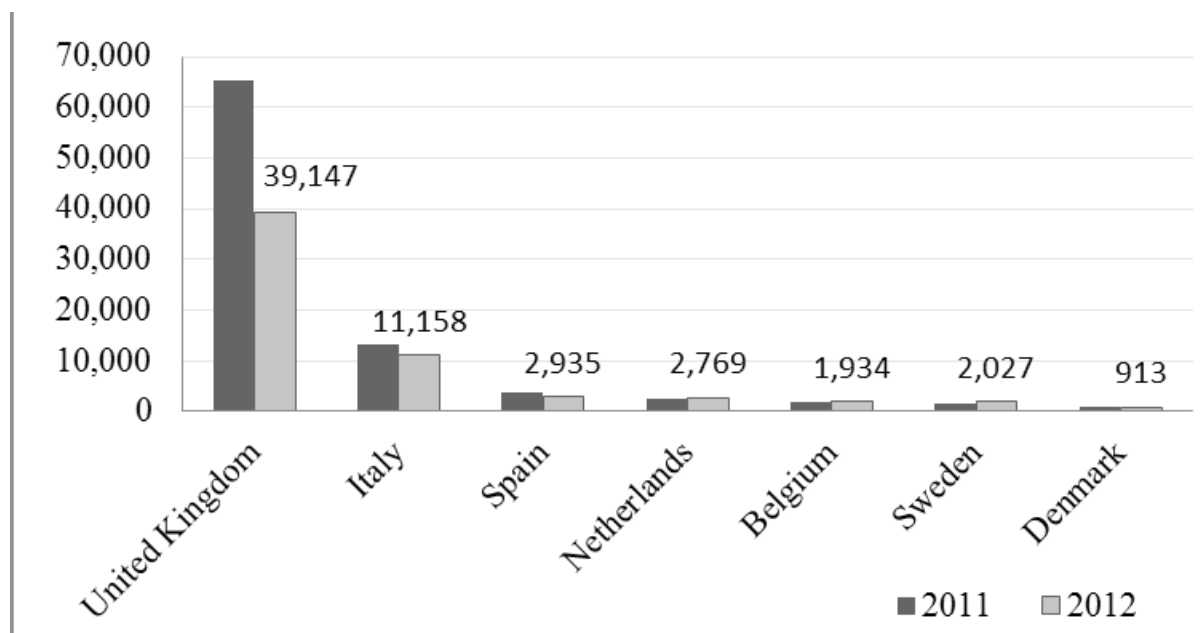
The major countries of destination have admitted increasing numbers of highly skilled migrants since the early 1990s. At the beginning of the decade, the traditional countries of immigration had already put into place policies pitched to increase their intake of highly skilled migrants, though most European countries did not review their policies to attract skilled migrants until the latter part of the decade. This trend towards skilled migration is continuing today and appears to be a composite result of evolving government policies and changes in the nature of the global labour demand and supply.

Highly skilled migrants are involved in various migration scenarios. The largest stock of skilled migrant workers consists of permanent residents, even though the flow of short-term migrants is increasing and often exceeds the yearly admission of skilled immigrants on a permanent basis.

### Characteristics of Temporary Transnational Migration

The economic development in any nation is driven by their human Capital. In addition to this migrants can be reduced the gap in the development process through their employment. Migrants perhaps benefitted to both the home country as well as to the host country and migrants itself in the positive sense. As development is the key factor most of the developed nations adopted and revamped the immigration policies to maximise their developmental benefits. The characteristics of migrants such as their age, skills and origin have a major role in development process.

This section explicates the characteristics of migrants from India to Europe and vice versa. As per the Eurostat data, United Kingdom is the major destination for Indians among the European Union countries. This relation was began centuries ago reflected the colonial period.

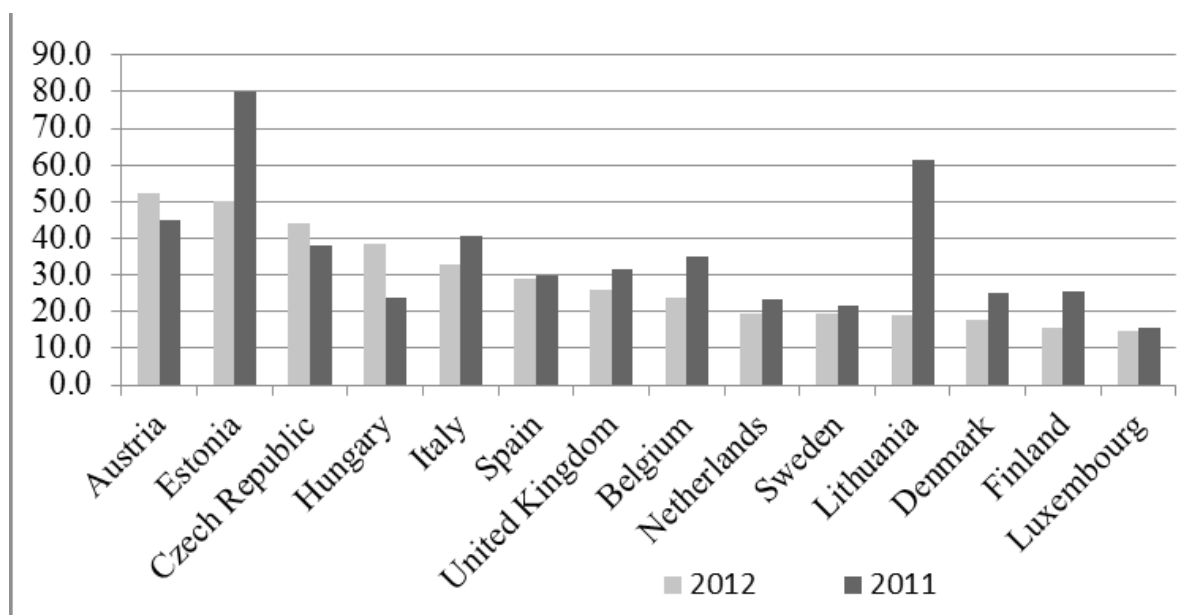


**Figure 8** Indians in major EU countries (Source: Eurostat Database)

Figure 8 clearly represented the major destination countries of Indians in European Union. The figure compares the emigrant flow during 2011 and 2012. The marked declining trend can be seen in UK with a huge decline of 26,279 immigrants in 2012. Italy and Spain also shows a declining trend. But Netherlands, Belgium and Sweden have a positive trend in attracting the migrants from India. The

share of Indians to the total immigration in EU countries is relatively lower except UK.

Figure 9 envisages that the emigration of females from India is increasing. The Indian female representation is very less in Austria compared to Luxembourg or Finland. In Hungary, Austria and Czech Republic the female immigration is decreasing when comparing the two years 2011 and 2012. The gender gap in migration may reflect the reason for migration. This may vary from family reason to choice of job. They are mainly concentrated in health and education sectors.



**Figure 9** Gender gap among Indian emigrants in major EU countries 2011-2012 (Source: EuroStat Database)

The age composition of immigrants clearly shows that the major emigration is in between the age group of 20-39 for males and 20-29 for females. It is evident from the data that the proportion of migration from India for the age group 20-29 is higher for both males and females for majority of the countries, except Bulgaria, Denmark, Italy, Hungary, Slovenia and Romania for males and except Romania for females.

Majority of the immigrants are working as professionals in Ireland, Poland, Hungary and UK. In Greece about 54 per cent have elementary jobs. In Switzerland major workers are professionals and technicians. Social sciences, health, education, Engineering and Science are the major sectors for skilled employment. In UK, 55 per cent are employed while 41.3 per cent are economically inactive. The immigrants are accompanied by their family members who are unemployed may fall under the category of economically inactive.

Highly educated Indian immigrants are in Ireland and Hungary. In Sweden, Denmark and Luxembourg the immigrants have the level 3 and 4 educational status. The education of immigrants in other countries is level 1 and 2. The main host country, UK, have the immigrants with level of education 1 and 2. This can be concluded that highly skilled Indians are working in Ireland and Hungary while low skilled migrants are working in countries such as, Finland, Italy, Greece, Portugal, Austria and Spain.

Eurostat data released detailed information on immigration from European countries to India. UK has the highest percentage in immigration to India followed by Spain though it is less in percentage. Other European countries showing significant numbers of immigrants to India include Ireland, Italy, Belgium and Denmark. Sufficient data are not available for countries such as Bulgaria, Croatia, Netherlands and Austria. Subsequently, the European countries which send the least number of immi-

grants to India include Slovakia, Slovenia, Lithuania, and Finland, and the growth in the number of immigrants to India from these European countries is also not significantly rising. The gender composition of immigrants from European countries into India over the last three years for most countries is skewed more in favour of male immigrants rather than female immigrants. The average share of immigrants to India from all the European countries together in the age-groups 20-29 and 30-39 were approximately 35 per cent and 45 per cent respectively. Since a large fraction of both male and female immigrants from European countries to India in the year 2012 were from the age-group 16-64 years, the possible purpose for such immigration might be professional, business related, educational or visiting purposes.

## Conclusions and Policy Recommendations

With the demographic dividend and young population, India is likely to emerge as one of the largest migrant-sending countries globally. As of now, India accounts for 14 million temporary workers throughout the world and half of them live in six countries in the Gulf. India accommodates about 5 million immigrants within its boundaries. The country also figures three out of the five migration corridors in South Asia: India-United States, India-Saudi Arabia and India-United Arab Emirates. World Bank has also projected India as the first in terms of remittances.

With the exception of UK, the European Union as a whole has a long way to go in building strong migration ties with India, so as to boost the prospect of future emigration from India given the nature of economic opportunities that lie ahead in the European region, which can be beneficial to both countries. India can be a potential source of temporary quality manpower for not only the IT sector but many other sectors including healthcare, construction, research and development and the services sector. Thus, building a harmonious relationship between the EU and India through migration would prove to be a win-win situation for both nations, further leading to a promotion of cultural and social relations that would transcend time and space.

There is apparent need for Indian Government to take steps in building ties with the European Union countries to facilitate short-term temporary labor mobility. Many steps have been taken in the past in this arena and many are still underway in building up strong ties between the European Union and India through various MoUs.

This is the starting point, where the home and host states and the Diaspora engage and grapple with the formulation of migration policies and strategies. It could be to ensure the availability of manpower in the host states, as the economies try to remain competitive, while the home states try to insulate the adverse impact of brain drain. Some examples would include, how 'brain gain' could be achieved (as Indian President exhorts PIOs and NRIs to return to India), so as to not losing intellectual capital. What role do sending states play? How does the UK procure the 'best and the brightest', as it adopts a selective policy of 'cherry-picking' and Saudi Arabia achieves 'Nitaqat' (naturalization) through progressive localization of jobs, causing concerns in India. These are all politically over-charged policy issues and it should be debated (Singh and Rajan, 2014).

UK and the most of EU has seen immigration policies aiming at limiting migration only to the entry of the best and the brightest. In the UK there have been attempts to send out negative messages on UK, as a suitable destination to future migrants – not just for undocumented or Asian/African migrants but even those from Bulgaria/Romania, consequent to their joining EU. This is in line with UK's policy reforms since 2010 of reducing immigration to, 'tens, rather than hundreds, or thousands'.

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## 4.7 TEMPORARY MIGRATION IN THE NETHERLANDS

Natasja Reslow

### Introduction

This report will provide the state-of-the-art knowledge on temporary migration to the Netherlands. The report is structured as follows: first it outlines the current state of research on (temporary) migration to the Netherlands. Then follows an inventory of national policies and practices on temporary migration, which will include an analysis of the political debate on immigration in the Netherlands, an explanation of which actors in the Dutch administration are responsible for temporary migration policy, the assumptions present about temporary migration in Dutch policy documents, the main categories of temporary migration to the Netherlands, and a case study of the Dutch circular migration pilot which was implemented in 2010-2011. This report closely complements the report on the characteristics of temporary migration to the Netherlands, which provides statistical information on the extent and nature of temporary migration to and from the Netherlands.

In order to proceed, it is important to begin with a definition of ‘temporary migration’. In the academic literature, this has been defined as “any form of territorial movement which does not represent a permanent, or lasting, change of usual residence” (Bell and Ward, 2000: 88). The Netherlands does not have a clear legal definition of the concept of temporary migration (European Migration Network, 2011: 13). For the purposes of the study on temporary migration, the Dutch government adopted the European Migration Network’s definition of temporary migration: temporary migration is “migration for a specific motivation and/or purpose with the intention that afterwards there will be a return to the country of origin, or onward movement to another country” (European Migration Network, 2010: 14). According to the European Migration Network online glossary, this term is related to the definition for a short-term migrant: “A person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year (12 months) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business, medical treatment or religious pilgrimage” (European Migration Network, n.d.). This implies that temporary migration includes migration for a period of between three and 12 months, except when the purpose of this is leisure, business or medical treatment. In the Netherlands, a temporary residence permit is granted for a maximum period of five successive years (European Migration Network, 2010: 14), which the European Migration Network highlights is considerably higher than the time limits in some other member states (European Migration Network, 2011: 14). After this time, the foreign national may apply for long-term residence status. A work permit is granted for a maximum period of five years, because after having held a work permit for a continuous period of five years the foreign national has free access to the Dutch labour market (article 4 of the Foreign Nationals (Employment) Act).<sup>1</sup> In its 2009 report on temporary labour migration, the Advisory Committee on Aliens Affairs defined temporary labour migration as a form of migration whereby migrants from non-EU countries have the opportunity to come to the Netherlands to work for a maximum period of four years. At the end of this period, migrants return to their country of origin, or depart for another country (ACVZ, 2009: 10).

Temporary migration should be delineated from the concept of circular migration. In Dutch policy, circular migration is “a form of migration in which the positive development effects on both the country of origin and the country of destination could be combined” (European Migration Network, 2010: 13). It is “migration in which the migrant resides in one country after another, including his or

<sup>1</sup> In the report on temporary and circular migration in the Netherlands by the European Migration Network, it is stated that foreign nationals have free access to the Dutch labour market after three years (European Migration Network, 2010: 14). However, the Foreign Nationals (Employment) Act was amended as of 1 January 2014, and this period was extended to five years.

her country of origin, for a longer period of time” (ibid.). This second aspect is the definition developed in the 2008 policy memorandum on international migration and development (Dutch Ministry of Foreign Affairs and Ministry of Justice, 2008: 9). At the European level, the European Migration Network relies on the definition of circular migration contained in a 2007 communication from the European Commission. That communication defined circular migration 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 European Migration Network thus notes that, “on the basis of these definitions, and with regard to the differences between these two terms, *temporary migration* is taken to refer more to a single movement and then *limited stay* in the EU, whilst *circular migration* may be considered in the context of a *back-and-forth movement* between the EU and the country of origin... Depending on the definitions of these two terms developed in the member state, these may or may not include references to a (minimum or maximum) duration of time” (European Migration Network, 2011: 13). This report adopts the definition of temporary migration handled by the European Migration Network:

*Temporary migration is migration for a period of at least three months but less than a year (12 months) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business, medical treatment or religious pilgrimage.*

It is important to note that ‘temporary migration’ in this report refers to the movement of non-EU nationals. EU nationals have the right to free movement throughout the territory of the EU. National and EU migration policies therefore target “third country nationals”: citizens of a non-EU country. This report also only considers temporary migration to the Netherlands for two main reasons: firstly, conceptually, the Netherlands is a country of immigration, and it is therefore more salient and relevant to consider policies and legislation on temporary immigration. Secondly, from a practical point of view, Dutch policy addresses temporary immigration. The purpose and length of stay of Dutch nationals immigrating to a non-EU country will depend on the policies in place in that country. This report’s ‘sister report’ which aims to quantify temporary border crossing movements will address temporary emigration of from the Netherlands, but the present report only addresses Dutch policy and practice in the area of immigration.

In order to provide some background, the remainder of this introduction explains the history of Dutch migration policy and the impact of EU migration policy on Dutch policy, and it presents a summary of the characteristics of temporary migration to and from the Netherlands.

## Dutch migration policy

Dutch migration policy is generally rather restrictive. Foreign nationals are only granted a residence permit if “this is required by international obligations, if the presence of the [foreign] national serves essential interests of the Netherlands, or if compelling humanitarian grounds exist” (European Migration Network, 2012a: 36). Immigrants are generally required to fulfil certain integration requirements before their arrival in the Netherlands, asylum procedures have been accelerated over the past decade, there are restrictions on family reunification, and work permits are only granted if a Dutch or EEA national cannot be found for a vacancy. These restrictive measures have even been strengthened over time. For example, the age limit for family reunification has risen to 21 years and the income requirement has risen to 100% of the minimum wage. Higher scores than in the past are now needed to pass the language component of the Civic Integration abroad exam. Illegal immigrants can be imprisoned on the basis of having entered the Netherlands irregularly and deliberately avoiding detection by the IND (Article 5.1b of the Aliens Decree). Illegal immigrants are excluded from public services. Dual nationality is generally prohibited (OECD, 2012: 254; Engbersen et al., 2007: 391; ter Wal, 2007: 250; van Selm, 2005).



Asylum procedures have been streamlined and accelerated: before 2000, the asylum procedure was very lengthy, and asylum-seekers often waited years for a final decision (Engbersen et al., 2007: 422). This means that these people were somewhere between a temporary and a de facto semi-permanent position. With the 2000 Aliens Act, the asylum procedure was shortened, and today a decision on an asylum application is, in principle, made within eight days. The basic principle remains that asylum-seekers should be kept outside society, with only limited rights to take up employment and no access to Dutch social security. The idea is that integration makes it harder for them to leave in case their asylum application is rejected; while they are waiting for the decision, they are in a temporary or insecure position and should therefore not be included in Dutch society (Engbersen et al., 2007: 423).

Dutch migration policy is focused on preventing illegal immigration. This is a very different situation than in the past; for instance, in the 1960s guest workers were able to enter the Netherlands spontaneously and become regularised once they had found work (Rath, 2009: 677). “Since there was general acknowledgement of the need for labour, undocumented migration and use of people smugglers... did not provoke the sort of media frenzy that was to appear in the 1990s” (Castles, 2006: 2). Today, the Aliens Decree stipulates that holding a valid travel document and visa (where required) are preconditions for entering the Netherlands.

In the 1970s and 1980s, immigration and integration were not issues that were politicised in the Netherlands (Penninx, 2005: 39), but this has changed dramatically and today immigration and integration are some of the hottest political topics (van Selm, 2005) with different political parties taking clear and diverging stances on these issues (see section 4.1 below).

Integration policy, which was non-existent in the 1960s and 1970s, has become central to Dutch migration policy. Until the 1970s the Netherlands was a “reluctant country of immigration in which the idea of temporary migration was maintained” (ter Wal, 2007: 249). However, it gradually became clear to the government that immigrants were not leaving and were also not faring well. In 1979 the Netherlands Scientific Council for Government Policy advised that the approach of viewing immigrants as temporary residents was putting these people in an untenable situation and risked demoting them to second-class citizens. It recommended that the “fiction” of temporary migration should be dropped (Guiraudon et al., 2005: 76). In response, at the beginning of the 1980s the Dutch government created an ‘ethnic minorities’ policy. This policy initially aimed to promote immigrants’ participation in social and economic life, fighting discrimination, and ensuring religious and cultural diversity (ter Wal, 2007: 250; Engbersen et al., 2007: 390). Over time, and particularly with the rise of populist right-wing parties in the early 2000s, Dutch integration policy has become more assimilationist, with the emphasis today being on civic participation, the social obligations of citizenship, knowledge of Dutch language and culture, and the adoption of shared norms and values (ibid.).

## Influence of EU migration policy

Over the past decades, the European Union (EU) has gradually been constructing a migration policy. Already at the creation of the then-European Economic Community in 1957, citizens of member states gained the right of free movement throughout the territory of the community. In 1985, the governments of Belgium, France, Germany, Luxembourg and the Netherlands agreed in the Schengen Treaty to gradually abolish border controls between themselves. With the signing of the Treaty of Amsterdam in 1997, the Schengen Agreement was incorporated into EU law, and as of July 2014 the borderless Schengen area consists of 22 EU member states<sup>2</sup> and 4 non-EU countries (Iceland, Liechtenstein, Norway and Switzerland). This free movement of EU citizens has brought about an EU dimension to migration policy concerning non-EU nationals. The European Commission has linked the

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<sup>2</sup> Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.



freedoms enjoyed by EU citizens and the abolition of internal borders to the need for an EU migration policy in order to ensure that immigration controls are not being bypassed (European Commission, 1991: 4). Building on intergovernmental cooperation between the member states on migration in the 1970s and 1980s, the Maastricht Treaty (signed in 1992) designated migration and asylum as “matters of common interest” (article K.1). The Amsterdam Treaty (signed in 1997) formally delegated powers over asylum and migration to the EU level, and the Lisbon Treaty (signed in 2007) eased decision-making procedures and further empowered the European Parliament.

The EU treaties today delegate significant competence on migration. Articles 77 and 79 of the Treaty on the Functioning of the European Union state that the European Parliament and the Council of the European Union shall adopt measures on: visas and short-stay residence permits; checks at external borders of the EU; conditions for the freedom of travel within the EU of non-EU nationals; the establishment of an integrated management system for external borders; the abolition of internal border controls; long-term visas and residence permits including for the purpose of family reunification; rights of long-term resident non-EU nationals; illegal immigration including removal and repatriation; and combating the trafficking of persons. The fact that the European Parliament has equal legislative power in these fields with the Council, which is the representative body of the member states, is significant. However, EU competence on labour migration is limited by article 79(5) which states that “this article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work”.

Since 1999 the heads of state and government of EU member states have also adopted five-year programmes on Justice and Home Affairs. These programmes are framework policy documents, setting overall guidelines for the legislation to be achieved. The first such programme, the Tampere programme (1999-2004), called for the development of a common EU migration and asylum policy based on four principles: partnership with countries of origin; a common European asylum system; fair treatment of third country nationals; and the management of migration flows (Council of the European Union, 1999). The Tampere programme highlighted the need for the “approximation of national legislations on the conditions for admission and residence of third country nationals” (ibid.). It was followed by the Hague programme (2005-2009), which noted that “legal migration will play an important role in enhancing the knowledge-based economy in Europe” (Council of the European Union, 2004: 19). The Hague programme therefore called on the European Commission “to present a policy plan on legal migration including admissions procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market” (ibid.). In 2009 the European Council adopted the Stockholm programme (2009-2014). In the section concerning migration and development, the European Council calls on the Commission to conduct a study on the “preconditions for increased temporary and circular mobility of migrants” (Council of the European Union, 2009: 62). The European Council further urges the “creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each member state... These systems must have due regard for... the principle of Union preference” (2009: 63). That legal immigration should take account of the priorities and needs determined by the member states is also stressed in the European Pact on Immigration and Asylum, adopted in 2008 (Council of the European Union, 2008). The pact undertakes to facilitate the movement of highly-skilled workers, students and researchers to the EU, and stresses that policies on temporary and circular migration should not aggravate brain drain (2008: 5).

Building on these political guidelines, the EU has adopted a number of directives in the field of migration. Many of these directives deal with long-term or permanent migration. The long-term residents directive (2003/109/EC), for instance, concerns the rights of migrants who have resided legally in an EU member state for five years. The family reunification directive (2003/86/EC) sets out the right to family reunification of migrants who are resident in an EU member state for at least a year,

and with ‘reasonable prospects’ of obtaining permanent residence. However, much of the legislation adopted at EU level concerns non-permanent migration and the status and rights of these migrants.

The Blue Card directive (2009/50/EC) sets out the conditions of entry and residence for highly-skilled migrants to the EU. A Blue Card is valid for between one and four years. The directive gives considerable discretion to member states in how to apply the provisions: for example, member states may decide whether to grant these migrants free access to the labour market after an initial period of two years; member states may still apply labour market testing by checking whether the vacancy for which a Blue Card has been applied could not be filled by nationals or EU citizens; and member states may reject an application for a Blue Card based on a concern that it aggravates brain drain.

The directive on the admission of students (2004/114/EC) stipulates that students shall be issued with a residence permit for the duration of at least one year (or for the duration of the course, if this is less than one year), which is renewable. Similarly, the directive on the admission of researchers (2005/71/EC) stipulates that researchers shall be granted a residence permit for at least one year (or the duration of their research project, if this is less than one year), which is renewable.

After four years of negotiations, the directive on a single permit for third country nationals was adopted in 2011 (2011/98/EC). Although in principle this is a general directive establishing a simplified procedure for third country nationals who want to obtain a work and residence permit for the EU, in practice many different categories of migrants are excluded from its application. This is true for many categories of temporary migrants: the directive does not apply to intra-corporate transferees, seasonal workers, au pairs, or self-employed workers.

On 17 February 2014, the directive on seasonal workers was adopted (European Parliament and Council of the European Union, 2014). Member states may define the maximum residence period for seasonal workers, which should be at least 5 months but not more than 9 months in any 12-month period.

The directive on intra-corporate transferees is still under negotiation. There is disagreement amongst member states, and between member states and the European Parliament, on a number of issues, including the maintenance of parallel national schemes, transferees’ rights, and the temporary nature of the permit: the Council has proposed that a period of up to three years should pass before a third country national can re-apply for intra-corporate transfer (Lazarowicz, 2013: 4).

All of this EU legislation and policy affects Dutch law and policy. The Netherlands is bound by EU law, and the above directives have been incorporated into Dutch law through changes to the Aliens Law, the Foreigners Act, the Foreign Nationals (Employment) Act, and the Integration Decree. Significantly, in 2014 the Netherlands will introduce a combined residence and work permit, in order to comply with the EU Single Permit directive (IND, 2014a). However, the new single permit will not apply to seasonal workers, students, Croatian nationals, and asylum-seekers; these groups will still require separate residence and work permits. In some cases, the flexibility present in the EU directive allows the Dutch government to maintain its national provisions, whilst not breaching EU law: for instance, the Netherlands has continued to issue permits for its national Highly Skilled Migrants Scheme instead of EU Blue Cards, due to the broad scope of the directive (Lazarowicz, 2013: 3). The Dutch Highly Skilled Migrants Scheme is arguably more favourable to migrants: in order to be eligible for an EU Blue Card in the Netherlands, the migrant must earn an annual salary of €60,000, whereas the threshold for the Highly Skilled Migrants Scheme is €51,239 (European Migration Network, 2012a: 53-55). The Blue Card also contains a qualification requirement, which the national Highly Skilled Migrants Scheme does not. The advantage of the Blue Card for migrants is that it facilitates mobility to other EU member states, and that the migrants’ family members are eligible for independent residence permits (2012a: 55).

The influence of EU policy is clear in Dutch national policy on temporary migration. The 2008 policy memorandum on migration and development, for example, highlights the EU-Africa partner-

ship as the context for Dutch programmes on temporary assignments for migrants to their country of origin (Dutch Ministry of Foreign Affairs and Ministry of Justice, 2008: 54). The EU-Africa partnership calls on European countries to foster the involvement of the diaspora in development processes in Africa (European Commission, n.d.). The EU's Lisbon Strategy and the stated aim of creating a knowledge economy in Europe account for the openness of Dutch policy to highly-skilled migrants and students (European Migration Network, 2010: 15).

## Characteristics of temporary migration to and from the Netherlands

The sister report to this report is entitled 'Characteristics of temporary transnational migration: The Netherlands' and seeks to quantify temporary migration in the Netherlands along four main lines: duration (in order to determine temporariness); country of origin/destination of migrants; the purpose of migration; and the numbers of such migrants. This section briefly summarises the results of that report.

In the period 2008-2012, the Dutch immigration service issued 239,691 temporary residence permits (valid for 6-11 months) for the purposes of family reunification, study, employment, and cultural exchange. Family migration is by far the most important category of temporary migration to the Netherlands: each year, more than 40 per cent of temporary migrants are joining a family member. Of the temporary migrants coming to the Netherlands for study, around 90 per cent are coming to follow a course of higher education; this reflects the strict requirements for residence permits to be granted for secondary education. Temporary labour migration to the Netherlands is mainly made up of migrants arriving to work for an employer, and au pairs. To date, not much use had been made of a government scheme allowing recent university graduates to spend one year in the Netherlands searching for highly-skilled employment. Each year, between 2,000-2,500 residence permits are issued for cultural exchange, including the European Voluntary Service scheme and working holidays. The most important countries of origin depend on the category of temporary migration. Overall, the five most important countries of origin are China, the United States, Turkey, India and Morocco. However, closer examination of the data reveals that Indonesia joins the top five for the category of students; Japan is an important country of origin of highly-skilled migrants; scientific researchers come mainly from China, Iran, Indonesia, Brazil and the United States; au pairs come mainly from the Philippines, South Africa, Brazil, Indonesia and Peru; and the working holiday schemes in place with Canada, Australia and New Zealand mean that these countries come to the fore in the category cultural exchange.

Temporary emigration from the Netherlands has long been dominated by Dutch nationals, although for 2012 the number of non-Dutch and Dutch nationals leaving the Netherlands is almost the same. For the years 2003-2012, the number of Dutch emigrants is between 47,000 and 64,000 per year. The most important countries of destination of Dutch nationals are Belgium, Germany, the United Kingdom, the United States, and the Former Netherlands Antilles. Due to the fact that residence permits are issued by the country of destination, little can be said about the purpose of migration or length of duration of migration. Secondary literature exists on labour migration to traditional countries of immigration (Canada, New Zealand and Australia) and lifestyle migration to other European countries, including retirement migration to southern Europe. However, quantifying temporary emigration remains problematic.

Illegal migration is by its very nature difficult to measure. Different indicators of illegal migration can be adopted including the number of migrants refused entry at the borders, the number of migrants found to be illegally present, and the number of migrants ordered to leave the country. However, these categories neither perfectly overlap, nor are they entirely distinct and separate, therefore an estimate of the total number of illegal migrants in the Netherlands is difficult to make. Researchers disagree on this, with estimates ranging from 88,000 to 163,000 for the years 2002-2009.

In conclusion, the process of research for this report uncovered serious data problems. Eurostat data has the major advantage of being comparable across EU member states, however it is less than perfect for assessing temporary migration to the Netherlands: it is not possible to know whether residence permits were extended or not, or whether migrants actually left when their residence permit expired; and the categories of data collected by Eurostat do not match exactly the categories of temporary migration according to Dutch policy and legislation. Eurostat data is inadequate for assessing temporary emigration from the Netherlands because the emigration captured by this data is for a period of more than 12 months; nothing is revealed regarding the purpose of emigration; and it is not possible to link emigrants to their country of destination because the data on country of destination cannot be broken down by nationality of the migrants concerned. The central policy recommendation of the report therefore relates to the need to improve the quality of Eurostat data.

## **The Current State of Research**

There is a large body of research concerning migration to the Netherlands and particularly integration of ethnic minorities in Dutch society. However, there is no literature on current Dutch policies or practice on temporary migration; rather, scholars are very much dealing with the situation today that has arisen from migration in the past that was assumed to be temporary, but turned out to be permanent in practice. This historical experience has led to political and societal debate on integration problems, the desirability of further immigration, and the status of immigrants in the Netherlands. This section reviews this literature, emphasising particularly the fact that it has arisen out of Dutch experience with ‘temporary’ migration.

There have been four main migratory movements to the Netherlands since the Second World War: immigration from the former Dutch colonies; guest workers arriving from Southern Europe, Turkey and Morocco to take up unskilled work; immigration of family members of guest workers; and inflow of asylum-seekers since the 1990s (see e.g. Zorlu and Hartog, 2001; Guiraudon et al., 2005; Rath, 2009). These categories of migration are all somehow connected to a notion of temporariness, although it is necessary to distinguish between different types of colonial migrants. Van Amersfoort and van Niekerk (2006) argue that the arrival of the Dutch population from Indonesia after independence was immediately recognised to be permanent (due to their status as Dutch citizens), and these ‘repatriates’, as they were referred to, were quickly incorporated into Dutch society. In contrast, the Moluccans who arrived in 1951 were considered to be temporary residents who would eventually be returned to Indonesia. For this reason, they were poorly (or not at all) integrated into Dutch society: they were housed in camps, where their children also attended school, and their access to the labour market was restricted. This reception in the Netherlands contributed to their isolation from Dutch society. Only in 1970 did the Dutch government recognise that this group of immigrants were not temporary but permanent residents in the Netherlands. For many years, a ‘myth of return’ also surrounded the Surinamese arriving in the Netherlands. The Dutch government and parliament assumed that these people would eventually return to their newly independent country, and only slowly came to accept that this would not be the case. Many Surinamese arrived at the height of the economic crisis of the 1970s and therefore could not find work and came to be dependent on social welfare. Public perception of them was therefore negative, although this changed when the economic situation improved and Surinamese were able to improve their socio-economic position, due to their existing knowledge of Dutch society and culture.

In the 1960s, the Netherlands signed guest worker agreements with Greece, Italy, Morocco, Portugal, Spain, Tunisia, Turkey and Yugoslavia (Geddes, 2003: 105). Between 1963 and 1983, 415,800 migrants from these countries arrived in the Netherlands (van Eijl, 2009: 29). All of these guest workers were intended to be temporary workers; indeed, a Dutch government paper from 1970 ar-

gued that the Netherlands needed “manpower and not the immigration of families” (van Amersfoort and Surie, 1987: 178). The guest workers from Southern Europe and Yugoslavia did largely return to their countries of origin with the onset of the economic crisis and the termination of the guest worker agreements in the 1970s. However, many of those from Morocco and Turkey stayed. The tightening of European migration policies at this time meant the end of circulation: migrants chose to remain in Europe, fearing that, if they did leave, they would not be able to return (Siegel and van der Vorst, 2012: 12; van Amersfoort and Surie, 1987: 176). In the 1970s, these migrants started to benefit from the possibility for family reunification (ter Wal, 2007, p.249) and so immigration from guest worker countries continued in the form of family reunification. In this way, family migration to the Netherlands was linked to temporary migration, because it concerned the family members of migrants who had initially been presumed to be temporary residents in the Netherlands. To this date, family migration is the most common reason for non-Western migrants to immigrate to the Netherlands (European Migration Network, 2012a: 27). These migration flows have shaped the immigrant population in the Netherlands today. Van Eijl calculates that, of the 415,800 migrants who arrived between 1963 and 1983, almost 175,000 were still present in the Netherlands in 2003. The percentage of guest workers who remained in the Netherlands varies according to the country of origin (see table 21 below), although across all countries of origin a higher percentage of those arriving between 1973 and 1983 were still present in 2003.

**Table 21** Immigration from guest worker countries 1963-1983 (source: van Eijl, 2009)

| Country of origin | Arrival 1963-1973 | Still present 2003 (%) | Arrival 1973-1983 | Still present 2003 (%) |
|-------------------|-------------------|------------------------|-------------------|------------------------|
| Morocco           | 27,500            | 53                     | 65,200            | 71                     |
| Tunisia           | 800               | 42                     | 1,900             | 44                     |
| Turkey            | 50,000            | 36                     | 109,600           | 59                     |
| Portugal          | 8,000             | 29                     | 5,400             | 35                     |
| Yugoslavia        | 19,100            | 23                     | 9,800             | 42                     |
| Greece            | 5,800             | 22                     | 2,500             | 30                     |
| Italy             | 18,100            | 19                     | 11,000            | 22                     |
| Spain             | 65,800            | 8                      | 15,300            | 21                     |

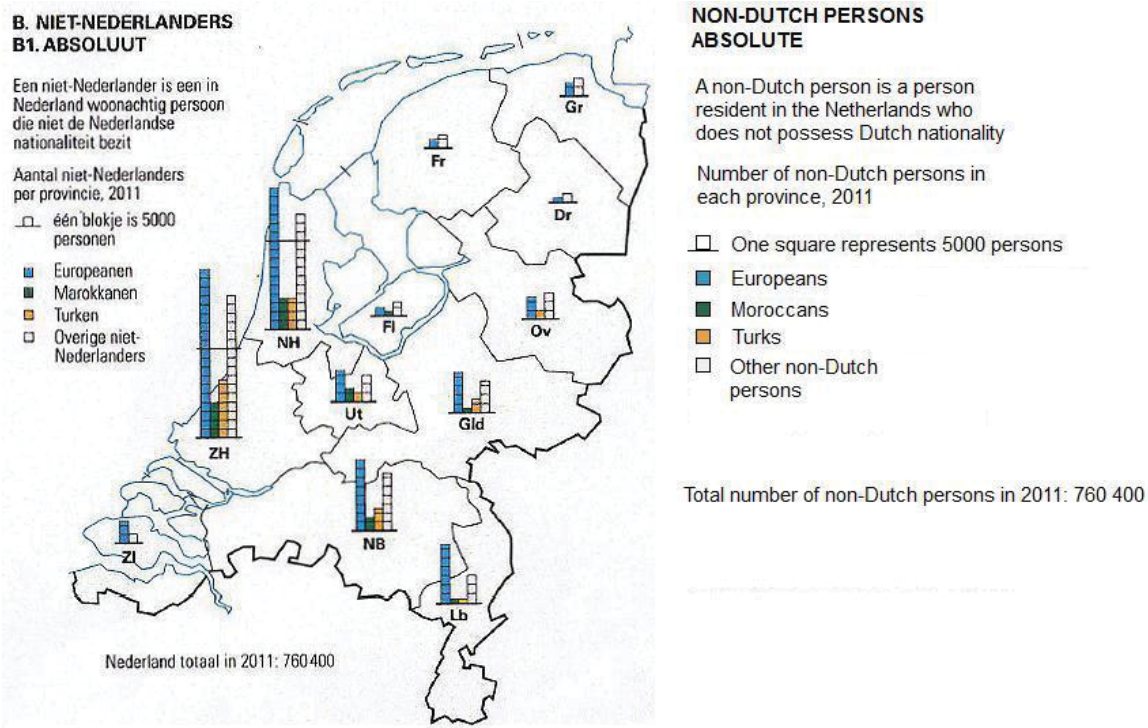
This is reflected in the stock of immigrant populations in the Netherlands today (see table 22 below for top countries of origin, and figure 10 for the geographical spread of immigrants amongst the 12 Dutch provinces). Of the top 10 countries of citizenship of non-EU nationals present in the Netherlands in 2012, the first two are countries of former guest worker agreements. Indeed, these two groups together represent more than 40 per cent of all non-EU immigrants in the Netherlands. The table also shows the influence of immigration to the Netherlands from the former colonies.<sup>3</sup>

**Table 22** Top 10 countries of origin (citizenship) present in the Netherlands in 2012 (source: Eurostat). Countries participating in the EURA-NET project are highlighted.

| Country of citizenship       | Number of immigrants in the Netherlands in 2012 |
|------------------------------|-------------------------------------------------|
| Turkey                       | 84,830                                          |
| Morocco                      | 56,595                                          |
| China                        | 23,900                                          |
| United States                | 15,348                                          |
| Indonesia                    | 11,766                                          |
| India                        | 10,776                                          |
| Suriname                     | 6,438                                           |
| Thailand                     | 5,887                                           |
| Brazil                       | 5,750                                           |
| Russia                       | 5,609                                           |
| Total immigrants (non-EU 27) | 336,894                                         |

<sup>3</sup> For full data table, see Annex 3





**Figure 10** Geographical spread of immigrants in the Dutch provinces (source: Grote Bosatlas, 2012).

Finally, asylum migration to the Netherlands these days also has a temporary element to it: asylum-seekers whose asylum applications are approved are first given a residence permit for a period of five years. If, after this time, it proves impossible to return to their home country, refugees can apply for permanent residence in the Netherlands (IND, n.d.). This means that “in practice, no one is protected under the UN’s 1951 Convention Relating to the Status of Refugees as originally conceived. The status granted is not open-ended, as convention status would be expected to be” (van Selm, 2005).

Scholars have labelled the Netherlands a ‘reluctant country of immigration’ because, despite the reality of sustained immigration as outlined above, political leaders failed to accept that these immigrants were settling permanently and did not acknowledge the Netherlands as a country of immigration (e.g. Engbersen et al., 2007; Castles, 2006: 4; van Amersfoort and Surie, 1987). The discrepancy between this perception has been dealt with by referring to immigrants as ‘repatriates’ (the Dutch population from Indonesia), ‘temporary migrants’ (the guest workers), or ‘minorities’ (immigrants in general) (Penninx, 2005: 37; van Amersfoort and Surie, 1987: 169). Only in 1998 did the Dutch government officially acknowledge that the Netherlands is a country of immigration (Engbersen et al., 2007: 392). Before this, there was an assumption of temporary stay, but a practice of long-term stay of migrants (Penninx, 2005: 38). There was therefore also no policy of incorporating immigrants, because it was assumed that these migrants would be leaving again.

This hands-off approach by Dutch government in the 1960s and 1970s has since been blamed for the problems with integration of migrants today (van Selm, 2005). Several authors highlight the marginalised position that immigrants (particularly those from the former guest worker countries of Turkey and Morocco) find themselves in in the Netherlands. For instance, immigrants in the Netherlands are much more likely than native Dutch to be unemployed (Bauer et al., 2001: 8). The weak labour market position of Turkish and Moroccan immigrants in particular can be explained by lower levels of education, poor command of the Dutch language, industrial restructuring and the disappearance of low-skilled work, low labour force participation of women in these cultures, and discrimination (Engbersen et al., 2007: 408; Rath, 2009: 677).

Much is made in the Dutch public and political debate of the over-representation of immigrants in crime statistics. Engbersen et al. (2007), in their review of studies on the subject, identify several factors which partially explain this over-representation: the national police database on suspects only concerns street crimes, not white-collar crimes, thus making the crimes committed by immigrants more visible in the public eye; police officers tend to monitor groups that they suspect of crime, meaning that immigrants who commit a crime are more likely to be apprehended; across ethnicities, poorly educated and unemployed youngsters turn away from society, and the high crime rates among immigrants therefore says more about their socio-economic position than about their cultural values and norms; foreign nationals are over-represented in Dutch prisons partly due to illegal immigrants being detained there, and these people have not committed a criminal offence; and men are both over-represented particularly in the asylum population and more likely to commit crime in general.

Without entering into the debate on whether media representations shape public opinion or vice versa, some scholars have investigated how the Dutch media portrays immigrants and ethnicity. Ter Wal et al. (2005: 942) find that newspaper stories in the Netherlands focussing on ethnicity generally concern “more negative, potentially problem- and conflict-laden controversial subjects of public order and crime, demonstrations and religion... the most important topic in the ethnic stories was crime”, although there is a difference between different types of newspapers, with crime and deviance being more often associated with ethnic stories in the popular press (2005: 944). Vliegthart and Roggeband (2007) identify five different frames of immigration and integration which have been present in the public and political debate: the multicultural frame emphasises respect for cultural diversity; the emancipation frame views migrants as backwards in their societal participation, customs and beliefs; the restriction frame presents new immigration as a problem; the victimisation frame presents women as victims of a misogynistic culture; and the Islam-as-threat frame presents Islam as a threat to Western values such as freedom of expression, gender equality, and tolerance towards homosexuality. In their analysis of Dutch parliamentary documents and newspaper articles on immigration and integration for the period 1995-2004, Vliegthart and Roggeband find that in both domains the Islam-as-threat frame dominates.

## **Inventory of National Policies and Practices**

### **Societal and political discussion on temporary migration**

Current policy on temporary migration is not a matter of specific public debate in the Netherlands. However, immigration in general is a highly politicised issue (van Selm, 2005), with political parties taking clear and diverging positions. Penninx (2005: 41-21) identifies three factors that have led to this politicisation: the role of Islam as a divisive factor, with Frits Bolkestein (of the conservative liberal VVD) stating in 1991 that Islam was a threat to liberal democracy; the explosion of asylum migration in the 1990s; and growing public and political dissatisfaction with immigrants’ poor knowledge of Dutch language and culture and their lack of participation in Dutch society. Particularly this last factor links the public debate on immigration in general to the Dutch experience with temporary migration in the 1960s and 1970s. Intellectuals and politicians point out that immigrants (particularly from the former guest worker countries of Turkey and Morocco) are over-represented among the unemployed and those dependent on social welfare and have higher drop-out rates from secondary education (ter Wal, 2007: 257). The media increasingly focus on deviance and petty crime committed particularly by Moroccan youths, which contributes to the stigmatisation of this group as a whole (ibid.). Reactionary Islamic positions on homosexuality, the wearing of headscarves, gender equality, and freedom of expression are, for Dutch public opinion, unacceptable (ter Wal, 2007: 258). A 2008 survey found that 56 per cent of the population of the Netherlands regards Islam as a significant

threat to Dutch identity (Rath, 2009: 674). This notion of ‘Islam-as-threat’ has also dominated Dutch parliamentary documents and newspaper articles (Vliegthart and Roggeband, 2007). The concept of multiculturalism has become an issue of public debate, with concerns that, rather than having one society with multiple cultures, essentially multiple societies exist that may clash (van Selm, 2005).

These factors cleared the way for right-wing populist parties to enter the Dutch political stage and achieve electoral success, as they have in many other European countries (see e.g. van Kessel, 2011, and figures 11 and 12 below). The political and societal debate in the Netherlands on immigration (in general, not only temporary migration) has very much shaped and in turn been shaped by these parties, and their presence has transformed the political landscape. Some scholars argue that the most salient issue in Dutch politics is no longer the traditional left-right divide, but rather “non-material issues such as national identity, immigration, asylum, law and order, and the future of European integration” (van Kersbergen and Krouwel, 2008: 400). As life in the Netherlands became less secure during the 1990s (due to the transformation of the welfare state, structural changes in the labour market, and the privatisation of public utilities), a large segment of the Dutch electorate became disillusioned with the traditional parties (2008: 402). Dutch parliamentary election studies show that issues such as unemployment became less and less important to voters since the 1980s, and problems related to minorities and refugees gained in importance (van Kessel, 2011: 79). First the party List Pim Fortuyn (LPF) and later Geert Wilders’ Freedom Party (PVV) managed to mobilise voters by bundling together separate issues of labour migration, employment, social security, healthcare, housing, refugees, and integration, and presenting it to voters as one single problem (van Kersbergen and Krouwel, 2008: 404-405).

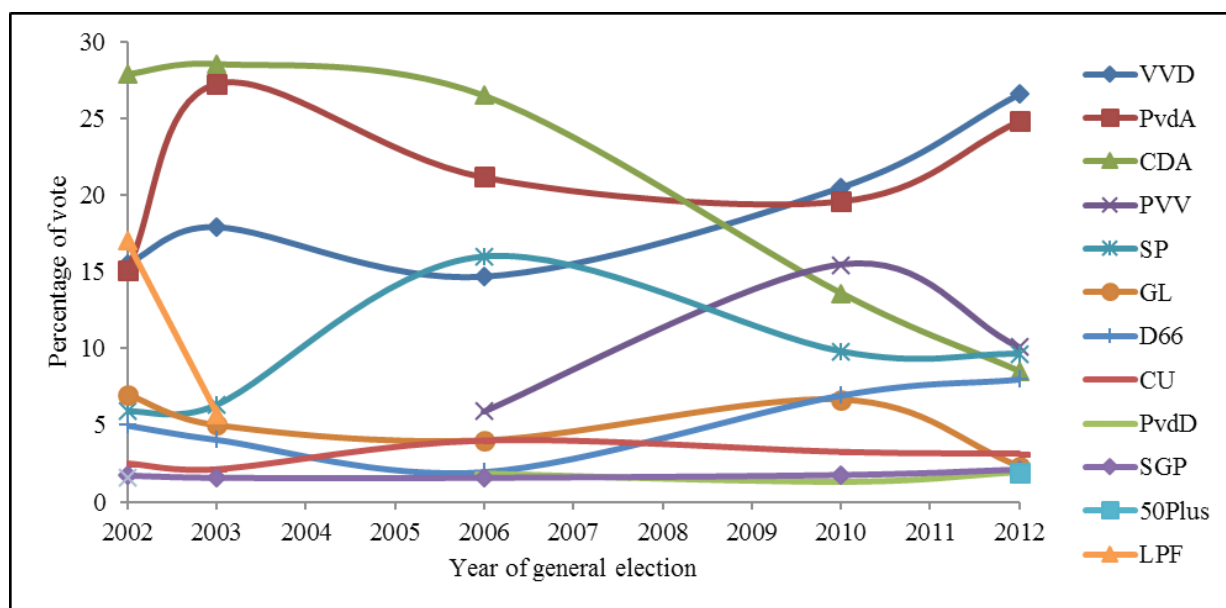
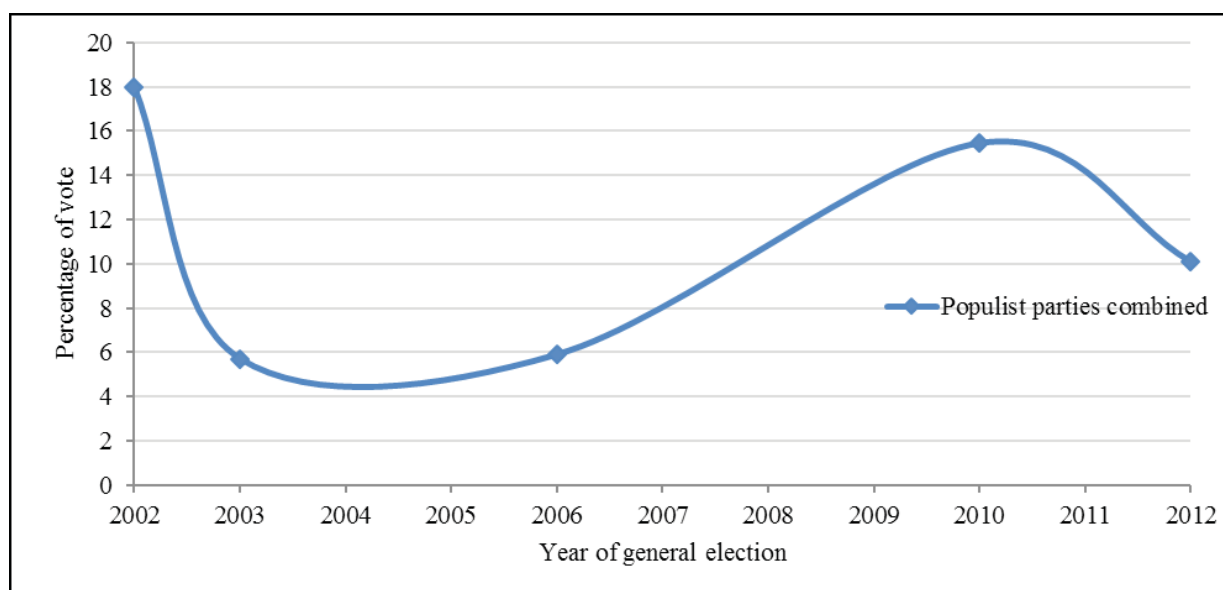


Figure 11 General election results in the Netherlands 2002-2012 (source: Inter-Parliamentary Union)



**Figure 12** General election results of populist parties combined (PVV, LPF, and LN) (source: Inter-Parliamentary Union)

The success of these right-wing populist parties has changed the nature of political debate in the Netherlands. Van Kersbergen and Krouwel (2008: 404) demonstrate that, whilst in the 1990s the leader of an insignificant right-wing party was convicted of inciting race discrimination for promising to abolish the multicultural society, post-2000 Pim Fortuyn could argue for removing the anti-discrimination clause from the Dutch constitution and refer to Islam as a ‘retarded culture’, but face no such punitive measures. The other Dutch political parties have also changed in response to the challenge from right-wing populist parties. Bale et al. (2010: 417) argue that the Dutch labour party (PvdA) “tied itself up in knots trying to adapt to the transformed political landscape”: it understood the importance to the electorate of immigration issues, but the party leadership also did not want to alienate its substantial following among ethnic minorities. It paid the price at the polls in 2002 and 2006. The centre-right parties, the Christian Democrats (CDA) and the conservative liberals (VVD), have “moved towards hard-line and restrictive policies” on issues of migration, asylum-seekers, nationalism and multiculturalism, in an attempt to find an answer to the challenge from the right-wing populists (van Kersbergen and Krouwel, 2008: 398).

## Institutional framework

Dutch policy on temporary migration is made and shaped by a number of different institutional actors. Broadly speaking, the Ministry of Security and Justice has overall responsibility for migration policy; the Immigration and Naturalisation Service (IND) takes decisions on applications for residence permits; the Ministry of Social Affairs and Employment has responsibility for the admission of foreigners to the Dutch labour market; the Employees Insurance Agency (UWV) grants work permits; and the Ministry of Foreign Affairs is responsible for visa policy. In 2012, the European Migration Network issued a report on the organisation of asylum and migration policies in the Netherlands; however, due to a general election held the month after, important sections of that report are now out-of-date. This section will therefore explain the roles of the main actors relevant for Dutch temporary migration policy. It thus focuses on legal migration and asylum policy, rather than border control and return policy. For a full institutional chart, see Annex 4.

As mentioned above, the Ministry of Security and Justice has overall responsibility for Dutch migration policy. Until 2012, when migration policy was handled by the Ministry of the Interior



and Kingdom Relations, there was a specific ministerial portfolio for migration, namely the Minister for Immigration, Integration and Asylum (European Migration Network, 2012a: 11); however, since responsibility for migration policy was transferred to the Ministry of Security and Justice, this ministerial post no longer exists. Within the ministry's Directorate-General for Alien Affairs, the Immigration Policy Department (DMB) develops "policies for entry, stay and return of third-country nationals" (2012a: 12).

Since the reallocation of responsibility for migration policy, the Immigration and Naturalisation Service (IND) now also falls under the Ministry of Security and Justice. The IND is "responsible for the implementation of Dutch immigration policy. This means that IND assesses all applications submitted by third-country nationals who wish to stay in the Netherlands", either for purposes of migration or asylum (European Migration Network, 2012a: 12). The IND thus plays a central role in the implementation of Dutch temporary migration policy because it issues residence permits. It assesses applications for residence permits in terms of the interests of public order, whether the foreigner satisfies the conditions laid out in the Aliens Regulations, and whether the foreigner will rely on public funds (2012a: 36).

The Ministry of Social Affairs and Employment (SZW) has as its objective "to foster a socially and economically vigorous position for the Netherlands in Europe, with work and income security for everyone" (European Migration Network, 2012a: 18). Within the ministry's Directorate-General for Employment, the Labour Relations Department is responsible for labour migration. Dutch labour market policy is based on certain main principles: highly-skilled migrants from outside of the EU are welcome as they can contribute to the Dutch knowledge economy; in order to protect the labour market and prevent unfair competition, labour migrants should be paid in line with the market, and at least the statutory minimum wage; and illegal employment is prohibited because it puts the domestic labour supply at a disadvantage (2012a: 61). The Ministry of Social Affairs and Employment is also responsible for Dutch integration policy, through its Integration and Society Department, which falls under the Directorate-General for Participation and Income Security (2012a: 13). However, the work of this department is not relevant for temporary migration, as temporary migrants are not obligated to integrate in the Netherlands (see section 4.3 below).

The Employees Insurance Agency (UWV) acts on instructions from the Ministry of Social Affairs and Employment. Its main objective is to "ensure that as many people as possible continue to work or find paid work once again, as quickly as possible" (European Migration Network, 2012a: 19). In relation to temporary migration policy, the UWV has been responsible for issuing work permits. However, since the introduction of the combined residence and work permit in the Netherlands in April 2014, applications for this permit are submitted to the IND. The IND requests advice from the UWV as to whether the foreign national meets the requirements for coming to the Netherlands for employment purposes. Based on this advice, the IND decides on the application (IND, 2014a). Responsibility for admitting foreign nationals for the purposes of employment has thus shifted away from the UWV, in favour of the IND.

The Consular Affairs and Migration Policy Department of the Ministry of Foreign Affairs is responsible for developing Dutch visa policy and assessing short-stay visa applications. Applications by migrants for a Regular Provisional Residence Permit<sup>4</sup> can be submitted at a Dutch embassy or consular representation, although they are sent to the IND to be assessed (European Migration Network, 2012a: 17).

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<sup>4</sup> The Regular Provisional Residence Permit (Machtiging tot Voorlopig Verblijf, MVV) is equivalent to a long-stay visa for a stay of 90 or more days. The MVV grants the migrant entry into the Netherlands, from where they can apply for a residence permit for their intended stay. Nationals of the EU and EEA, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the United States, and Vatican City are exempt from the requirement to be in possession of an MVV (European Migration Network, 2012a: 34-35).



The division of responsibilities between the three main ministries involved (Security and Justice, Social Affairs and Employment, and Foreign Affairs) is highly relevant because these ministries are likely to have different views of and objectives in migration policy. Siegel and van der Vorst (2012) argue that these different visions were one of the main reasons for the failure of the Dutch circular migration pilot, because they translated into competing goals in the project framework. The Ministry of Foreign Affairs, in line with the policy memorandum on International Migration and Development, approached the topic of circular migration from a development perspective, and was interested in whether a ‘triple win’ could be achieved, whereby circular migration would be beneficial for the migrant, for the country of origin, and for the Netherlands (2012: 23). The Ministry of Justice was primarily concerned with return and ensuring that participants in the circular migration pilot would not overstay their visas and fall into illegality in the Netherlands (ibid.). Finally, the Ministry of Social Affairs and Employment was actually opposed to the circular migration pilot because its task is to safeguard the Dutch labour market. Its view was that vacancies in the Netherlands could be filled by Dutch or EU nationals, and the circular migration pilot was therefore not relevant (ibid.).

## Assumptions about temporary migration in Dutch policy

### *Temporary migration concerns medium- and low-skilled workers from non-EU countries*

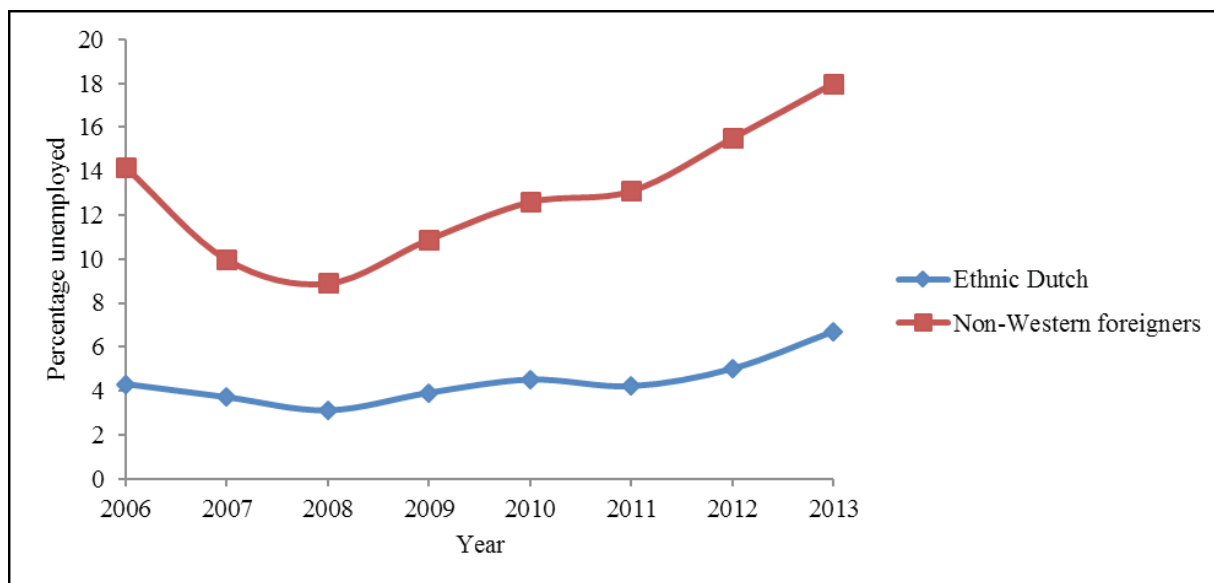
Since the adoption of the Modern Migration Policy (which amended the Aliens Act), Dutch migration policy has aimed to make a specific distinction between temporary migration and migration that might eventually lead to permanent settlement, in order to underline the temporary character of temporary migration (Dutch Ministry of Justice, 2006: 7; Wiesbrock, 2010: 51). With regards to labour migration, the distinction between temporary and more permanent migration is basically one between medium- and low-skilled workers on the one hand, and highly-skilled migrants on the other.

Dutch migration policy aims to be restrictive and in principle, residence permits are granted to foreigners only in one of three cases: if it is required by international obligations; if the presence of the foreigner serves an essential Dutch interest; or if there are compelling humanitarian grounds for admitting the foreigner (European Migration Network, 2012a: 36). In addition to being restrictive, Dutch migration policy functions according to a principle of selectivity: firstly, priority for filling gaps in the labour market is given to Dutch and EEA nationals.<sup>5</sup> Only if there is an insufficient supply of labour from these countries will a work permit be issued for a non-EEA national (European Migration Network, 2013: 20). Secondly, Dutch migration policy aims to be “inviting to migrants needed by Dutch society and restrictive to others” (European Migration Network, 2010: 5). Although the Netherlands “has one of the most restrictive immigration and integration policies in Europe”, Dutch policy on the immigration of highly skilled migrants is rather liberal (Wiesbrock, 2010: 21). The government aims to facilitate the admission of migrants who contribute to Dutch economy, culture or science (European Migration Network, 2010: 11). Since the introduction of the Highly Skilled Migrants Scheme in 2004, for instance, highly skilled migrants do not require a work permit and are exempt from integration requirements (European Migration Network, 2012a: 27).

As the residence permit for highly skilled migrants is not linked to a maximum residence period (European Migration Network, 2010: 5), it follows that ‘temporary migration’ refers to medium- and low-skilled migrants; in other words, migration of these other migrants is in principle always intended to be temporary in nature. This focus on highly-skilled migrants can also be explained by the experience with guest workers in the 1960s and 1970s: these migrants were low-skilled, and so were hit particularly hard by the economic recession of the 1970s, and the fact that low-skilled jobs within industry were disappearing due to technological advances. This led to ethnic minorities being over-rep-

<sup>5</sup> EEA refers to the European Economic Area, which comprises 27 member states of the European Union (Croatia, the 28th member state of the EU, has not yet joined the EEA), plus Iceland, Liechtenstein and Norway.

resented in unemployment figures (Zorlu and Hartog, 2001: 12), a phenomenon that continues to this day: data from Statistics Netherlands shows that unemployment amongst non-Western foreigners is consistently higher than for ethnic Dutch (see figure 13 below).



**Figure 13** Unemployed ethnic Dutch and non-Western foreigners (source: Centraal Bureau Statistiek)

#### *Temporary migration is not a tool for addressing shortages in the Dutch labour market*

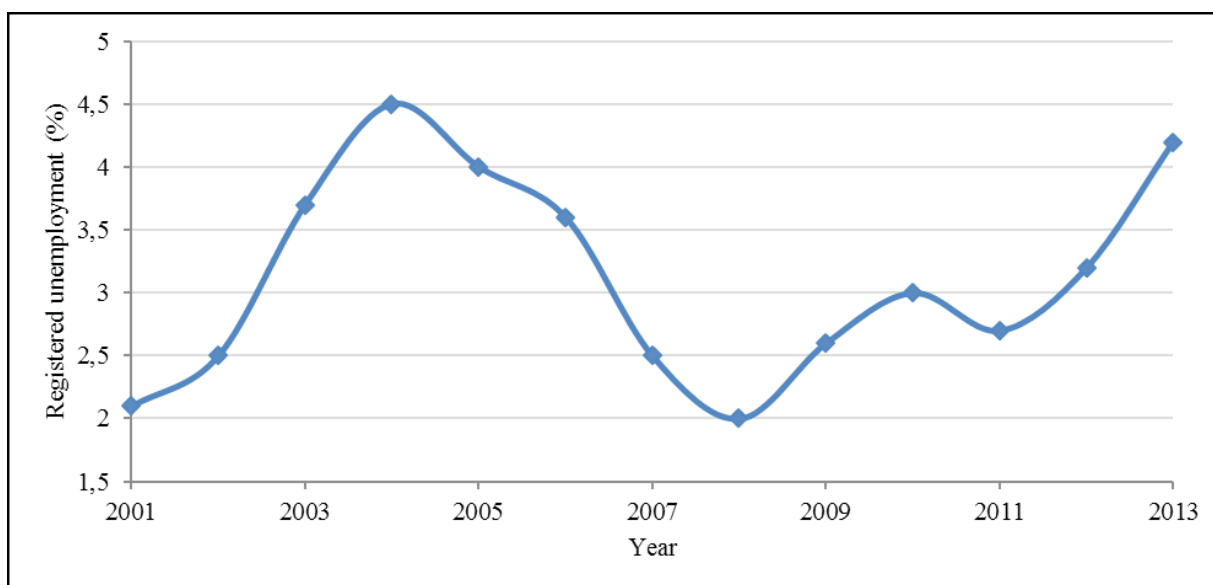
Since the experience with the guest worker agreements of the 1960s and 1970s, the Netherlands has been rather cautious regarding temporary and circular migration schemes (Siegel and van der Vorst, 2012: 15). Policy documents emphasise that shortages in the Dutch labour market are better addressed by the activation of groups in the population that are currently under- or unemployed (European Migration Network, 2010: 5), and an increase in labour productivity (2010: 16). In that sense, temporary migration is seen as a ‘final option’ to solve the problem of an ageing population. However, academics contradict this, arguing that the demographic situation in the Netherlands is such that “there will be an increased need for labour that cannot only be met by traditional labour market activation policies” (Siegel and van der Vorst, 2012: 4). Indeed, 300,000 extra workers will be required by 2020 (HIT Foundation, 2011: 4).

#### *In the light of the economic crisis in Europe, it is questionable whether temporary migration is desirable*

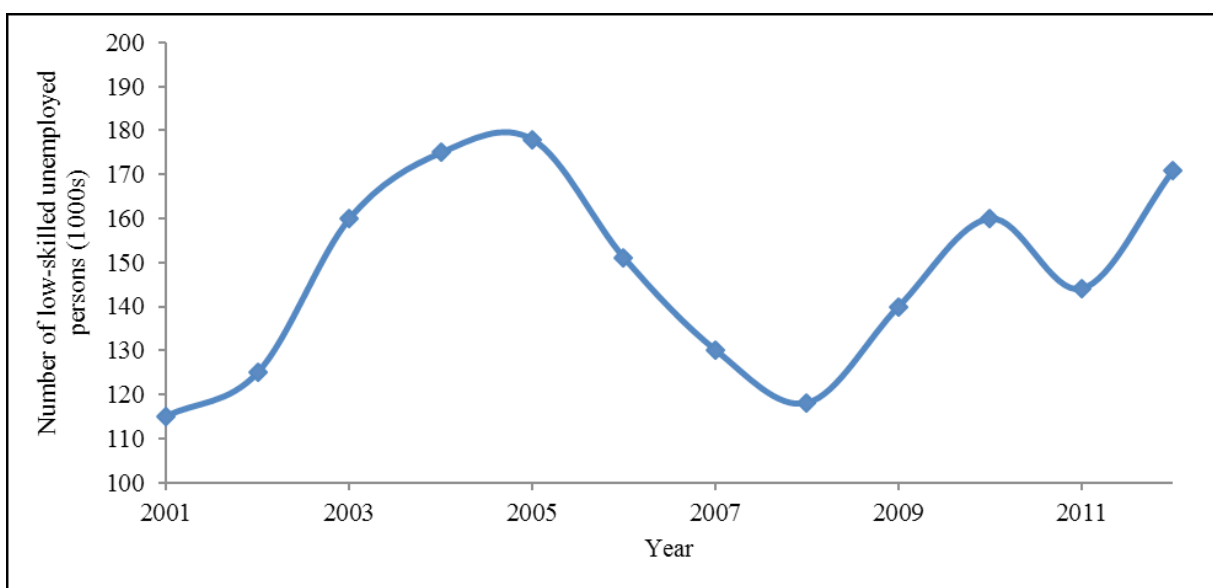
Policy documents paint a picture of increasing unemployment in the Netherlands resulting from the economic crisis in Europe (e.g. European Migration Network, 2010: 5). Indeed, when the government in 2008 proposed to introduce the circular migration pilot, it was opposed by three political groupings in parliament, which requested the cancellation of the pilot on the basis that unemployment in the Netherlands was increasing (Siegel and van der Vorst, 2012: 10). The insecure economic situation was also a reason given by organisations for not participating in the circular migration pilot: in an insecure economic climate it was too risky to hire a circular migrant for a period of two years, given that organisations were already struggling to create enough work for existing employees (2012: 33). This “negative political environment”, in which discussions on bringing foreign labour to the Netherlands were highly sensitive, is one factor accounting for the failure of the circular migration pilot.

Data from Statistics Netherlands show that there was indeed an increase in unemployment after 2008, although unemployment for the years 2009-2013 was not higher than in the early-mid 2000s

(see figure 14 below). There was also an increase in the number of low-skilled unemployed persons in these years, although this number is also not higher than for the early-mid 2000s (see figure 15 below).



**Figure 14** Registered unemployment in the Netherlands (source: Centraal Bureau Statistiek)



**Figure 15** Unemployment of low-skilled persons in the Netherlands (source: Centraal Bureau Statistiek).

*Temporary migrants should return to their countries of origin*

According to Dutch migration policy, “third-country nationals whose residence permits expire and are not extended... are considered to be illegally present in the Netherlands” (European Migration Network, 2012a: 32) and should leave the country, ideally voluntarily (2012a: 57). Ensuring that the residence of non-highly skilled migrants from outside the EU is indeed temporary is one of the main objectives of Dutch labour market policy (2012a: 50). On this basis, return is considered “an essential part of the process [of temporary and circular migration]” (European Migration Network, 2010: 14). Article 3.7 of the Aliens Decree determines that certain guarantees can be required in connection

with the issuance of a temporary residence permit: these may include the deposit of a sum covering transport to a third country where the migrant will be granted entry, or the purchase of a travel ticket; a bank guarantee; and sufficient insurance to cover health costs incurred. In their evaluation of the Dutch circular migration pilot, Siegel and van der Vorst (2012: 9) highlight that the Dutch political debate has tended to equate ‘circular migration’ with ‘return’.

This concern with ensuring return stems from the experience with guest workers in the 1960s and 1970s (2012: 19; see also section 2 above). Although it was assumed that these migrants would return home, in reality many of them stayed in the Netherlands, and immigration increased in the form of family reunification and family formation. As a result of this experience, the Dutch government considers it important that temporary migration does not once again result in permanent and large-scale immigration of low-skilled migrants (European Migration Network, 2010: 6). In 2009, the Advisory Committee on Aliens Affairs published a report on temporary labour migration (ACVZ, 2009). Based on the importance attached to ensuring the return of temporary migrants to their countries of origin, the Committee made several policy recommendations: family members of temporary migrants should not be admitted to the Netherlands; employers should be obligated to cooperate in the return of their (former) employees; migrants who do not return could be made ineligible for future temporary residence and have the payment of certain benefits withheld; and migrants could receive financial assistance with their reintegration in the country of origin.

#### *Temporary migration can contribute to the development of migrants’ countries of origin*

Temporary migration was one of the policy priorities identified in the Dutch government’s 2008 policy memorandum on International Migration and Development (Dutch Ministry of Foreign Affairs and Ministry of Justice, 2008). Temporary migration can potentially be a ‘triple win’, for the country of origin, the country of destination, and the migrant himself/herself (2008: 42). The Dutch policy on migration and development is backed up by a financial framework within the budget for development cooperation. For the years 2013-2018, €9 million per year has been set aside for the promotion of the links between migration and development.<sup>6</sup>

In order to contribute to development policy goals, temporary migration can take two forms: either labour migrants come from developing countries to work temporarily in the Netherlands; or migrants with a permanent residence status in the Netherlands return temporarily to their countries of origin (2008: 31-32). Temporary migration of labour migrants from developing countries to the Netherlands (which is the main focus of this report) contributes to development through the remittances that these migrants send to their families and communities at home, and through the skills and networks that migrants acquire while abroad (2008: 6). The policy memorandum stresses the government’s concern with ensuring the return of temporary migrants. For instance, it states that the possibility for creating temporary migration schemes depends on the ways in which the temporariness of this migration can be guaranteed (2008: 53), and the policy on migration and development is grounded in the broader Dutch migration policy which emphasises an effective return policy (2008: 4). The aim of this type of migration is not permanent residence or the acquisition of citizenship in the country of destination (2008: 31).

Alternatively, migrants resident in the Netherlands can return to their countries of origin for temporary assignments. The two main projects funded by the Dutch government in this regard are the MIDA Ghana Health Project and the Temporary Return of Qualified Nationals, both of which are implemented by IOM. MIDA Ghana Health ran from 2002 to 2012 and aimed to contribute to the development of the healthcare sector in Ghana (European Migration Network, 2010: 24). Qualified members of the Ghanaian diaspora in the Netherlands travelled to Ghana in a capacity-building func-

<sup>6</sup> [http://www.rijksbegroting.nl/2014/voorbereiding/begroting,kst186654\\_10.html](http://www.rijksbegroting.nl/2014/voorbereiding/begroting,kst186654_10.html)

tion, to provide support and training in an area of need identified by the Ghanaian authorities (IOM, 2012). Between 2005 and 2012 282 temporary assignments were carried out. Temporary Return of Qualified Nationals is currently in its third phase, and aims to contribute to development by improving the capacity of governmental and non-governmental institutions. The countries targeted for the period 2012-2015 are Afghanistan, Armenia, Cape Verde, Georgia, Ghana, Iraq, Morocco, Somalia and Sudan (IOM, 2014). During the first two phases of the project, from 2006 to 2012, 530 temporary assignments were carried out (ibid.). Migrants from the target countries living in the Netherlands or other EU countries apply to IOM to participate, and indicate their expertise. Based on the needs in the target country, IOM selects migrants for temporary assignments.

#### *Temporary migration schemes can help prevent brain drain*

Concern has been expressed in Dutch public and political debate that migration from developing to developed countries may deprive developing countries of their best people, with serious repercussions for instance for healthcare infrastructure (European Migration Network, 2010: 16). Although the contribution of the Netherlands to this phenomenon is considered limited, as there are not many highly-skilled migrants from developing countries working in the Netherlands (2010: 17), temporary migration can help to combat brain drain because it allows migrants to play a role as “transnational entrepreneurs” (Dutch Ministry of Foreign Affairs and Ministry of Justice, 2008: 8).

#### *There are both advantages and disadvantages for individual migrants of temporary migration*

The Dutch government sees general advantages of international migration for migrants themselves, mainly in relation to the possibility to improve their living conditions by increasing their income (European Migration Network, 2010: 18). Temporary migrants in addition will gain skills and knowledge that they can put to use when returning to their country of origin. However, they and their families also face certain disadvantages: children may grow up without one or both parents present; women left behind take on many more tasks in the household without necessarily gaining an increased position of power; and temporary migrants are in a vulnerable position and are prone to abuse and marginalisation (ibid.). Once in the Netherlands, Dutch labour market policy guarantees that migrants are paid the same as Dutch workers, and that they receive at least the statutory minimum wage. However, it is also policy that labour migrants should be prevented from relying on social security benefits (European Migration Network, 2012a: 50).

#### *It is not necessary for temporary migrants to integrate in the Netherlands*

Article 3(1) of the Civic Integration Act states that foreigners who come to the Netherlands for a purpose *other than* a temporary stay, have an obligation to integrate. In a similar manner, integration was not a policy goal for the guest workers who arrived in the 1960s: their stay was seen as temporary, and therefore it would be better for them to maintain ties with their home country (Zorlu and Hartog, 2001: 10). Integration of foreigners has become an important aspect of the Dutch political debate since the 1990s, and successive governments have aimed to enact more restrictive integration policies, for example by requiring migrants to pass Dutch language tests abroad, before they travel to the Netherlands (Wiesbrock, 2010: 50). In 2009, the then-Minister for Housing, Communities and Integration stated that foreigners who work in the Netherlands to save money to invest in property in their country of origin would do better to invest in their living environment in the Netherlands instead. The implication was that ‘keeping one foot in the homeland’ is not conducive to participating fully in Dutch society (European Migration Network, 2010: 18). Exempting temporary migrants from integration requirements thus emphasises their non-permanent status.



## Dutch policy on admission of temporary migrants

This sub-section will outline the legal and policy framework on Dutch temporary migration policy, and thereby come to a categorisation of the different ways of migrating to the Netherlands for temporary purposes. The most important piece of legislation is the Aliens Decree, which outlines the different restrictions under which temporary residence permits may be issued, thus indicating different categories of temporary migrants. The Aliens Decree is secondary legislation that is intended to implement the Aliens Act (primary legislation). The Foreign Nationals (Employment) Act contains relevant rules for some temporary migrants, namely those coming to the Netherlands to work. Although it is a very important aspect of Dutch migration law, the Civic Integration Act specifically does not apply to migrants who come to the Netherlands on a temporary basis (according to Article 3(1)). It is therefore not considered here.

There are five different categories of residence permits in the Netherlands, reflecting the temporary or permanent status of the migrant: 1. Temporary asylum residence permit; 2. Permanent asylum residence permit; 3. Temporary regular residence permit; 4. Permanent regular residence permit; 5. Residence card for EU nationals (European Migration Network, 2012a: 43). As there is no official definition of temporary migration in Dutch law, this report follows the definition of the European Migration Network (which the Dutch government also adopts when submitting reports to the Network): “Temporary migration is migration for a period of between three and 12 months, except when the purpose of this is leisure, business or medical treatment”.

For this reason, this section will not deal with temporary residence of asylum-seekers and refugees. Whilst asylum-seekers whose asylum application is granted do initially receive a temporary residence permit, this permit is issued for a period of five years. At the end of the five-year period, if it is not possible to return to the country of origin, refugees may apply to the IND for a permanent asylum residence permit (European Migration Network, 2012a: 44). Thus the temporary status may be changed into a permanent one, but the initial temporary residence permit is granted for a period of time that exceeds the length requirements of interest to this report. This section will thus only deal with temporary migration falling under the temporary regular residence permit.

There are three main broad categories of legal migration to the Netherlands: admission for work in paid employment; admission as family member or relative; or study (European Migration Network, 2012a: 42). Depending on the purpose of residence, the IND issues residence permits for a period of one year, three years, or five years (2012a: 44). The IND is also responsible for requests for extension of temporary residence permits, although the maximum period for a temporary permit is five years. After this, the holder is entitled to apply for a permanent residence permit (*ibid.*), and also becomes eligible to apply to naturalise in the Netherlands (2012a: 48). Given the definition of temporary migration that is being used in this report (migration for between three and 12 months), the primary focus here is on residence permits issued for an initial period of one year or less. Until April 2014, permits for residence and work were issued separately in the Netherlands. The UWV examined applications from employers for work permits for foreign nationals, and determined, based on Dutch labour market policy, whether a work permit should be granted. Since April 2014, a single permit covers most migrants entering the Netherlands. The IND is now responsible for issuing the permit, but still relies on advice from UWV as to whether a work permit shall be issued. Since the changes made to the Foreign Nationals (Employment) Act on 1 January 2014, a work permit is valid for one year. This report focuses on temporary migration as defined by *residence* permits, because not all temporary migration is for work purposes or requires a work permit. However, all temporary labour migrants will need not only a work permit, but also a temporary residence permit. Focusing on residence permits thus ‘captures’ the whole target group intended.

Before a migrant’s application for temporary residence is examined, he or she must meet certain

minimum conditions (Article 3.1a(2) of the Aliens Decree). The migrant must not be suspected of war crimes or crimes against humanity; must not have committed a serious crime; and must not be a threat to Dutch society or national security. In any of these cases, the migrant will be deported and the application for temporary residence will not be examined.

Temporary residence permits are restricted to certain purposes, and these purposes can be seen as the main categories of temporary migration to the Netherlands. According to article 3.4 of the Aliens Decree, these categories are:

- Residence as a family member/relative
- Economically non-active long-term resident
- Self-employment
- Highly-skilled migrant
- EU Blue Card holder
- Seasonal worker
- Labour migrant
- Cross-border service provider
- Scientific researcher (in the framework of EU directive 2005/71/EC)
- Interns
- Work as non-privileged serviceman or civilian
- Study
- Searching for employment
- Exchange
- Medical treatment
- Temporary humanitarian grounds
- Awaiting result of investigation into Dutch citizenship
- Non-temporary humanitarian grounds

Some of these categories can be excluded as they are outside of the remit of this report. Category 2 relates to migrants who are long-term resident, but not working due to their independent financial status. Category 11 relates to foreign nationals employed, for example, at international military headquarters. The extent to which their stay in the Netherlands is temporary does not reflect on Dutch migration policy, but rather on the international commitments of the Netherlands and the policy of international organisations such as NATO. The definition of temporary migration being used in this report excludes migration for the purposes of medical treatment (category 15). As highlighted above, residence permits for temporary humanitarian grounds (category 16) are granted for an initial period of five years, which is longer than the definition of temporary migration adopted for this report (migration for between three and 12 months). Category 17 concerns those who believe they have a claim to Dutch citizenship. If their claim is rejected, they will be deported; if their claim is accepted, they will have the right to permanent residence in the Netherlands. And category 18 specifically concerns residence on non-temporary grounds, and can therefore also be excluded. There therefore remain 12 categories of temporary migration of interest to this report. The remainder of this sub-section sets out the requirements for a temporary residence permit to be issued in each case, the length of validity of the permit, and any further restrictions or information. This information is also summarised in table 23 below.

**Table 23** Categories of temporary migration to the Netherlands

| Category (English)            | Category (Dutch)                       | Duration of residence permit                                         | Renewable?               |
|-------------------------------|----------------------------------------|----------------------------------------------------------------------|--------------------------|
| Family reunification          | Verblijf als familie- of gezinslid     | Same as sponsor                                                      | Yes                      |
| Self-employment               | Verrichten van arbeid als zelfstandige | Up to 2 years                                                        | Yes                      |
| Highly Skilled Migrant Scheme | Kennismigrant                          | Duration of employment contract                                      | Yes (maximum five years) |
| EU Blue Card                  | Europese blauwe kaart                  | Duration of employment contract plus three months (minimum one year) | Yes (maximum four years) |
| Seasonal worker               | Seizoenarbeid                          | Up to 24 weeks                                                       | No                       |
| Labour migrant                | Aarbeid in loondienst                  | Duration of work permit                                              | Yes                      |
| Cross-border service provider | Grensoverschrijdende dienstverlening   | Up to 2 years                                                        | No                       |
| Scientific researcher         | Wetenschappelijk onderzoek             | Duration of employment contract                                      | Yes                      |
| Interns                       | Lerend werken                          | Up to 1 year                                                         | No                       |
| Study                         | Studie                                 | Duration of study programme plus one year (maximum 5 years)          | Yes                      |
| Searching for employment      | Zoeken naar arbeid                     | 1 year                                                               | No                       |
| Exchange                      | Uitwisseling                           | 1 year                                                               | No                       |

### *Residence as a family member/relative*

Articles 3.13-3.28 of the Aliens Decree concern family reunification. In principle, foreign nationals become eligible for family reunification once they have been resident in the Netherlands for one year, even if they do not have a permanent residence permit. The right of family reunification extends to the spouse (who must be aged 21 or over), and the foreign national's minor children. The Aliens Decree does not specify the duration of the residence permit which will be issued to family members, because the permit is valid for the duration of the residence permit of the sponsor. The permit may be renewed, and once the family member has been resident in the Netherlands for five years, they may apply for a permanent residence, although this will only be granted if the family member has passed the Civic Integration exam (IND, n.d.) and if the sponsor has permanent residence status (Article 3.5 Aliens Decree). What may begin as temporary migration, therefore, can become permanent.

There are certain conditions attached to the residence permit for family reunification. A permit will only be issued to one spouse, who must be aged 21 or over. The family member must have a valid long-stay visa and a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands. The sponsor must have sufficient means of subsistence, which according to Article 3.74 of the Aliens Decree means at least the national minimum wage. The Aliens Decree refers to the EU family reunification directive (Directive 2003/86/EC), the EU-Turkey Association Agreement, the EU Blue Card directive (Directive 2009/50/EC), and the EU long-term residents directive (Directive 2003/109/EC) as exceptions under which the residence permit will also be issued.

### *Self-employment*

Article 3.30 of the Aliens Decree concerns migrants coming to the Netherlands for the purposes of self-employment. In order to qualify for a permit in this category, the foreign national must be planning to carry out work which serves an essential Dutch interest. Whether an essential Dutch interest is served will be decided by the Ministry of Security and Justice in cooperation with the Ministry of

Social Affairs and Employment. From the planned activities, the foreign national must have sufficient means of subsistence, and he or she must be qualified for the work. A residence permit in this category is valid for a maximum period of two years, and can be renewed (IND, n.d.). When the foreign national has been resident in the Netherlands for five years, he or she will be eligible to apply for long-term residence, meaning that also in this case temporary migration may become permanent.

#### *Highly-skilled migrant and EU Blue Card holder*

There are two different possibilities for highly-skilled migrants to come to the Netherlands: the national Highly Skilled Migrant Scheme (Article 3.30a of the Aliens Decree), and the EU Blue Card (Article 3.30b of the Aliens Decree). To qualify for the national scheme, the foreign national must earn a monthly salary of at least €2968 per month (if aged under 30) or at least €4048 (if aged 30 or over) (Article 1d of the Decree implementing the Foreign Nationals (Employment) Act). He or she must also have an offer of employment from an employer that will act as their sponsor. To qualify for an EU Blue Card, the foreign national must earn a monthly salary of at least €4743 per month and have completed a course of higher education of at least three years at a Dutch institution, or have a comparable degree from a foreign institution (Article 1i of the Decree implementing the Foreign Nationals (Employment) Act). He or she must have an offer of employment from an employer (that does not, however, need to act as a sponsor). There are further conditions attached to the EU Blue Card: the employer must not in the previous five years have been sanctioned for infractions of the Foreign Nationals (Employment) Act; the foreign national must possess a valid travel document and long-stay visa; and must not form a danger to public order or national security in the Netherlands. Neither of the schemes requires a work permit. A residence permit under the national Highly Skilled Migrant Scheme is valid for the duration of the employment contract, with a maximum of five years; after this time, the foreign national will be eligible to apply for long-term residence in the Netherlands.

A residence permit for a holder of the EU Blue Card is issued for the duration of the employment contract plus three months, with a minimum of one year, and a maximum of four years. The holder of an EU Blue Card may apply for long-term residence in the Netherlands already after two years, if they have been resident in the EU for an uninterrupted period of five years in total, and if they were resident in another EU member state for 18 months as a Blue Card holder immediately prior to taking up residence in the Netherlands (IND, n.d.). Thus, for both categories of highly-skilled migrant it is possible for temporary migration to become permanent migration.

#### *Seasonal worker*

Article 3.30c of the Aliens Decree concerns seasonal work. In order to qualify for a permit in this category, the foreign national must have an employment contract and must have been issued with a work permit for a maximum period of 24 weeks. He or she must also have been resident outside of the Netherlands for the 14 weeks immediately prior to the application for the permit. A permit for seasonal work is not renewable, although it is possible to qualify for the scheme again at a later time, after having spent the required 14 weeks outside of the Netherlands. This form of migration is therefore temporary, and may also become circular in nature.

There are certain conditions attached to the issuance of a residence permit to a seasonal worker. The foreign national must have a valid long-stay visa and a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands. The employer must submit a written declaration confirming the reason for the application for the residence permit.

### *Labour migrant*

Article 3.31 of the Aliens Decree concerns labour migration for general purposes. In order to be issued with a residence permit as a labour migrant, the foreign national must have an employment contract for which the employer has applied for a work permit. This work permit will be issued if the salary is equivalent to the minimum wage of a 23-year old, and in line with market standards, and if no Dutch or EEA nationals can be found to fill the vacancy. The residence permit is valid for the duration of the work permit, and may be renewed. Article 11 of the Foreign Nationals (Employment) Act stipulates that the work permit is valid for a maximum of one year. The work permit cannot be renewed; if employers wish to keep their non-EU national employee for longer, they must submit a new application for a work permit. This implies that the labour market test, to check whether a Dutch or EEA national can fill the vacancy, will be carried out again. If new work permits continue to be granted so that they foreign national has been resident in the Netherlands for five years, he or she will be eligible to apply for long-term residence, meaning that this type of temporary migration may become permanent.

The foreign national must conform to certain conditions in order to be issued with a residence permit as labour migrant. He or she must have a valid long-stay visa and a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands. He or she must have sufficient means of subsistence for the duration of stay in the Netherlands, must not previously have committed fraud when applying for a residence permit in the Netherlands, and must not previously have been illegally present in the Netherlands (IND, n.d.).

### *Cross-border service provider*

Article 3.31a of the Aliens Decree concerns cross-border service provision. A cross-border service provider is a foreign national who temporarily performs work in the Netherlands on behalf of an employer based in another country of the EU or EEA, or Switzerland (Article 1e of the Decree implementing the Foreign Nationals (Employment) Act). A residence permit for cross-border service provision is issued for the duration of the cross-border activities, with a maximum period of two years, and may not be renewed past this. This form of migration is therefore temporary.

### *Scientific researcher*

Article 3.33 of the Aliens Decree concerns foreign nationals coming to the Netherlands as scientific researchers, in the framework of EU directive 2005/71/EC. A hosting agreement must exist between a nationally approved research organisation and the researcher, in which the researcher undertakes to complete a certain research project at the research organisation. A residence permit will be issued for the duration of the employment contract, with a maximum of five years, and may be renewed. When the foreign national has been resident in the Netherlands for five years, he or she will be eligible to apply for long-term residence, meaning that this type of temporary migration may become permanent.

Article 6 of the EU directive 2005/71/EC sets certain general conditions for the hosting agreement between the research organisation and the researcher. The proposed research project must have been approved by the relevant authorities in the research organisation; and the researcher must have sufficient means of subsistence and adequate sickness insurance. Furthermore the researcher must have the appropriate qualifications to be admitted to the doctoral programme, and must either be paid a salary by the research organisation or be in receipt of a grant from an institution approved by the EU (IND, n.d.). Article 3.33 of the Aliens Decree also stipulates that the foreign national must have a valid long-stay visa and a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands.



## *Interns*

Article 3.39 of the Aliens Decree concerns foreign nationals wishing to come to the Netherlands to gain work experience. If the foreign national is already in employment abroad, they come to the Netherlands as a 'praktikant' (apprentice). If the foreign national is studying at an educational establishment abroad, they come to the Netherlands as a 'stagiair' (trainee). The hosting organisation in the Netherlands must have been granted a work permit for the intern. The residence permit for an intern will be issued for a maximum period of one year, and cannot be renewed. If the praktikant requires a work permit, this will be issued for a maximum period of 24 weeks (IND, n.d.). This form of migration is therefore temporary.

Interns must be in possession of a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands. Interns may not account for more than 10 per cent of employees at Dutch companies. There are separate conditions specific to both the 'praktikant' and the 'stagiair'. A praktikant must already be in employment abroad; there must be an agreement between the employer abroad and the company in the Netherlands regarding the internship plan; the purpose of the internship is to improve employability at a foreign employer; the foreign national must not be filling a regular vacancy; at the end of the internship, the intern will resume work at the foreign employer; the intern must have appropriate qualifications; and the salary must be in line with market standards and at least equivalent to the minimum wage for a 23-year old. A stagiair must be registered on an educational programme and have appropriate qualifications; the internship must be a requirement for completion of the educational programme; a student on a vocational training course may come to the Netherlands for a maximum of six months; and a student studying applied sciences may come to the Netherlands for a maximum period of one year (IND, n.d.).

## *Study*

Article 3.41 of the Aliens Decree concerns foreign nationals who come to the Netherlands to study at a nationally approved educational institution. The duration of residence of students in the Netherlands depends on the duration of the study programme. A permit is issued for the duration of the study programme plus one year for preparation to follow the programme. When the programme ends, the residence permit expires, but up until then it can in principle be renewed. The permit is valid for a maximum of five years. However, residence on the basis of studying does not qualify the holder of the permit to apply for long-term residence in the Netherlands (Article 3.5 Aliens Decree). This form of migration is therefore also temporary.

Article 3.41 outlines certain conditions for students coming to the Netherlands. If foreign nationals wish to come for the purposes of secondary or applied education (as opposed to higher education), then the Minister of Security and Justice must judge that the foreign national is likely to contribute to the development of their country of origin upon returning, and that the Netherlands is the most appropriate country for the foreign national to study in. This is the case if the foreign national is a citizen of Suriname, Indonesia or South Africa, or if the foreign national has family ties to the Netherlands, or if the foreign national speaks Dutch. In addition, all students must be in possession of a valid travel document, must be willing to be tested for tuberculosis, and must not form a danger to public order or national security in the Netherlands (IND, n.d.). Students must have proof of registration, be following a nationally accredited, full-time programme, sign a declaration of temporary residence and have sufficient means of subsistence, and their departure from the Netherlands upon completion of their studies must be reasonably guaranteed (European Migration Network, 2010: 33). Foreign nationals holding a residence permit for study purposes are also permitted to work, provided that they work only in the months of June, July and August, or that the work during the rest of the year does not take

up more than 10 hours per week. No work permit is required for these students, and there is no labour market test (2010: 31).

### *Searching for employment*

Article 3.42 of the Aliens Decree gives foreign nationals who have recently obtained a Bachelor, Master degree or Ph.D. the right to a residence permit to search for work. There are two separate schemes, one for foreign nationals who gained their Bachelor, Master or Ph.D. at an accredited institution in the Netherlands, and one for foreign nationals who gained their Master or Ph.D. from one of the top 200 institutions of the Times Higher Education World University Rankings, the QS World University Rankings, or the Academic Ranking of World Universities. The foreign national must have graduated immediately prior to the application (in the case of a Bachelor degree from a Dutch university), or in the three years immediately prior to the application (in the other cases) (Nuffic, 2013). A foreign national who has made use of the ‘search-year’ in the past is not eligible for it again, and the residence permit cannot be renewed. This category of migration is therefore temporary by itself, although the very purpose of it is to continue residence in the Netherlands in the framework of employment.

There are certain further criteria attached to the ‘search-year’. The foreign national must be in possession of a valid travel document, must be willing to be tested for tuberculosis, must not form a danger to public order or national security in the Netherlands, and must not previously have committed fraud on an application for a Dutch residence permit or been illegally present in the Netherlands. The foreign national’s qualifications must be evaluated by the Dutch organisation for international cooperation in higher education (Nuffic). A points system is also applied to the foreign national’s application, and here a score of 35 from a maximum of 40 must be achieved. The points are awarded with regards to qualifications, age, and chance of success in the Netherlands. Knowledge of Dutch or English, and an age of between 21 and 40 will be rewarded (IND, n.d.).

### *Exchange*

Article 3.43 of the Aliens Decree concerns foreign nationals who wish to come to the Netherlands as part of a nationally approved exchange programme or working holiday scheme. The IND includes au pairs and participants of the European Voluntary Service scheme in this category (IND, 2014b). The residence permit is valid for a maximum of one year, and cannot be renewed. This form of migration is therefore definitely temporary.

There is a distinction between foreign nationals participating in a cultural exchange programme, Canadian nationals participating in the Working Holiday Program and Australian or New Zealand nationals participating in the Working Holiday Scheme, au pairs, and the European Voluntary Service scheme (IND, 2014b). As a general rule for all these categories, the exchange programmes must be reciprocal. Foreign nationals participating in one of these schemes must be 18 year or older, but younger than 31; must have a valid travel document; must not form a danger to public order or national security in the Netherlands; must not have participated in a cultural exchange programme previously; and must not previously have committed fraud on an application for a Dutch residence permit or been illegally present in the Netherlands. In addition, participants in cultural exchange programme must stay in a host family made up of at least two persons with which they have no previous working relationship. On some exchange schemes, participants may be aged between 15 and 18. Participants in the Working Holiday Program or Working Holiday Scheme must be in possession of a return travel ticket, or must have sufficient means to purchase such a ticket. These foreign nationals may work during their residence in the Netherlands, but employment may not be the main purpose of their stay, rather it is a method of financing their stay (European Migration Network, 2010: 36). Au pairs must stay in a family made up of at least two persons, with which they have no previous working relation-

ship, and which has sufficient means for one year (which has been determined to be 1.5 times the national minimum wage). Au pairs may perform light household work for up to eight hours per day, with a maximum of 30 hours per week. Au pairs receive room and board, pocket money, and at least two whole days off per week (IND, 2014b). Participants in the European Voluntary Service scheme must be volunteering at an accredited host organisation in the Netherlands, and must not previously have held a residence permit in the Netherlands (European Migration Network, 2010: 37).

### Case study: the Dutch circular migration pilot, 2010–2011

As has been outlined in section above, the Dutch government is generally rather hesitant about temporary migration, particularly in the light of the economic crisis. Temporary migration concerns only medium- and low-skilled workers, and emphasis is put on ensuring that these migrants return to their countries of origin. With this background, it is therefore rather remarkable that, from 2010 to 2011, a pilot circular migration scheme was implemented in the Netherlands.<sup>7</sup> The decision to launch such a scheme should be understood in the light of the Dutch policy on migration and development (European Migration Network, 2010: 19). The pilot therefore had dual aims: to “study how temporary labour migration can contribute to sustainable development in developing countries and how the Dutch business sector may benefit from this” (2010: 20). The pilot was launched on 1 December 2009 and was scheduled to run until 30 December 2012. However, it was terminated ahead of schedule. This sub-section examines the nature of this scheme and the reasons why it failed.

The pilot circular migration scheme was proposed by the Dutch government in 2008. Although three political parties of the opposition filed a motion in parliament for the pilot to be cancelled, plans went ahead and pilot started on 1 March 2010 (Siegel and van der Vorst, 2012: 10). Migrants were to be employed for a maximum period of two years in a sector for which there was a shortage of labour in the Netherlands; the work permit would only be valid for the position for which participation in the pilot had been granted; employers were to arrange housing and health insurance; participants would not have a right to family reunification; and the vacancies falling under the circular migration pilot would be exempt from the labour market test (2012: 26-27). The HIT Foundation was chosen to implement the project, although some doubts existed as it is a small organisation with limited experience in the area of circular migration (2012: 24). The HIT Foundation selected Indonesia and South Africa as the countries for the pilot, based on a number of criteria: the potential development impact; the state of their labour markets; the presence of Dutch enterprises in the country; interest from the country in participating; experience of the HIT Foundation in that country; quality and quantity of supply of labour; English language skills; and likelihood of migrants returning (2012: 30).

The Blue Birds circular migration pilot aimed to put 160 migrants into employment in the Netherlands within one year (2012: 4). However, this target was not reached: 15 months into the implementation phase, only eight migrants were working in the Netherlands (although the HIT Foundation points out that 30 more migrants had been selected and 80 were in the process of recruitment and selection). The pilot was therefore terminated already on 1 September 2011 (2012: 11). The final report on the pilot by the HIT Foundation states that “the support base for the pilot had eroded” and that the aims of the pilot no longer matched the policy objectives of the new Dutch government (HIT Foundation, 2011: 9). The tone of the report is rather critical: the HIT Foundation refers to the limitations set by the Ministry of Foreign Affairs as “strict”, and states that “proposals for adjustments and modifications were forbidden” (2011: 12). This assessment partly overlaps with the analysis by Siegel and van der Vorst, who identify several limitations which can explain the failure of the project. Firstly, the three ministries responsible for the project (Justice, Foreign Affairs, and Social Affairs

<sup>7</sup> Although the Blue Birds scheme was called a pilot circular migration project, the HIT Foundation (2011: 12) rightly points out that it should be understood as a temporary migration scheme, because migrants were only permitted a two-year stay in the Netherlands. The stay could not be extended, and after two years migrants would have to return to their country of origin.

and Employment) had different visions of and objectives regarding circular migration, which translated into competing goals in the project framework (Siegel and van der Vorst, 2012: 23). During the process of implementation, the focus also shifted from a development perspective to a concern about the Dutch labour market. This was particularly the case following the formation of a new government in the Netherlands in 2010 (2012: 35). Different partners in the project, notably the UWV and the HIT Foundation, had different understandings of the concept of a 'medium-skilled migrant' (2012: 27). There were difficulties with linking foreign qualifications to their Dutch equivalents, meaning that some migrants in the scheme had to complete qualifications in the Netherlands before taking up employment. This cost employers time and effort, and was seen as an obstacle to participation (2012: 32). Due to the political sensitivities surrounding circular and temporary migration in the Netherlands, the HIT Foundation was not permitted to publically advertise the circular migration pilot, which made it more difficult to find organisations willing to participate (2012: 29). Organisations that did participate frequently pointed out that the maximum period of two years was not sufficient because the investments made in training an employee cannot be realised in this time period (2012: 31). Finally, many organisations highlighted that they were still in a period of insecurity due to the economic crisis. Hiring a migrant for a period of two years, whilst having difficulty in creating enough work for existing employees, was therefore considered risky (2012: 33).

## Conclusion

This report set out to answer the following research questions: What are the Dutch policies, legislation, and programmes on temporary migration? What is the relationship between temporary and permanent migration? Based on the analysis above, this section offers some conclusions and recommendations for policy-makers.

Firstly, Dutch temporary migration policy focuses on ensuring that migrants return. Based on the historical experience with guest workers in the 1960s and 1970s (whose stay in the Netherlands was supposed to be temporary, but who ended up becoming permanent immigrants), government policy lays down certain conditions for temporary migrants, aimed at ensuring their departure once their residence permit has expired. However, such conditions walk a fine line between ensuring return and infringing on migrants' rights. For example, the recommendation by the Advisory Committee on Aliens Affairs that family members of temporary migrants should not be admitted to the Netherlands implies granting a lower level of rights to temporary (therefore by definition low-skilled) migrants than those granted to permanent (highly-skilled) migrants, and thus discriminating between migrants based on the length of validity of their residence permits. More research is required into patterns of return migration and evidence of the effectiveness of various incentives.

Secondly, 'temporary migrant' is not necessarily a permanent status. For many of the categories of temporary migration outlined in section 5 of this report, migration originally intended to be temporary can become permanent through continual renewal of the original residence permit. Once a migrant has accrued an uninterrupted period of five years of legal residence in the Netherlands, he/she becomes eligible to apply for long-term residence. This makes a clear analytical distinction between 'temporary' and 'permanent' immigrants in the Netherlands difficult. The second stage of the EURA-NET project will investigate how migrants experience this temporariness and how it affects them whilst they are in the Netherlands. This should form the basis for a policy discussion on the security of migrants' status and the connections between temporariness of migration status and migrants' well-being.

Finally, an open political debate is needed about the place of temporary migration in Dutch migration policy. Currently, Dutch temporary migration policy is full of contradictions, for example between the generally cautious approach of the government to temporary migration schemes (given

the past experience with guest workers) and the decision to nonetheless implement a circular migration pilot scheme in 2010-2011. There are also political and administrative disagreements on the role that temporary migration should play in Dutch migration policy; indeed, such disagreements between ministries are partly to blame for the failure of the circular migration pilot scheme. The research process for this report uncovered little public debate about temporary migration, perhaps due to the fact that migration is a highly politicised topic and so political leaders shy away from an informed debate and clear stances on the matter. Given the role that migration that was supposed to be temporary (but turned out to be permanent) has played in Dutch migration history, it is hardly surprising that political leaders avoid this explosive topic. However, as academics point out, due to the demographic situation in the Netherlands, immigration will play an important role in future labour market policy. Temporary migration needs to be part of a bigger political debate on the role of migration in Dutch public policy.



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## 4.8 TEMPORARY MIGRATION IN THE PHILIPPINES

Graziano Battistella and Maruja M.B. Asis

### Introduction

The Philippines is considered one of the most important countries of origin of migrants not only because of the annual outflow of workers or the total number of workers abroad, but also because of the relevance that migration has acquired in Philippine society, to the point that we can speak of a culture of migration (Asis, 2006). Another important reason is the comprehensive migration policy that the country has adopted. With Filipinos deployed in almost all the countries of the world (although 80 per cent of them just work in ten countries, mostly in the Middle East and Asia), the analysis of migration from the Philippines seems particularly useful for an insight into temporary labour migration and the lessons that can be learned.

This report will present the policy and institutional framework of Filipino migration and its assessment as documented in migration literature. Although the Philippines is one of the most important countries of origin also of permanent migration, the focus will be on temporary migration. All countries have international migration policies embracing the various stages of the migration process. However, the tendency is to give more attention to the dominant phenomenon, which is either the emigration or the immigration aspect of population movement. Countries that are mainly the destination of migrants tend to dedicate less policy attention to the emigration of their citizens not only because it is less important, but also because it does not require much regulation. In general, few restrictions are placed on the emigration of citizens, while the immigration of persons coming from another country is tightly regulated. This asymmetry is reflected in the formulation of rights. Whereas the right to exit a country is recognised by humanitarian law, with few restrictions (ICCPR 12), the right to enter another country cannot be found in any instrument (unless a country is party to a regional agreement granting free circulation to citizens of member countries).

On the other hand, countries that are primarily origin countries dedicate specific attention to the exit process. When those migrating are unskilled or low skilled workers, countries of origin have formulated policies with the ultimate intention to protect their nationals throughout the migration process. There have been discussions on whether such regulation unduly restricts the right of people to leave their country and whether protection is the primary motivation for legislating on migration. Facilitating the entry of nationals into the international labour market seems in many cases the prime objective of the policies of origin countries (Battistella, 1995, 2012).

In Asia, the Philippines is considered as having the most comprehensive legislation on international migration, embracing the various moments of the migration process (from recruitment to reintegration) and the various levels of policy making (national, bilateral, regional and international) (IOM and SMC, 2013). However, unlike other countries in Asia, the Philippines does not have a migration ministry which subsumes all the various migration-related functions in one department. Rather, many government agencies share in some form or the other a responsibility in the governance of migration. After a brief excursus on the development of the Philippine legislation on migration, the actual process both for hiring Filipino workers and for finding employment abroad are presented; the most important features of the Philippine migration policy are then illustrated, focusing in particular on protective measures in the three stages of the migration process: before departure, on site and upon return.

As the Philippines is a key player also at the international level, the report emphasises that its migration policy is multi-level, involving not only national legislation, but also bilateral agreements, regional cooperation and adherence to international treaties concerning migrants (Battistella, 2012).

The conclusion addresses some challenges for migration policy and expands the considerations on temporary labour migration in general, which has such a big impact on Philippine economy and society.

## Multi-Level Migration Policy

About 80 per cent of international migrants from the Philippines are intraregional migrants, with countries in the Middle East and East and Southeast Asia as the major destinations. Philippine legislation on migration is considered applicable to nationals who are going to all destinations, although bilateral treaties are of interest only to the signatory parties. In particular, bilateral treaties on migration and social security concern only some European countries.

As a country of origin, the Philippines avails of the migration opportunities that countries of destination offer. The annual outflow of migrants to countries of permanent immigration is considerable. According to the Commission on Filipino Overseas (CFO 2012), 39,124 went to the United States, 24,354 to Canada, 4,259 to Australia and 1,170 to New Zealand in 2012. However, figures from the destination countries are much higher. The US reported that 57,327 Filipinos were admitted in 2012 (the number includes those who adjusted their status from non-immigrant to immigrant); Canada admitted 32,747 in the same year, and Australia took in 12,933 Filipinos from mid-2011 to mid-2012.

The great majority of Filipinos, however, participate in temporary labour migration programmes, offered in particular by the Gulf Countries, and other destinations in East and Southeast Asia. The length of migration stints varies from country to country. In general, contracts last two to three years and are renewable, but after returning to the home country. Most countries do not limit the number of times a contract can be renewed. Taiwan has put a limit to the maximum number of years (12) a migrant can work. Those who find employment in South Korea under the Employment Permit System can stay up to 4 years and 10 months and can renew only once.

## National legislation

### *The development of Philippine legislation on temporary labour migration<sup>1</sup>*

The participation of the Philippines in overseas labour began in the early 1970s with the recruitment of Filipino workers in the construction projects in the Middle East. It was institutionalised by the Labour Code (Presidential Decree 442 of 1 May 1974) of then president Ferdinand Marcos. The legislative development on overseas labour oscillated between the objective of facilitating the employment of Filipinos in the international labour market and increasing the protection of Filipino workers.

In the initial stage, deployment was reserved to government agencies to ensure the protection of migrants' rights (art. 17). For this reason, the Labour Code instituted the Overseas Employment Development Board (OEDB) for land-based workers and the National Seamen Board (NSB) for seafarers, and prohibited direct hiring (art. 19).

To respond to the increasing opportunities of employment in the Middle East and increasing the chances for Filipino workers to work abroad the Labour Code was amended in 1978 (Presidential Decree 1412), allowing the involvement of private agencies (art. 25) and instituting the Bureau of Employment Services (BES) to regulate the employment agencies and develop information on the foreign labour markets. The admission of private employment agencies was instrumental in increasing the annual processing of contracts for overseas labour from 50,961 in 1978 to 380,263 in 1983. However, the mushrooming of private agencies was considered deleterious to the conditions of Filipino workers as their employment conditions declined because of competition among the agencies.

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<sup>1</sup> For a detailed illustration of the legislation history until the early 1990s, see Asis 1992. For a recent discussion, see IOM and SMC 2013.



Consequently, in 1982 the government stopped issuing new licenses to employment agencies (Letter of Instruction 1190). The involvement of the private sector also raised concerns over illegal practices and illegal recruitment as defined in the Labour Code (art. 39)

To increase the efficiency of government services, the institutions involved in overseas labour (OEDB, NSB and BES) were merged in a new agency, the Philippine Overseas Employment Administration (POEA) in 1982 (Executive Order 797). The functions of POEA consisted in promoting and monitoring overseas labour, as well as protecting the overseas workers. The functions were expanded in 1987 to include the regulatory and adjudication responsibilities.

In reaction to the public outcry to the execution of Flor Contemplacion, a Filipino domestic worker in Singapore, the government hastened the passage of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act or RA 8042), a law that combined the concern for the protection of Filipino workers with the objective of increasing the linkages and contributions of the Filipino diaspora to the development of the country (Battistella, 1998). The law, adopted at a time of strong commitment to the liberalisation of the economy by then President Fidel Ramos, envisioned also the deregulation of recruitment for overseas work. However, a strong reaction by civil society organisations (and the opposition of the relevant government institutions) led to the repeal in 2007 of the deregulation provisions (RA 9422). Recently, the law was further amended to strengthen the protection of workers (RA 10022 of 2010). The regulation of overseas labour is detailed in the POEA Rules and Regulations, issued separately for land-based (in 2002) and sea-based workers (in 2003).

### *The migration process*

Intermediaries in the destination (known as placement agencies or brokers) and origin (known as recruitment or employment agencies) countries are important actors in the labour migration process. They facilitate labour migration by matching the employers' demand for workers in the destination countries with qualified workers from the origin countries. Aspiring migrant workers must comply with various steps that require relating with a variety of actors and institution, from government regulatory agencies to medical inspectors, travel agencies, government personnel at exit and entry points, etc. The two main processes according to Philippine rules are illustrated below.

### *The main elements of Philippine migration policy*

*Policy declaration.* The official Philippine migration policy is spelled out in RA 8042, Sec. 2 as amended by RA 10022. The declaration contains the typical commitment of a state (upholding the dignity of the migrants, providing them a range of services, ensuring gender sensitivity in policies and programmes, guaranteeing protection to all migrants, including those in an irregular situation, and guaranteeing to migrants the exercise of their political rights). The two controversial aspects in the policy declaration concern the negation that the overseas labour programme is a strategy for development and the declaration of the commitment to deploy workers only to safe countries. The first is controversial because many have observed that the continuous increase of the number of Filipinos abroad, and the consequent increase of remittances, can hardly be considered a spontaneous phenomenon. If not promoting, the state is certainly facilitating migration. The second derives from the commitment not to send workers to countries that do not provide guarantees for the protection of migrants (such as protective national laws or participation in international treaties and bilateral agreements). The controversy arose in the implementation of this provision, as many feared diplomatic retaliations from countries considered non-compliant. The Department of Foreign Affairs proceeded with a progressive certification of compliant countries. Eventually, only 15 countries were considered unsafe and deployment to those countries was banned in 2012.<sup>2</sup> The ban does not have a big impact

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2 Afghanistan, Chad, Cuba, Democratic People's Republic of Korea/North Korea, Eritrea, Haiti, Lebanon, Mali, Mauritania, Nepal,

on Filipino migration, since the banned countries are minor destinations. Bans are the executive instrument of the POEA Governing Board to regulate migration flows to unsafe areas and they are used frequently but are normally temporary in nature. Total or protracted bans often produce the result of pushing migrants to migrate through unsafe channels.

*Protection of migrants.* Temporary migration, particularly labour migration, is often associated with limited respect for migrants' rights. The temporary status is designed to avoid that migrants acquire entitlements, such as residence rights and social security benefits. When not accompanied by the possibility for long-term residence or the acquisition of citizenship, temporary migration reduces migrants to labour providers, thereby contributing to the economy, but with minimal consideration for the human and social dimensions of the person. In itself temporary migration can be organised with full respect of migrants' rights (Ruhs, 2013). In practice, the oversupply of workers compared to the demand, their limited qualifications, their employment in low skilled occupations, the competition among intermediaries and the lack of adequate legislation contribute to many abuses and violations.

The Philippine migration policy contains a comprehensive range of measures directed at protecting migrants throughout the migration process.

*Before departure.* Preventive measures include the education and information of migrants, stressing the migration of skilled workers, and the selection of the countries of destination. In terms of educational programmes, the Pre-Employment Orientation Seminar (PEOS) is offered nationwide, through the help of local government units and the use of broadcast and social media. It is intended to help applicants make informed choices when it comes to overseas labour. One of the most important information concerns the choice of the recruitment agency. Information on agencies in good standing is available on the POEA website ([www.poea.gov](http://www.poea.gov)). In addition to PEOS, which is optional, the Pre-Departure Orientation Seminar (PDOS) is mandatory and offered a few days before departure. It is intended to give the workers needed information on customs and practices in the country of destination and tips and suggestions on where and how to seek for help in case of distress. The PDOS for domestic workers has specific emphasis on their rights.

In addition to education, preventive measures concern the selection of skills to be deployed. Overall, highly skilled and skilled workers enjoy better protection than migrant workers in the less skilled occupations. Most complaints are lodged by unskilled workers, domestic workers in particular. RA 8042 (Sec. 2g) stated that possession of skills is the ultimate protection for migrants. RA10022 amended it by stating that having skills is the most effective tool for empowering the workers. No specific measures were ever adopted to phase out the deployment of unskilled workers. The most recent attempt was the 2006 Household Service Workers Reform Package, which required that domestic workers meet the following conditions: they should be at least 23 years old, they should undergo training with the Technical Educational Skills Development Authority (TESDA), they must obtain a country specific language and culture certificate of competency, and they must have a minimum monthly salary of US \$400 (Battistella and Asis, 2011). The package was considered a disguised way to discourage the deployment of domestic workers, but their number only decreased in 2007 and 2008, and has surpassed previous levels since then. In practical terms, the labour market demands for unskilled workers are considerable, particularly in the production, construction and domestic services sectors. Also, countries of origin can easily respond to such demands because of the large supply of underemployed workers.

A third preventive measure consists of the goal to deploy migrants only to countries that ensure protection for workers, which was already discussed above.

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Niger, Palestine, Somalia, Uzbekistan, and Zimbabwe. See POEA Governing Board Resolution 08, 28 June 2012.

Finally, a crucial protective measure consists in fighting illegal recruitment, which is considered one of the most pernicious practices in the migration process. The Labour Code identified illegal recruitment practices when it admitted private recruitment agencies to participate in the overseas labour programme. Initially, illegal recruitment was confined to activities done by non-licensed agencies. However, RA 8042 did not provide that distinction, implying that even licensed agencies can be involved in illegal recruitment. RA 10022 did not modify that understanding, and added practices such as reprocessing of workers to non-existent jobs or managing a recruitment agency by non-Filipino citizens as acts of illegal recruitment. Although penalties for illegal recruitment are very severe, including 12 to 20 years of jail, complaints continue to be lodged with the POEA Adjudication Office, indicating that violations continue to be committed. Anti-illegal recruitment campaigns are organised to educate migrants to avoid getting the services of unlicensed agencies and to utilize practices which are contrary to the law, but the results have been insufficient. In 2011 the Presidential Task Force against Illegal Recruitment (PTFAIR) was reactivated (EO 41). It is comprised of various departments and led by the Vice-President. Recruitment agencies have formed associations which have adopted codes of conduct to raise the professional standards and improve the image of employment agencies. However, their refusal to weed out members involved in questionable practices has cast doubts on their resolve to fight illegal recruitment. An attempt has been launched in 2008 by the International Organization for Migration (IOM), and renewed in 2014 in cooperation with the International Labour Organization (ILO), to raise the ethical standards of recruitment in the region by forming an Alliance of Asian Associations of Overseas Employment Service Providers.

*During migration.* While migrants are employed abroad, protection is offered in the form of information and services provided on site by personnel attached to embassies and consulates and by social protection measures.

Upon arrival, the Post-Arrival Orientation Seminar (PAOS) is available in selected countries and cities where the concentration of Filipino workers is particularly high. It is a practical orientation for newly-arrived migrants, which builds on the PDOS.

In selected Philippine Consulates and Embassies there are Philippine Overseas Labour Offices (POLOs). They operate under the Department of Labour and Employment (DOLE) and are staffed by at least four persons coming from different departments: a labour attaché (DOLE), a foreign service person (Department of Foreign Affairs or DFA), a welfare officer and a centre coordinator (both from the Overseas Workers Welfare Administration or OWWA). When necessary, a local interpreter is also included in the POLO personnel. POLOs have a variety of functions, including assisting in the accreditation of foreign principals and in the verification of contracts. Of the 38 POLOs, 20 also have a Migrant Worker and Other Filipinos Resource Center (MWOFRFC). Such centres were established by RA 8042 (Sec. 19) for the purpose of providing counselling and legal services, welfare assistance, information to assist in the integration process, opportunities for irregular migrants to register, human resource development programmes, gender sensitive programmes and orientation for reintegration. They operate 24 hours a day, so that they can respond to the appeals of distressed Filipino migrants. The Filipino personnel in embassies and consulates operate under the leadership of the ambassador through the country-team approach, instituted by President Ramos when the protection of Filipinos abroad was given the highest priority in the Philippine foreign policy (EO 74 of March 29 1993).

Overseas Filipinos also benefit from social protection measures. RA 10022 (Sec. 2) introduced a mandatory insurance to be paid by employment agencies and to cover the workers for the duration of employment. Accidental death, natural death, permanent total disablement, repatriation costs, subsistence allowance benefits, money claims, compassionate visit, medical evacuation and medical repatriation are among the potential costs covered by the insurance. Insurance companies cannot dispute the payment for accidental death, natural death and disablement. Overseas Filipinos are also exempt

from tax on the income they earned while abroad (RA 8424, Sec. 23 (C)) on the basis that their earnings were already taxed in the country of employment. Social protection schemes are provided by the OWWA through a variety of insurance and loan packages. In addition, migrant workers can benefit from social protection schemes available to all Filipinos, such as health insurance through membership in PhilHealth, social security through membership in the Social Security System, and housing loans through membership in Pag-IBIG.

Perhaps the most original initiative by the Philippines in promoting the protection of migrants is the joint and several liability (JSL) of the recruiter with the employer for any claim arising from the employer-employee relation. Provided by RA 8042, JSL was reaffirmed in RA 10022 (Sec. 7) and it ensures that a Filipino migrant having a dispute with a foreign employer, which could not be settled while abroad, still has the possibility to obtain redress by bringing the recruiter to court.

*Upon return.* Return is embedded in temporary migration, as migrants must return at the end of every contract or at the end of the temporary migration project. However, even temporary migration can become a long-term experience, as the objectives that migrants intended to achieve at the beginning of the process required more time abroad or were modified during the migration experience. The large and increasing number of Filipino re-hires who go abroad every year (two thirds of the total outflows) indicates that many have extended the time to work abroad. Even if temporary migration is extended, it remains temporary because it does not give access to long-term or permanent residence and return is the inescapable conclusion. It is acknowledged that in the comprehensive migration policy of the Philippines the reintegration phase has received less attention, also because there is no administrative procedure to capture the returning migrants and returning migrants might not be in need of government services. RA 8042 established the Re-placement and Monitoring Centre (Sec. 17) which remained mostly on paper for many years. RA 10022 amended it and established the National Reintegration Centre for Overseas Filipino Workers (NRCO), which is under the responsibility of OWWA and was initially allocated two billion pesos, to be distributed in the form of loans for the entrepreneurship of returning migrants.

*The protection of victims of trafficking.* In addition to ratifying in 2002 the anti-trafficking protocol, the Philippines has adopted national legislation against the trafficking in persons in 2003 with the Anti-Trafficking in Persons Act (Republic Act or RA 9208) and adopted an Inter-Agency Council Against Trafficking. In 2012 the Act was expanded (RA 10364) to include the prohibition of attempted trafficking (Sec 4A), the accomplice liability (Sec. 4B) and accessories to trafficking (Sec. 4C). Penalties against traffickers were increased to 15 years in prison and the law can be applied also outside of the national territory.

*Upholding the political rights of migrants.* The Philippine policy concerning migrants includes the commitment to uphold their rights. In this regard, the Philippines has ratified many key international instruments on human and labour rights (see section below). In addition, the Philippines has adopted national legislation to facilitate the migrants' exercise of political rights. In 2003 it adopted the Overseas Absentee Voting Act (RA 9189), which allowed Filipinos overseas to vote in national elections for the President and Vice-President, for the Senators and for the Party List representatives. Filipino migrants who intend to exercise their political rights without returning to the country, must register with the Commission on Elections (COMELEC) and cast their ballot at the nearest Philippine embassy or consulate or send it by mail. The number of Filipinos overseas who have actually registered and participated in elections was limited. In the 2013 elections only 113,209 voted (15 per cent of those registered). The main difficulties were the dispersion of migrants and the difficulty to take a day off from employment to go and cast the vote. The Act was amended in 2013 (RA 10590), deleting the



requirement to state the intention to return to the country within three years and expanding the possibility to vote also in national referenda and plebiscites.

Filipinos overseas, who have lost Filipino citizenship because of naturalization in another country, can reacquire it thanks to the Citizenship Retention and Re-acquisition Act of 2003 (RA 9225), provided they take an oath of allegiance to the Philippine Republic. This is not a measure directly concerning temporary migrants, as they cannot naturalize in another country, but it further shows the commitment of the Philippines in upholding the rights of its migrants.

### *The institutional structure*

As mentioned earlier, many government agencies participate in one form or the other into the governance of temporary migration from the Philippines. The departments with the most direct responsibility toward temporary migrants are the Department of Labor and the Department of Foreign Affairs.

**Department of Labour and Employment (DOLE).** The agencies most directly involved in the governance of international labour migration are under the DOLE.

The *Philippine Overseas Employment Administration (POEA)* is an attached agency of the DOLE which is in charge of promoting, regulating and monitoring overseas labour. Its functions are specified by RA 10022 (Sec. 10). In terms of promotion, it has a general mandate to formulate and implement a system promoting overseas employment. In particular, it handles recruitment and placement of workers in government-to-government programmes. Its regulating functions concern both the employment agencies, which must obtain a license to operate, and the migrants. The monitoring and adjudication concern in particular illegal recruitment practices and the sanctioning of employment agencies with the revocation of the license to operate.

The *Overseas Workers Welfare Administration (OWWA)* was originally established in 1977 and was renamed as OWWA in 1987 (EO 126, Sec. 19). OWWA manages a welfare fund. Originally the fund came from donations from different sources, including employers. It evolved into a membership-based fund with contributions coming from migrant workers – the US\$25-membership fee must be paid by the employer or recruitment agency, but in fact, this is often passed on to migrant workers. Its functions are specified by RA 10022 and the OWWA Omnibus Policies, Sec. 3. They include the provision of social and welfare services to OFWs, including insurance, social work assistance, legal assistance, cultural services and remittance services.

The *National Labour Relations Commission (NLRC)*, established by the Labour Code, is a quasi-judicial body tasked to resolve labour disputes for local and overseas workers. In particular, it acts when migrants have money claims to advance against employers and recruiters or in disputes concerning the non-provision of services by insurance companies.

The *National Reintegration Centre for Overseas Filipino Workers (NRCO)* was established to facilitate the reinsertion of returning migrants in the economic and labour market. It should provide mechanisms in that regard, promote local employment and tap the migrants' skills and potential for local development.

**The Department of Foreign Affairs (DFA).** In addition to the support that reverberates from the diplomatic activities with countries where migrants are working, the DFA has specific responsibilities in relation to migration:

- It is responsible for the release of the passport. The procedure for the release of the passport is regulated by the Philippine Passport Act of 1996 (RA 8329). The electronic passport was introduced in 2010, hoping also to reduce the practice of tempering with the passport or having multiple passports.



- It ensures the representation and protection of Filipinos abroad through embassies and consulates and through officers and staff in foreign service posts.
- It includes the Office of the Undersecretary for Migrant Workers Affairs (OUMWA). It was originally created by RA 8042 as the Office of the Legal Assistant for Migrant Workers Affairs and was later renamed. It assists the Secretary of Foreign Affairs on migration policies and functions particularly in granting assistance to distressed Filipinos during emergency crisis, such as the ones experienced recently in Libya and Syria.

**The Office of the President.** There are two institutions under the Office of the President with direct connection to international migration. One is the Commission on Filipinos Overseas (CFO), which is responsible for emigrants. However, it also has involvement in temporary migration as it is responsible for au-pairs, which are not considered workers, and for the Exchange Visitor Programme with the United States.

A second institution is the Commission on Higher Education (CHED), which is in charge of certifying the degrees that the migrants have acquired, a certification which is necessary for the signing of the contract.

**The Department of Health (DH).** Migrants must be in good health, as foreign countries present different requirements before granting the visa, including the specification of clinics where health tests can be taken. PhilHealth is the national programme to provide health care to citizens. Migrants are also required to be part of it.

**The Central Bank (Bangko Sentral ng Pilipinas or BSP).** In addition to its typical functions, particularly in intervening on the currency exchange rate, which directly affects the value of remittances that migrants send to their families, the BSP has the function of gathering the information from the commercial banks on the remittances sent by migrants as well as offering programmes for the investment of remittances.

**The Department of Justice (DOJ).** The Inter-Agency Council Against Trafficking (IACAT) operates under the Department of Justice and is tasked with the implementation of the laws against trafficking. It is comprised of the secretaries of the Departments of Justice, of Social Welfare and Development, of Foreign Affairs, and of Labor and Employment. In addition, members of the Inter-Agency Council are the Administrator of POEA, the Commissioner of the Bureau of Immigration, the Director General of the Philippine National Police, the Chairperson of the National Commission on the Role of Filipino Women and three NGO representatives.

Although each agency involved in the governance of migration has specific functions, the law mentions in several instances the need for interagency cooperation. This is particularly required in the fight against illegal recruitment and providing assistance to victims of illegal recruitment and trafficking; assistance to migrants in foreign countries also involves various agencies which detach personnel in the POLOs; the reintegration process should involve not only the agencies under DOLE, but also TESDA (to facilitate re-training) and other agencies.

### *Bilateral agreements*

Unlike temporary migration in Europe after World War II, temporary migration from the Philippines was not organised through bilateral labour agreements (BLAs) among governments. Most of the labour flow was handled by private employment agencies. Concerns for the protection of migrants spurred attempts to forge BLAs with countries of destination, particularly in the Middle East. However, efforts by the Philippine government were not met with a positive response by the destination

countries, which advanced, among others, the practical challenges of forging BLAs with the Philippines, as it would open up similar requests from other states of origin. Although some agreements did take place in the 1980s and 1990s (for instance with Libya (1979), Jordan (1981 and 1998), Iraq (1982), Qatar (1981 and 1997), and Kuwait (1997)), the signing of agreements stepped up since the year 2000. These agreements cannot be defined as BLAs in the formal sense (with commitment of both countries to grant similar protection to the respective citizens). In fact, the official document adopts a different terminology, using the generic “agreement” or most commonly, the Memorandum of Understanding (MOU). It is precisely the less cogent nature of MOUs that have allowed its proliferation (Go 2007; CMA 2010; Battistella 2012). “[They] are general in scope and usually contain general principles and areas of cooperation on the employment and welfare protection of workers” (Dimapilis-Baldoz 2007:12). In particular, because they are not formal international treaties, they can be handled administratively and do not require the ratification of the Philippine Senate. The main objective on the part of the Philippine government is to facilitate employment abroad, sometimes of workers engaged in specific occupations, while trying to ensure minimum guarantees. In this regard, MOUs often have a short duration and often are not renewed. In some cases, agreements were signed but never ratified by the proper authority of the country of destination, indicating a political effort to advance the protection of migrants but without corresponding results.

Of the agreements currently valid, the MOU with Japan concerns the employment of nurses and caregivers and it is part of the more general Japan-Philippines Economic Partnership Agreement (JPEPA) signed in 2006 and ratified in 2008 (Medalla and Ledda 2013). Unfortunately, the requirement for nurses to pass the licensure in Japanese language has limited the hiring of nurses to only a few, while the others perform nursing tasks which are not equivalent to their degree and preparation. The MOU with South Korea is part of the government-to-government approach of the Korean Employment Permit System (EPS) and it is regularly renewed. In relation to Taiwan, an MOU ensuring the cooperation on the hiring of Filipino workers is renewed on a regular basis.

The Agreement on Domestic Worker Recruitment Between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labor and Employment of the Republic of the Philippines, signed on May 19, 2014, is to be considered of particular importance. The agreement ensures the application of the standard employment contract between employers and domestic workers, it prohibits salary deduction and the imposition of fees on workers, it guarantees the right to recourse to competent authorities for any dispute, and it ensure the speedy issuance of the exit visas at the end of the contract or in case of emergencies, among others. The initial minimum salary is SR 1,500, which corresponds to the US\$ 400 that the Philippines established in the reform package of 2006. In addition to the provisions, the agreements is very important because it is the first of its kind signed by Saudi Arabia, and other countries of origins are considering it as the basis for their own labour agreements.

Although the commitment of the Philippine Government in pursuing bilateral cooperation is laudable, it has been observed that MOUs have limitations. Among them are the lack of effective measures for the protection of the rights of migrants; the poor monitoring of the implementation of the MOUs and the lack of mechanisms to verify such implementation; and the limited involvement of civil society and migrants’ organization in negotiating the agreements (Go 2007; CMA 2010; Battistella 2012).

## The regional approach

The Philippines is a founding member of the Association of South East Asian Nations (ASEAN), established in 1967, and which now embraces 10 of 11 countries in Southeast Asia. In 2015 the ASEAN Economic Community (AEC), a free market area among the member states, will take effect. However, it will have limited implications for migration as only seven categories of professionals will be allowed to circulate freely, while the circulation of migrant workers will remain restricted (Aldaba,

2014). Since ASEAN was formed mainly for security reasons, economic cooperation slowly entered into the agenda of the association and issues concerning migrants were normally not discussed. However, in 2004 ASEAN adopted the Joint Declaration against Trafficking in Persons Particularly Women and Children and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. Although it is just a declaration, and therefore not legally binding, an ASEAN Committee on Migrant Workers was established for the purpose of monitoring how the articles of the declaration are given attention in each country.

The Regional Consultative Processes (RCPs) are another vehicle to discuss common migration issues and to take resolutions to improve the governance of migration at the regional level. There are three existing processes: the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2002), which comprises about 40 countries, including those also outside the region; the Colombo Process (2003) which concerns the interests of 11 countries of origin of migrations in Asia (IOM 2011); and the Abu Dhabi Dialogue (2008), which includes the member states of the Colombo Process and the Gulf Cooperation Council (GCC) countries. While useful in terms of promoting discussions (albeit non-binding), the processes are not very effective in producing real political results and lack continuity and an effective structure to ensure the implementation of resolutions. The Philippines has been very active both within ASEAN and within the process mechanism, trying to further the cooperation among countries for the protection of migrants.

## **Ratification of international instruments**

While the governance of migration is practically exercised through national policies and laws, membership in regional and international treaties ensures that the national system properly reflects the international framework, which is particularly oriented toward the protection of the rights of migrants. In Asia, the Philippines has the highest rate of ratification of international instruments related to migrants. It has ratified all the UN instruments on human rights, except for the International Convention for the Protection of all Persons from Enforced Disappearance. In particular, it has ratified in 1995 the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. In regard to instruments on labour rights, it has ratified all the ILO core conventions. Of the conventions specifically related to migrants, it has ratified C97 Migration for Employment Convention (Revised), 1949; C143 Migrant Workers (Supplementary Provisions) Convention, 1975, and C189 Domestic Workers Convention, 2011. It has not ratified C181 Private Employment Agencies Convention, 1997, the convention which requires that migrants be not charged fees for their deployment. The Philippines allows employment agencies to charge migrant workers the equivalent of their one month salary as fee for the former's services.

## **Migration to Europe**

Europe is not the main region of destination of Filipino temporary migrants. In 2010 migrant workers deployed to European countries were only 4.2 per cent of the total deployment. The Philippines does not have a specific policy for migrant workers going to Europe. Therefore, what was already discussed in the previous section also applies to Filipinos in Europe. In regard to admission, Filipinos must comply with the policies of individual countries. For other aspects (work, study, family reunification, integration, long-term residence and return) EU has a common policy determined by the various directives and which every EU country must comply with.

## **Bilateral agreements**

The Philippines has adopted bilateral agreements with some EU countries. In particular, an agreement

was signed with Germany in 2013 concerning the deployment of Filipino nurses and human resource development cooperation. The agreement specifies that initially Filipino nurses will be employed as assistant nurses and then, after recognition of their qualification, as qualified nurses. Very few nurses have so far been admitted to Germany under this agreement. Other agreements were signed in the past with European countries, but with uneven success. The agreement with Norway on the recruitment of professionals for the health sector was signed in 2001 and was terminated in 2002. The agreement with Switzerland on the exchange of professional and technical trainees was signed in 2002 and ended in 2003. An agreement with the UK on hiring Filipino health professionals was also signed in 2002 but was never ratified, while an MOU on healthcare cooperation was signed in 2003 and expired in 2006. Also with Spain there was an MOU on the management of migration flows signed in 2006 but it was not ratified. These few examples show that European countries have an interest in migrants from the Philippines, but in limited numbers and in specific sectors (in particular the health sector). They also show that signing bilateral agreements is sometimes part of good intentions rather than practical policies.

Instead, many bilateral agreements have been signed and ratified with European countries on social security. The salient features of such agreements concern equality of treatment with nationals in regard to social benefits; the portability of benefits (which can be paid to the worker in his/her country of residence); the combining of periods of membership and the coordination between liaison offices. Table 24 illustrates what agreements are currently in force or being negotiated.

## Au pairs

A specific case of temporary migration from the Philippines to Europe concerns au-pairs. The Philippines imposed a ban on au pair migration in 1997 because of reported cases of abuse. The ban was lifted for Norway, Denmark and Switzerland in 2010 and for all European countries in 2012. When the programme was resumed, the following conditions were established. The au pair must be a Filipino citizen in the ages 19 and 30, unmarried and without children, and placed under a cultural exchange programme with a European/American host family for a maximum of two years. The au pair should learn language and culture while living with the host family in exchange for performing light household chores.

**Table 24** Bilateral social security agreements with European countries (Source: CMA, 2010)

| Country                     | Date Signed   | Date Ratified   |
|-----------------------------|---------------|-----------------|
| 1. Austria                  | 01 Dec. 1980  | 01 April 1982   |
| 2. United Kingdom & Ireland | 27 Feb. 1985  | 01 Sept. 1989   |
| 3. Spain                    | 21 May 1988   | 01 Oct. 1989    |
| 4. France                   | 07 Feb. 1990  | 01. Nov. 1994   |
| 7. Switzerland              | 17 Sept. 2001 | 04 March 2002   |
| 8. Belgium                  | 07 Dec. 2001  | 04 March 2002   |
| 10. Netherlands             | 21 May 2001   | 01 October 2003 |
| 12. Greece –Draft SSA       | 20 May 2009   |                 |
| 13. Portugal –Draft SSA     | 28 May 2010   |                 |
| 14. Denmark                 | 11 Sept. 2012 |                 |

The processing of their papers used to be handled by the Philippine Overseas Employment Administration (POEA) and they attended the Country Familiarisation Seminar provided by the Overseas Workers Welfare Administration (OWWA). As au pairs are not workers, the involvement of these two agencies which deal with migrant workers was terminated and since 1 March 2012, those leaving as au pairs must register with CFO.

## **Immigration to the Philippines**

The Philippines is not a popular destination of temporary migrants from abroad. The 2010 census estimated that the foreign population in the Philippines was 177,368. However, this did not include foreigners with a residence permit in the country. The Bureau of Immigration counted 203,753 registered aliens in 2012, of which the top three nationalities were the Chinese, Koreans and Americans.

### **Immigration law**

Although it is not a destination country, the Philippines has an immigration policy to regulate the inflow of foreigners who come to work or reside in its territory. The main law is the Philippine Immigration Act of 1940, which has been amended several times. The law specifies several non-immigrant visas. Among them is the Pre-arranged Employment Visa (9g), which concerns all those who come to the Philippines for temporary work. The visa has one or two year validity and can be renewed, but only for a maximum of ten years. After that, the foreign worker must exit the country and apply for a new visa. Non-immigrant visas also include temporary visitors, persons in transit, seamen, traders and investors, government officials, students and refugees. Among the special non-immigrant visas is the visa for retirees, as the country has the Philippine Retirement Authority, which offers opportunities to retire in the Philippines.

Even if the regular inflow of foreigners to the Philippines is rather small, the country has not escaped from irregular migration. The government adopted two regularisation programmes, one in 1988 when then President Corazon Aquino issued Executive Order (EO) 324, which concerned migrants who had entered the country before 1984. A second regularization was undertaken in 1995 with the Alien Social Integration Act (RA 7919) and which concerned migrants who had entered before 20 June 1992.

### **The institutional structure to govern migration to the Philippines**

The main agency in the governance of immigration is the Bureau of Immigration, which was established by the Philippine Immigration Act of 1940. It was renamed into the Commission on Immigration and Deportation during the time of martial law and regained its current name under the Administrative Code of 1987. It operates under the Department of Justice and is headed by a Commissioner. It regulates the entry, stay and departure of foreigners and monitors the movement in and out of the country of Filipino nationals. It issues the documents that authorize the stay in the country according to the various visa categories, it cancels the same documents upon violation of immigration laws, it investigates, arrests, detains foreigners who violate immigration laws and executes orders concerning deportation and repatriation of aliens.

## **Overview of the Philippine Migration Policy**

The analysis of the Philippine migration policy has revolved around three areas: one is related to the functioning of the policy in the various moments of the migration process and of the institutions in charge of implementing it; another area is the impact of the policy on the country, particularly the impact on the economy. Much research has also been done on the social consequences of migration, but this is only secondarily related to policy. The third area concerns the basic discussion of whether the overseas labour programme is good or bad for the country. It is a discussion often conducted along ideological lines, but which has also raised theoretical considerations of migration as a factor in rethinking the state and its dimensions.



## The functioning of migration policy

As mainly a country of origin, the Philippines has devoted much attention to the regulation of migration, both in regard to the recruiting industry as well as the procedures that migrants must undertake.

### *The regulation of recruitment*

Early on, two issues have attracted the attention of scholars and practitioners in regard to the recruitment of migrants: the cost of recruitment and irregular practices qualified as illegal recruitment. Attention to the cost of migration was raised years ago by Abella (1989). He compared the cost of commissions, fees, transport, contributions and others across several countries, including the Philippines. In the early years, the policy was that migrants should only be charged documentation costs, but in practice migrants were also charged recruitment fees. Eventually, the state gave in to the request of recruitment agencies and allowed them to collect one month salary as recruitment fee. Aberra-Mangahas (1989) concluded that the involvement of the recruitment industry had commercialized migration, making it a business to extract profits. In this regard, the government was not exercising a purely regulatory role, as connivance between the industry and the bureaucracy worked against the interest of the workers. The recommendation was for wider information available to migrants. Subsequent research did not focus much on the recruitment procedures and the cost of migration, which were left mostly to civil society organisations as advocacy matters. Abella (2004) lamented the lack of evidence and argued that, while recruiters perform a needed function in the absence of alternative forms to transfer labour to foreign markets, they are also involved in fraudulent practices. Policies to regulate the sector have been insufficient, in particular the policies that limit the recruitment fees. Ultimately, such fees are a share of the wage differentials between local and foreign employment. A few years ago, Agunias (2009) has examined the role of intermediaries to conclude that their services are often overshadowed by malpractices such as charging exorbitant fees and abusing the rights of migrants. Among other solutions, she suggested providing migrants better access to information and employment opportunities so they would be in a better position in dealing with intermediaries.

The issue of illegal recruitment has figured prominently in the discussion of migration policies, mostly because it seems to be an intractable issue. In spite of various measures and initiatives established by government agencies, cases of illegal recruitment continue to surface (in 2011 POEA assisted a total of 5,786 victims of illegal recruitment (POEA, 2012)). The issue has surfaced in all studies on migration from the Philippines, although it has received specific attention in a few cases. The most comprehensive research was done by the Scalabrini Migration Center (Battistella and Asis, 2003), which compared unauthorised migration in four countries (Indonesia, Malaysia, Philippines and Thailand). It concluded that the attention to unauthorised migration should focus much more on the irregular channels and the practices of the intermediaries rather than the migrants, as irregularities are mostly the result of constrained choices. Another recommendation is more congruence between migration policies and economic policies, since labour markets with large informal sectors will always attract irregular migration. Furthermore, there should be more cooperation between countries of origin and destination, because the instruments available to individual governments are limited. Elsewhere (2002: 368-369), Battistella argued that “the balance between the interests of government, private sectors and migrants does not necessarily intersect at zero irregularity level” as they all can benefit to some extent from irregular migration and this explains why irregular migration continues to prosper. Siracusa and Acacio (2004) are more direct in commenting that the overseas labour programme is a state migrant exporting scheme which leads to illicit migration, although they acknowledge that they cannot make any definitive conclusion in that regard.

Overall, researchers agree that the intermediation of labour will grow in importance, but so should also grow their ethical behaviour in the form of a code of best-practice conduct (Martin, 2005). An

ILO volume on the issue of recruitment (Kuptsch, 2006) concluded that basic practices such as registering and licensing the recruiters, and requiring them to post guarantees in case of disputes with workers are necessary to reduce the irregularities in labour intermediation. Those practices have been implemented in the Philippines for a long time, but malpractices persist.

#### *The regulation of migration procedures*

The Philippine migration process is highly regulated. In time, procedures were simplified, particularly with the introduction of the one-stop processing centres, which are now operating in 11 regions of the country. The aspect that has most attracted the attention of researchers is the pre-departure orientation seminar (PDOS), considered one of the good practices in the Philippine migration policy. The idea of providing workers with specific information before departure has been imitated by other countries, such as Sri Lanka, which has expanded it into a several-weeks information and training seminar. Although praised for its validity, PDOS has also been heavily criticised for the way in which it is implemented. Conducted mostly by association of recruitment agencies, it was often limited to practical information concerning arrival and the meeting with the employer. Associations were also criticised for charging migrants for the participation in the seminar and in some cases the certificate of attendance, which is required as one of the documents to show to the Labor Assistance Centers (LAC) at the airport to obtain the exit clearance for embarkation, was simply released upon payment of the fee. Eventually, PDOS for domestic workers were granted to NGOs, on the assurance that a module on their rights and protection be included in the program. Finally, at the insistence of civil society organisations, the pre-employment orientation seminary (PEOS) and the post-arrival orientation seminar (PAOS), although not mandatory, were added as part of the information services offered to migrants. PDOS and PEOS for migrant women were researched by the Scalabrini Migration Center in 1992. The focus on women migrants, specifically domestic workers, entertainers and nurses, was motivated by the conviction that they are in a more vulnerable condition and could benefit more from pre-migration services. The PDOS was revisited by Asis (2005) and Anchustegui (2010), and by Asis and Agunias (2012) – the last was a comparative study involving the Philippines, Nepal and Indonesia. After observing that migrants do not necessarily acquire the crucial information they need, that PDOS tend to provide the same information to all migrants going to all countries, and that inputs during the seminar reflect contrasting views by stakeholders, the studies recommend to involve local governments and civil society organisations as partners, to seek the cooperation of receiving societies and to supplement the information received at PDOS with other programs.

#### *The institutional structure*

The country's migration policy is implemented through various agencies within various departments, as illustrated in sec. 1.1.4. Other countries (such as India) have created a department on migration. In the Philippines there has been resistance to move in that direction, probably because interdepartmental coordination would still be needed and because bureaucracy tends to resist change. Within the current structure, the regulatory function is granted to POEA, the welfare function to OWWA, and the protection of overseas workers to OUMWA. Adjudications of labour disputes is administered by NLRCO and reintegration programs are run by NRCO. While there seems to be clarity in the division of functions, some incoherence is observed, for instance in the fact that POEA has both regulatory and adjudication functions in regard to recruitment agencies, or overlapping functions, like in the case of the repatriation of stranded workers, where both the DFA and OWWA are involved.

In studying the structure and operations of OWWA, Agunias and Ruiz (2007) concluded that the administration of the fund needs to strike the proper balance between delivery of services and financial stability. To ensure financial stability, the board decided in 2002 that operational costs should

not be over 50 per cent of the budget, but the limit was respected only for a couple of years. In the meantime, the OWWA fund has constantly increased, as only one portion of the annual intake, which consists of over 70 per cent of workers' fees (US\$ 25), is disbursed. There is dissatisfaction among migrants with the benefits they receive from the OWWA fund, which includes a variety of assistance programmes, loans and some educational scholarships, in addition to expenses for the repatriation of distressed Filipinos. One indication that many OFWs do not value the welfare from OWWA is the decrease in membership, as members are perhaps half of the actual number of OFWs. The authors recommended that the government partner with other organisations and institutions in granting protection to OFWs, to increase transparency and accountability in the administration of the fund, and to involve the cooperation of countries of destination in granting protection to overseas workers.

In a study of POEA, Agunias (2008) emphasised the inadequacy of a national agency to manage a global flow of workers. Consequently, the study recommended that state capacity be fostered, particularly by increasing the budget and personnel. It also recommended pursuing partnership agreements and favouring destinations where migrants have better protection. As for the intention of POEA to decrease unskilled labour in favour of highly skilled workers, the report warned of possible implications for poorer migrants. Obviously, the recommendation of seeking deployment in countries that ensure better protection is in line with policy recommendations contained in the law (RA 8042) but it is not realistic, considering that 60 per cent of the deployment of Filipino workers is to the Gulf countries, where labour laws are not always adequate.

The Philippine regulation of migration policy has also been analysed in comparative studies, like the one by Mughal and Padilla (2005), in which Pakistan, the Philippines and Sri Lanka are included. The authors listed among the good practices the workers' contribution to the OWWA fund and the pre-departure seminars. Civil society organisations are critical of the OWWA fund, arguing that employers should shoulder the OWWA contribution.

## The impact of migration policy

Much research has gone into the analysis of the impact of migration policy on development. One of the general findings of research is that migration is mostly beneficial to migrants, but not necessarily to the development of the country of origin, at least not in the sense of being a decisive driving factor. This is confirmed in the case of the Philippines. Forty years of migration did not generate visible macro results. In those years the economy went through a cycle of boom and bust, caused by political, international and environmental factors, and where overseas labour only played a minor role. Leaving aside the literature on the impact of migration on the life of migrants and their family, as well as on the social impact on culture and society, we will briefly look at the impact of migration on economic development, focusing on remittances, the labour market and reintegration.

### *The impact of remittances*

Remittances to the Philippines have constantly increased, but the real growth occurred after the liberalisation of the economy introduced by President Ramos began taking effect in the mid-1990s. Improvements in the banking system to capture migrants' savings and better opportunities in the local economy can be credited for the growth of remittances. Restrictions in money transfers adopted by the international community after September 11, 2001 also contributed to channelling the flow of money through the banks. Most of all, however, the growth is due to improvements in the reporting. Currently, the Philippines is among the top three countries of destination of remittances and the overall amount remitted in 2013 reached US\$ 25.1 billion, accounting for 8.4 per cent of the GDP.

The literature on remittances focused on its use. According to the 2012 central bank (BSP) quarterly Consumer Expectations Survey (CES), remittances are spent in food (95.4 per cent), education

(68.8 per cent), medical care (65.5 per cent) and debt payments (44.1 per cent). The traditional discussion has been on whether migrants use remittances properly. Many researchers tend to attribute the limited impact of remittances on development to their use for consumption rather than investment. Others reach opposite conclusions. In looking at this issue Tabuga (2008) concluded that families with remittances spend more on basic household needs, while additional expenditures on education and medical care required more study. Orbeta (2008) attributed the differences in conclusions to the different methodologies of the various studies. On the other hand, he also discovered that there was convergence in remittances tending to increase expenditures on education and durable goods. While some authors, such as Rodriguez and Tingson (2001) and Tullao, Cortez and See (2007) would conclude that remittances decrease the labour force participation in households (as family members tend to live off remittances rather than entering the labour market), Ducanes and Abella (2007) and Yang (2008) did not find such result. It appears that one reason for estimating the lower labour force participation in remittance receiving households comes from the fact that migrant workers, who are abroad, are not considered as members of the household. Also, Cabegin's (2013) analysis indicated that stayer spouses in migrant households reallocate time from market work towards more time in home production rather than increased consumption of leisure.

Studies have also tried to determine whether remittances can take families out of poverty. Ducanes and Abella (2008) have concluded that having a member of the family abroad contributed to a 6 percentile point-increase in the income/expenditure distribution. From this, it was inferred that in the past ten years between 525,000 to 850,000 families were taken out of poverty by overseas labour migration. It also ascertained that at least 20 per cent of the increase of OFWs between 1997 and 1998 come from households belonging to the poorest 30 per cent of the population. The ability to cross over from poverty was particularly likely for migrants with better education and work experience.

Together with its impact on poverty, remittances are held responsible for increased inequality, based on the fact that only the better off can migrate as migration is costly (in fact, 50 per cent of OFWs belong to the richest quintile of the population – Ducanes and Abella, 2008), and that OFWs come mostly from the provinces with the lowest incidence of poverty. Conversely, remittances flow disproportionately to the richest regions.

Social remittances have attracted attention lately because of the involvement of the Filipino diaspora and the potential of directing the good will of Filipinos abroad not just to assistance projects but to development initiatives. The Commission on Overseas Filipinos has launched several programs to link with the Filipino diaspora, including the *Lingkod sa Kapwa Pilipino Programme (LINKAPIL)*. The effort is to encourage migrants to contribute to the country by increasing what is called the “diasporic dividend” for the Philippines (Aldaba and Opiniano, 2008).

Policies directly concerning remittances have been established several times in the Philippines. In the early days mandatory remittances were imposed on all migrants (art. 22 of the Labor Code). Later, the imposition was abandoned because of low compliance by migrant workers and the government tried to provide incentives, rather than sanctions, to increase the inflow of remittances. Mandatory remittances remain in force for seafarers, who are bound to remit 80 per cent of their salary through the manning agencies.<sup>3</sup> The BSP has taken many initiatives to facilitate remittances and channel them to investments (*see IOM and SMC, 2013: 272-279*). Currently the focus is on reducing the cost of remittances and improving its use; the latter has spurred financial literacy programmes for migrants and their families.

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<sup>3</sup> The constitutional basis of this provision, mandate by EO 857 of 1982, remains to be clarified.

### *The impact of migration on the labour market*

The most general motivation for labour migration is the search for more decent employment (in terms of wages, working conditions, utilisation of skills, etc.). The typical questions that researchers pursue in examining the impact of migration policies on the national labour market concern whether migration reduces unemployment, whether it generates any effect on the education and training system and whether migration generates scarcity of skills in specific sectors.

Not much research has gone on the impact of migration on employment in the Philippines, perhaps mainly because, in spite of the increasing number of overseas workers, unemployment has remained high and steady for many years, thanks to a population growth that the economy cannot absorb. Stahl (1988) examined the impact of early migration from the Philippines on the labour market and concluded that it had a direct positive effect, since a number of workers found employment abroad, and an indirect negative effect, since some of them were not replaced in specific industries, such as construction. Tan (1983) did not find any evidence of lack of replacement, considering the large percentage of unemployment in the country, but Stahl argued that, since migration is selective, perhaps replacement workers were not guaranteeing the same productivity. Further studies by Tan (1993) have confirmed that there is a reduction of unemployment but no significant impact on domestic wage rates. It should also be observed that, although the absolute number of OFWs going abroad every year seems very large, it corresponds to a small percentage (between 8 and 13) of the overall unemployment. In the case of youth unemployment, the impact of migration is even lower, as the number of youth finding work overseas corresponded to only 3.7 per cent of the unemployed youth in 2010 (Asis and Battistella, 2013).

More attention has been dedicated in recent times to the relation between migration and the education system. Filipino workers are employed in a variety of occupations, but they seem to have cornered two occupations in particular: seafaring and nursing. Due to opportunities in these two sectors, schools have mushroomed and enrolment has produced many more graduates that neither the international or domestic labour market could absorb. On the other hand, tertiary education is also highly skewed toward only three disciplines (Business Administration and Related Disciplines, Education and Teacher Training, and Engineering and Technology). Various policies have been crafted to address the education-labour market mismatch, including the Nurses Assigned in Rural Areas Project (NARS) in 2009, and similar programs in 2011 and 2013. The Technical and Skills Development Authority (TESDA) has offered vocational education and training to more than a million students between 2002 and 2011 (IOM and SMC, 2013).

The education-migration nexus was also examined to ascertain the level of education of OFWs. Quinto and Perez (2004) estimated that between 1990 and 2002 the percentage of OFWs with college education increased from 50 to 64. They also concluded that deskilling was taking place as only 22 per cent of those with college degree in 2002 held a professional job. Looking at Filipinos employed in OECD countries, Zosa and Orbeta concluded that OFWs were mostly overqualified, since 53 per cent had a degree in humanities, 40 per cent in social science, 30 per cent in education and health, but only a much smaller percentage worked as professionals.

We have already indicated that research did not find scarcity of skills in the local labour market because of migration. Tan (2009) has reaffirmed the same conclusion, but also emphasized that since the mushrooming of schools at the tertiary level did not ensure quality education and since migration is a selective process, the replacement workers in the country were not performing at the same level as those who left for abroad. Likewise, Lorenzo et al. (2007) concluded that there was sufficient supply of nurses to replace those who went abroad, but it took time to guarantee the same level of skills and experience.

This introduces the discussion on brain drain and brain waste. It seems that brain waste, in the



form of overseas employment in occupations that are below the level of qualification of OFWs, is an established fact, as mentioned earlier. This was reinforced by the results of a study on brain drain and brain waste among young OFWs (Battistella and Liao, 2013), which found that young college graduates apply for jobs as factory workers and that there is a mismatch between young migrants with a nursing degree and the position applied for. In regard to brain drain, the study by the Department of Science and Technology – Science Education Institute (DOST-SEI) (2011) found a continued and increase outflow of S&T professionals. In the health sector, at some point the hiring of Filipino nurses became so popular that doctors undertook training in nursing to land a job abroad (Kuptsch, 2006). Other categories of professionals going abroad are engineers and teachers (Ubalde, 2009).

Policies to address brain drain and brain waste recommend not only redressing the mismatch between education and labour market, but also retaining links with professionals abroad, as well as promoting knowledge transfer (Asis and Roma, 2010; Siar, 2011; Miralao, 2012). The migration of professionals is no longer seen in terms of brain drain and brain waste only. Brain gain and brain circulation have also entered into the discussion. In this regard, Opiniano and Castro (2006) found that knowledge transfer and support of business opportunities as well as contributions in expertise and kind occur in the Filipino diaspora. Similarly, Siar (2013) confirmed through a study involving China, India and the Philippines what Wescott and Brinkerhoff (2006) had argued: that brain drain because of migration may not be a permanent loss as the diaspora can contribute to the development of the home country in terms of skills, venture capital and intermediation services. However, unlike China and India, the Philippines has not implemented effective programs to capitalize the contribution of the diaspora.

### *The reintegration of migrants*

Although return is embedded in the temporary labour migration process, policies concerning the reintegration of workers in countries of origin have received late attention and are not considered very effective. Studies on the return of Filipino migrants were carried out as early as the 1980s (Go, 1986). In general, the findings indicated that only a quarter of returnees found wage employment, 17 per cent became self-employed, and the majority remained without employment (Arcinas, 1989). Given these data, the interest was to find out whether returnees could turn to entrepreneurship. However, an ILO project concluded that migrants are not more entrepreneurial than others. To promote entrepreneurship, investment of earnings into some form of business should be made early in the migration process; migrants should undergo training on how to conduct business; access to credit is crucial; and the success of business is dependent on the overall conditions of the economy (ILO, 1991). The *Kabuhayan* (Livelihood) programme was developed to ensure cooperation among government agencies in offering services to migrants. Its implementation was limited. On the other hand, some forty-five cooperatives were formed under the coordination of the Cooperative Development Authority.

Reintegration was given more prominence with the adoption of the Migrant Workers and Overseas Filipino Act of 1995, which established the Replacement and Monitoring Center, charged with reintegration, employment promotion and the utilisation of migrant skills for development. However, the centre was poorly implemented. After revisiting return migration to the Philippines, Battistella (2004) concluded that return can take place in various moments of the migration process and policies should address those various moments (see Figure 16). He also concluded that the biggest difficulty of returnees is finding employment, that skills acquired abroad are not always helpful for reintegration, that only a portion of migrants is able to accumulate savings and that “entrepreneurship is successful only in regions that provide economic environments hospitable to development” (p. 224). Consequently, “programs designed by local entities, rather than by national agencies, are more likely to succeed” (p. 225).

## RETURN MIGRATION POLICIES

|                               |                                   |                               |                    |                    |
|-------------------------------|-----------------------------------|-------------------------------|--------------------|--------------------|
| <b>RETURN</b>                 | <b>Decision</b>                   | <b>VOLUNTARY</b>              | <b>INVOLUNTARY</b> |                    |
| <b>Time</b>                   |                                   |                               |                    |                    |
| <b>END OF CONTRACT</b>        | <b>Achievement</b>                | <b>Completion</b>             |                    |                    |
|                               | <b>Entrepreneurship</b>           | <b>Economic Reintegration</b> |                    | <b>DEVELOPMENT</b> |
| <b>BEFORE END OF CONTRACT</b> | <b>Setback</b>                    | <b>Crisis</b>                 |                    |                    |
|                               | <b>Reintegration Redeployment</b> | <b>Emergency Initiatives</b>  |                    | <b>ASSISTANCE</b>  |
|                               |                                   |                               |                    | <b>Type</b>        |
|                               | <b>INDIRECT</b>                   | <b>DIRECT</b>                 | <b>Action</b>      | <b>POLICIES</b>    |

**Figure 16** Return migration types and policies (Source: Battistella, 2004: 213)

Distinguishing the decision to return of temporary migrants (target earners) and permanent migrants (life cycle migrants), Yang (2006) explored the impact of the fluctuation of exchange rates on that decision. A more favourable exchange rate leads to the decision of life cycle migrants to remain abroad and postpone return, while target earners anticipate the decision to return to capitalize on the favourable rate through investments.

Policy concerns on reintegration accelerated with RA 10022, which established NRCO and later originated the Reintegration Program Department within OWWA. The implementation of programs has not been very decisive, but there is awareness that programs must be developed locally and be integrated in the provincial and regional plans. The limitations of the reintegration policy were highlighted also by Go (2012).

The renewed attention to reintegration has revitalized the discussion on migration and development. Already initiated at the first High Level Dialogue on Migration and Development, held at the United Nations in September 2006, it was further discussed in various Global Forum on Migration and Development (GFMD). In the Philippines, the nexus was explored in a nationwide research project, undertaken as part of the Migrants' Associations and Philippine Institutions for Development (MAPID) Project. The research found that development policies did not make reference to migration; that development agencies and migration agencies were not coordinating; and that there was lack of coordination between the national and the local government units in regard to migration and migration and development in particular (Asis and Roma, 2010; Asis, 2011). The research has generated much interest on migration and development in local governments<sup>4</sup> and a more prominent insertion of migration in the Medium Term Philippine Development Plan 2004-2010.

The whole relation between migration and development remains fluid, with opinions offered in both directions. While some contend that migration should diminish and eventually subside in the presence of development, others like de Haas (2006) insist that pursuing development policies will not substitute migration.

<sup>4</sup> A pilot project was implemented in the city of Naga (IOM, 2014).

## The overall discussion

Aside from the specific aspects just reviewed, the discussion on Philippine migration policy examined the basic issues: is migration beneficial to the country? If yes, with what policies? If no, how or what exit strategy should be implemented to replace the overseas labour programme? How long will it take for migration to become a choice rather than a constraint?

Perhaps those questions were not addressed head on by researchers, but were certainly the object of debate of the other stakeholders, notably the government, the recruitment industry, and civil society organisations. Opinions were obviously polarised, with the recruiters claiming recognition for providing jobs to thousands of Filipinos, civil society blaming the government for not providing alternatives to migration, and the government insisting that it was not exporting labour, but simply protecting Filipinos who wanted to work abroad. After many years of bickering, the arguments have not changed much. Interestingly, the recruiters have succeeded in finding recognition in RA 10022 (which was previously reserved only to civil society). Civil society organisations successfully achieved the institutionalisation of the Tripartite Overseas Landbased Consultative Council (OLCC). The government has maintained its official policy as defined in RA 8042 and reiterated in RA 10022.

It is possible to consider the whole discussion as irrelevant since it did not have any impact on policies. The deployment of migrants has expanded, regulation has improved but violations continue, civil society organisations have become less combatant and more involved in providing services. Nevertheless, perceptions matter as well as the language used in public policy.

Early reflection on the issue indicated that it was important not to isolate migration as a social phenomenon, but to consider it a symptom of developments in other areas of society (Battistella, 1991). The Flor Contemplacion crisis in 1995 can be considered a crucial moment in the appreciation of migration. The protection of migrants was indicated as the top priority of Philippine foreign policy. The neoliberal thinking espoused in those days inspired a lesser involvement of the government, a shift from export to management (Battistella, 1995). However, speaking of management did not reduce the involvement of the government, and the critics of migration as a state policy were vindicated when President Gloria Macapagal-Arroyo enjoined POEA to target the deployment of one million migrants per year. President Benigno C. Aquino III has shifted the focus on domestic job creation while continuing to ensure the protection of migrants. Managing migration is no longer a fashionable terminology, substituted by the more political correct governance of migration. The tensions over the issue, however, persist.

The role of the state and the impact of migration on its identity is one area that has received research attention. Ball (1997) observed that its excessive concern with the economic benefits of migration was undermining its regulatory role, thus compromising the general legitimacy of the state. Gonzalez (1998) advocated more direct attention on migration by policymakers, abandoning the *bahala na* (let it be) mentality and more presidential leadership as migration policy is not an ordinary policy. The possibility for the state to reconcile conflicting objectives was articulated by Battistella (1999); the dilemmas confronting the state were clearer after the 1997 Asian financial crisis, in particular the dilemma of deployment vs. protection.

An interesting discussion has developed on the terminology used in public policy. President Corazon Aquino first coined the term of “new heroes” for the migrant workers. The term has generated criticism, as disguising the inadequacy of the state to provide employment at home, and claims on the part of the migrants. Rodriguez (2002) has examined how the terminology has translated in expanding nationalism beyond the national borders; at the same time it provided migrants abroad with the opportunity to export the political debate on the rights of citizenship. Concepts like diaspora and transnationalism have come up in discussions on how migration is transforming notions of the state. Cautioning that distinctions among the different types of overseas Filipinos should not be ignored,

Camroux (2008) has posited that overseas Filipino evince a type of binary nationalism, rather than transnationalism, as they live out multiple senses of non-exclusive loyalties. Perhaps the most radical criticism was articulated by Rodriguez (2010) who did not make any recourse to nuance and defined the state as a labour broker. Consequently, the “orientation of Philippine officials and government agencies toward overseas employment reveals the extent to which Philippine citizens have become reduced to mere commodities to be bartered and traded globally (p. 27).” In the process, the concept of citizenship is redefined, as the state needs on the one hand to justify its migration policies and on the other, to ensure the loyalty of millions of its citizens abroad.

## Philippine migration policy: what are the challenges?

The active involvement of the Philippines in the governance of migration at all levels (Battistella, 2012) indicates that the state does not consider its national legislation sufficient to ensure an effective and safe development of overseas labour. While acknowledging that the country has a comprehensive policy, which is considered as a reference point by other countries of origin in Asia, analysts have suggested that many challenges still exist.

- Perhaps the first challenge concerns the actual implementation of norms and regulations. Although no public policy is fully implemented in any country, the numerous violations of procedures and migrants’ rights indicate that the implementation mechanism is weak. In particular, alarms have been raised concerning corruption among government officers, which jeopardises efforts to control the irregular practices of employment agencies.
- Weaknesses are evident in the lack of cooperation of the various agencies and the various levels of governance (Orbeta and Abrigo, 2011). In particular, local government units are not sufficiently sensitised on migration issues and concerns, especially in connection with the pre-migration and reintegration phases (Asis and Roma, 2010; Asis 2011). Thus, mainstreaming migration in the various areas of governance is considered a major challenge, although more awareness of the issue is demonstrated by the numerous references to migration contained in the Philippine Development Plan, 2011-2016.
- The relation between migration policies and public policies has not received sufficient attention both in terms of analysis and of action. Consequently, the big question on how long the Philippines will continue to expand its overseas labour programme remains unanswered. The growth of the Philippine economy has not translated into the creation of sufficient jobs (and decent jobs) that would provide an alternative to international labour migration.
- Improvements need to be made in the various programmes to benefit migrants, beginning with information programmes, which have limited duration, content and impact; to services by foreign posts, which have received criticisms from migrants (including complaints of inappropriate practices by officials and personnel in some posts); to welfare programmes which do not make a real difference in the lives of the families left behind; to reintegration programmes which are not attuned to the local reality and ineffective in helping migrants to benefit from their migration experience.
- The migration policy seems excessively rigid in respect to the variety of migration experiences. Temporary migrants can be unskilled workers in need of protection, and therefore regulations are needed, or highly skilled migrants whose rights are protected by solid contracts and may not need as much regulation as migrant workers in less skilled occupations. Some form of selective deregulation should be considered.
- Public officers need on-going training and capacity building as migration is related to many aspects (Orbeta and Abrigo, 2011). In addition to traditional concerns, such as welfare and protection, the training should also touch on how migration is linked to youth employment, development, climate change, diaspora engagement, security and health issues, among others.

- Evidence-based policies require improvement in migration data collection, processing and dissemination. In particular, while inter-agency cooperation on migration data is improving, there is not a stronger resolve and commitment to invest in technical assistance and adequate equipment towards this end.

## Conclusion

When the overseas labour programme was launched in 1974, no one could have imagined that forty years later it would still be in place and the number of Filipinos going abroad every year as new hires or rehires would surpass 1.8 million. Since then, the population of the country more than doubled (from 41.8 million in 1975 (Concepcion, 1977) to 97.7 million in 2013 (World Population Statistics). During these forty years the migration policy has undergone revisions and the institutional structure has been reorganised, but the objectives remain the same: to facilitate overseas labour for Filipino migrants and seafarers and to ensure their protection. Although the state facilitates migration, it does not consider migration as a strategy for development.

To reach those objectives, the Philippines established a comprehensive set of provisions that embrace the whole migration process. Most migrants use the intermediation of private recruitment agencies, which need to be licensed and to abide by the rules established by the Philippines Overseas Employment Administration (POEA). To help migrants prepare for overseas work, training opportunities have been established, from the pre-employment, to the pre-departure and post-arrival moments. The protection of Filipino workers abroad is ensured by the diplomatic posts, whose highest priority is the protection of Filipino workers. The welfare of migrants is guaranteed by a mandatory insurance and the various programmes offered by the Overseas Workers Welfare Administration (OWWA). Emergency repatriation is handled by the Office of the Undersecretary for Migrant Workers Affairs. The reintegration of return migrants is assisted by the National Reintegration Center for OFWs (NRCO).

The complex set of regulations and institutions with direct or indirect competence on migration made the Philippine migration policy as a model for other countries of origin. The Philippines also led the way by engaging countries of destination in bilateral agreements and by ratifying human and labour rights conventions. However, researchers have indicated several aspects that remain in need of improvement. Perhaps the most intractable issue is illegal recruitment that continues in spite of various campaigns to quell it. The training seminars have not proven very effective in empowering Filipino migrants. The governance of migration by different institutions under various departments needs more adequate personnel and better coordination.

The impact of migration policy on the development of the country is uncertain. While the growth of remittances has been spectacular, amounting to 8.4 per cent of the GDP, its developmental effect has been modest. The impact of migration in reducing unemployment has not been adequately measured, although if there was no overseas labour, the unemployment rate would more than double. There is no clear evidence of brain drain in terms of scarcity of skills, as overseas workers are replaced by local workers, although it might occur in the form of decreased qualifications and expertise. Brain waste is better established, as those with tertiary education do not find employment commensurate to their education or training. Reintegration remains the weakest component of the migration policy, since it is difficult to know the number of returnees and to offer them appropriate services. Researchers have indicated that migration should be better integrated in development plans, particularly at the local level, to maximise its benefits.

The discussion on whether temporary migration is beneficial for the country is debated by different stakeholders. A mechanism to involve different stakeholders in the consultation process has been established. Migrants have acquired more agency, with the capacity to vote in national elections, and have succeeded in sending representatives to Congress.



Various challenges remain to make migration policy effective, including better implementation of norms and regulations, better cooperation among agencies and levels of government, improvements in the training programs, a partial deregulation of a system which is excessively rigid, adequate training of officers and a coordinated data system.

In general, millions of Filipinos have benefited and will continue to benefit for some time of temporary labour migration, but not without costs. The improvements in the Philippine economy are not expanding the middle class, which remains a small portion of the entire population. A long period of sustained growth, which has eluded the Philippines, is necessary to make overseas labour more a choice than a necessity.

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## 4.9 TEMPORARY MIGRATION IN THAILAND

Manasigan Kanchanachitra, Sakkarin Niyomsilpa and Sureeporn Punpuing

### Introduction

According to migration theories, 'migration' is defined by boundary, time and intention. In the case of international migration, there is no question on the boundary, but the factors of time and intention are ambiguous. Furthermore, the defining of 'temporary', which in contrast with 'permanent' migration, is even more complicated. 'Temporary migration' is always classified by the destination countries' laws and regulations, which depends largely on the duration of stay. On the other hand, at the origin countries, 'temporary migration' may be identified by return trips of their nationals regardless of duration or intention at the destination (Manolo, 2006). It is argued that there is no standard for what duration of stay can be considered 'temporary' or 'permanent'. The 'permitted period' of stay at the destination relates to factors such as economics, politics or policies rather than the immigrants' requested period of stay. In addition, using 'intention' in defining 'temporary migration' at both the origin and destination countries often is not practical because of the dynamic and weak defined duration of stay (European Migration Network, 2011).

Alternatively, 'temporary migration' is simply defined as migration that is not 'permanent migration'. While 'permanent migration' includes not only migrants with permanent residency or citizenship, it also includes those who are holding documents related to transitional or temporary visas. As a consequence, migrants naturally obtain rights over time that their 'temporary migration' status is a beginning step toward permanent residence or citizenship in the destination countries (Agunias & Newland, 2007). It is argued that residence and employment status with a 'temporary work permit' always leads to 'temporary migration' as migrants need to return to the country of origin or migrate elsewhere if their temporary residence and/or work permits have expired. At the same time, this does not exclude the possibility of temporary migrants being eventually granted permanent residence in the destination countries (Ruhs, 2005).

In the Asia-Pacific region context, where the majority of mobility or migration is related to employment, Hugo (2009) provides a typology of 'temporary labour migration' that includes high-skilled with temporary contract, low-skilled or low-skilled seasonal with temporary contract, working holiday workers, trainees, project-based workers and border commuters.

Another term, which is employed in studies of migration is 'circular migration', which is always defined as temporary movements of migrants who repeatedly move formally or informally across borders, and usually for work (Wickramasekara, 2013). It is pointed out that circular migration is a major mechanism that would satisfy an increasing labour demand of receiving countries as well as reduce irregular immigration through channels of legal immigration with limited duration of stay. Furthermore, it promotes development through remittances, and counteracts brain drain of sending countries (European Migration Network, 2011; Wickramasekara, 2013).

The high-income destination countries often set policy priority for avoiding 'permanent migration' for low-skilled workers and their dependents and, thus, these countries focus on 'temporary' migration programmes for qualified low-skilled workers (European Migration Network, 2011). In contrast, the destination countries often promote the settlement of highly-skilled individuals such as by transferring foreign students, high-skilled or well-financed individuals into transitional programmes, which may lead to permanent residency. At the country of origin, the government also restricts brain drain and its negative impacts by supporting temporary or circular migration of highly-qualified nationals (European Migration Network, 2011). The bilateral agreement, or Memorandum of Understanding (MOU) between sending and receiving countries or unilateral entry systems or multilateral agreement

are always employed (European Migration Network, 2011).

In this report, we discuss the state-of-the-art knowledge on temporary migration in Thailand. We begin by examining existing literature related to temporary migration in the Thai context, followed by a review of existing migration policies. The policies that are considered include both international level policies that Thailand is involved in, and national level policies that reflect migration issues in the country.

## Current Research on Temporary Migration in Thailand

### Background

Thailand has long experienced independent out-migration, both regular and irregular. The migration occurs mainly through direct application for overseas employment by formal or informal services, or via social network channels. In the past, Sino-Thais have regularly travelled for business and other work to Hong Kong, China, Penang (Malaysia) and Singapore.

During 1950s and 1960s, there was a growing and significant number of Thais studying abroad; the majority was in the United States (US), Europe and Australia, with some remaining after graduation. During the Cold War period, Thai women who had married American service men migrated to the US, and later years by Thais seeking study and employment opportunities in richer OECD<sup>1</sup> countries (Supang, 2000; Hewison, 2003).

In Thailand's Fifth Development Plan (1982-1987), the Thai government implemented a policy to promote labour exportation in order to respond to increasing unemployment in the country. Under this policy, there was an endorsement of a Job Placement and Protection of Job Seekers Act B.E. 2528 in 1985 and its amendment in 1994. It sets the conditions for the recruitment and placement of "overseas Thai workers" through government agencies and licensed private recruitment companies. As a consequence, there were many workers, particularly semi- or low-skilled workers that have migrated (Chantavanich et al., 2000)

The destinations of migration are varied. The high-skilled Thai migrant workers are mainly directed toward the richer OECD countries, Hong Kong, Singapore and neighbouring GMS countries. On the other hand, destination countries for low-skilled migrants are mainly in East and Southeast Asia and the Middle East. Some are currently in OECD countries.

Highly-skilled and highly-educated Thais occupying technical, scientific and managerial positions abroad remain relatively few compared with other middle-income countries in Southeast Asia, such as Singapore, Malaysia and the Philippines<sup>2</sup>. Possible reasons include language difficulties constraining career opportunities, limited incentives to migrate because of significant economic growth in Thailand, and strong cultural and family ties with the homeland (Chalamwong, 2004a).

Among the highly-skilled migrants, the type of profession is one indicator that relates to the decision to migrate. For example, as a result of Thai government policy to be a medical hub in Asia, not many Thai physicians and nurses migrate because their incomes in the urban area and in private hospitals are relatively high in Thailand. Moreover, the language barriers have been an obstacle for the medical doctors and nurses to receive license or to be certified by the medical association in the destination countries (Chalamwong & Tansaewee, 2005). Thus, it would seem that the global concern for "brain drain", or emigration of health personnel, is not pertinent to Thailand at this stage. Rather, the increasing job opportunities in the growing tourism-oriented medical industry may lead to the reverse trend of foreign health personnel immigrating into Thailand under GATS, AFAS or ASEAN agreements to fill the supply gap, if and when certification restrictions are lifted (Sciortino & Punpu-

1 The Organization for Economic Co-operation and Development (OECD) includes Australia, Canada, selected countries in Europe and the United States (US).

2 These figures are produced using Cohen and Soto Database, one of the two methods used by OECD.

ing, 2009). In addition, Chalamwong & Tansaewee (2005) pointed out that specialists in Information and Technology (IT) sector are willing to leave Thailand because of the low wages, limited job market and low opportunities for career advancement.

The major group of out-migration from Thailand through employment contract or independent overseas movement is the semi or low skilled workers. Certainly, the independent migrants are more vulnerable than those under an employment contract. It is found that there are more low skilled female than male workers in this group, particularly in Hong Kong and Japan, where a majority of them work as domestic workers and in entertainment sectors respectively. In Northern European countries and Australia, the majority of Thai women are married to citizens of the destination countries and work as unskilled labourers in the manufacturing, services and entertainment industry. However, it is pointed out that the independent Thai migrants may at some point be able to regularise their position through official employment, marriage to native citizens, or legalisation efforts in the country of destination (Chantavanich, 2000 and 2001).

Thai contract migrants are dominated by low skilled workers, which differ in terms of profession, education and magnitude from the high-skilled workers. The International Organization for Migration (IOM) stated that the two migrant groups—"unskilled" and "high-skilled" workers—are treated very differently by destination countries, although they are from the same origin country (IOM, 2006).

Migrant contract workers, or the so-called "guest-worker", in Europe have been practiced for decades. These groups of migrants are expected to be temporary and circulatory migrants. Countries in Asia and the Middle East do not approve of permanent settlement or family reunion and expect migrants to travel alone, remain single and childless during their stay and return home at the end of the contract. However, it was pointed out that formal rules do not stop migrants from engaging with the local population and marrying and having children in the destination countries. It does not stop migrants from deciding to overstay or re-enter the destination country irregularly. How many overseas Thai workers have indeed returned to their country of origin is in this context difficult to assess due to a lack of data on returnees (Rojvithee, 2007). Generally, it is assumed that most overseas Thai workers return to Thailand at least for some time before engaging in successive contracts to the same or other destination countries (Chantavanich et al., 2000).

## Migration from Thailand to Europe

### *Labour migration*

The different types of out-migration of Thais to Europe include labour migration, family migration and reunion, training, study and temporary visits. The majority of migrants are labour migrants, who move to seek economic opportunities in countries with stronger economies. They expect higher returns than working in Thailand despite the higher costs involved. Thai labour migrants are predominantly males, working in construction, manufacturing and agriculture sectors. Female migrants, on the other hand, are concentrated in service, commercial and domestic sectors, waitresses, traditional massagers and entertainers. The majority are semi- and low-skilled workers with low education from rural parts of Thailand (particularly the North Eastern part).

Compared to other regions, the proportion of Thai workers in Europe is not high due to laws and regulations and labour demand of the destination countries as well as the mismatch between available work and the workers' qualifications. However, the number of Thai workers deployed in European countries has been generally increasing overtime.

While the UK was the most popular destination country for Thai migrants to Europe, since 2008 the UK has been impacted by the global economic downturn, increasing its unemployment rate. Accordingly, the UK Government revised its immigration policy for many nationalities, except for the members of the EU and European Economic Area (EEA). The UK introduced a point-based system

for accepting migrants, with five levels of priority as follows: Tier 1- highly-skilled migrants, who are a benefit to the UK economy and are able to be employed independently, therefore not needing employer sponsorship before entering the UK; Tier 2- skilled workers with a job offer. These workers are needed to fill the ten labour-deficient occupations which are accounting, computer services, marketing research, legal services, health services, education, construction, information technology (IT), aircraft engineer and clinical psychologist; Tier 3-low-skilled workers. This category is restricted to workers who are from EU countries; Tier 4- Students, who are guaranteed by a UK educational institution certified by the Home Office, and specifying a period of immigration based on their study programmes; and Tier 5- Youth mobility and temporary workers. This group includes trainees and those who come under government exchange programmes or MOUs in such areas as culture, religion, or charity exchange programmes, which allow a stay of up to 24 months and not transferable to other tiers.

According to analysis by the Thailand Office Employment Overseas (TOEA) of the Ministry of Labour (2013), there are opportunities for Thai workers in two major categories: 1) Highly-skilled in the ten deficient occupations, and 2) Skilled workers in food service, including hospitality staff (e.g., waiter/waitress, hotel and related services) or highly experienced and trained Thai cuisine chef. There are opportunities for other service workers such as housekeeper, child or elderly care provider or Thai massage therapist. However, these jobs require intensive standard training as well as English language ability.

In 2012, 775 Thai workers received work permits from the UK, of whom 60 per cent were males. About 1 in 3 were from the North eastern region (the poorest region in Thailand), followed by those from the Central, Eastern, North and Western regions. About half received work permits as service or sales worker in shops/markets, followed by technician, basic occupation, and professional and skilled workers in different business units. About half have at least a bachelor's degree, followed by those with primary school, high school, or vocational school education.

Sweden became the top destination country for Thai workers deployed in Europe since 2007, with the sole exception being 2011, when Finland was the first rank. The number of Thai workers in Sweden has increased from 2,549 to 5,587 and 6,603 in 2011, 2012 and 2013 respectively. A large proportion of these migrants work as berry pickers, Thai cuisine cooks, traditional massage therapists, and technicians in the automobile sector.

Interestingly, the majority of Thai nationals in Sweden are seasonal workers (three to four months a year), particularly in the berry-picking sector. This type of migration can lead to labour disputes because the workers' income depends on the weather, skill and experience of the individual. However, the Swedish Government has a policy of increasing work permits for nationals outside the EU, which would provide more opportunities for Thai workers to receive work permits and residential status in the EU. The Swedish Government has set a priority for migrant labour in construction, services and IT. The government will replace foreign workers only in positions classified in the deficient occupations, which are physician, nurse, engineer, electrician, information technologist and welder. The berry pickers are only a short-term labour requirement of the country.

### *Marriage migration*

Starting in 1945 (after the conclusion of World War II), there was a trend of Thai women marrying released Dutch prisoners of war, so-called 'Siamese Brides' initially, these women had low education, came from rural areas and worked in the entertainment or service sectors of the Netherlands. Later, middle-class women with more formal education began to participate in this marriage migration. Gradually, this migration pattern expanded to include Thai women who accompanied or followed foreign tourists back to their home country in Europe.

The blurred meaning among the terms “bride”, “romantic union” and “worker” makes it difficult to analyse the link between “marriage migration” and “labour migration,” if the consideration is based on economic purpose of migration. European countries have revised the EU immigration laws, in part in response to the increasing number of Thai women who migrate to marry a European. The revised laws and regulations have reduced the ability of Thai female migrants to work in the EU labour market, particularly those who are ‘marriage migrants’. The majority of these migrants have relatively limited skills and education, but remain determined to obtain jobs and send remittances.

There are arguments whether the Thai female migrants should be considered passive “victims” of gender and economic inequity, structural power imbalances between developed and developing countries, global forces and criminal networks, or family obligations. Some argue that their self-determination (“agency”) be recognised in that they make decisions, are resilient to difficulties, and seek to achieve autonomy and security in their lives. These issues have resulted in the increasing number of government and non-government agencies that are trying to ensure safe migration of Thai women to Europe. These include the FrauenrechtistMenschenrecht (FIM) in Germany and the Thai Women’s Network in Europe (TWNE), a volunteer organisation with chapters in 13 European countries, and supported by UNESCO and the Thai Government (Sciortino & Punpuing, 2009).

Based on a study of 100 Thai migrant women and some of their German husbands (Nakagawa & Yongvanit, 2007) found that these Thai women had been in Germany for 13 years on average, and 86 per cent were satisfied with their life experience so far. However, more than 60 per cent reported encountering problems, e.g., their limited cultural knowledge and language ability resulted in isolation and loneliness. Some women experienced domestic violence, exposure to health hazards by working in prostitution or other unsafe jobs, sexual abuse, work exploitation and discrimination (Plambech, 2007; Suksomboon 2008; Sims 2008).

Although female migration in European countries differs, it is important to note that the general picture of Thais in the EU is that of a minority of highly-educated male and female Thai professionals and students, in parallel with a much larger one-way migration stream of unskilled women (Sciortino & Punpuing, 2009).

### *Student migration*

There is quite limited research in the field of student mobility from Thailand to Europe as there are not many issues arising from this type of migration. Students from Thailand enter the destination country under a student visa, but it is common for students to find a part-time job as well. These part-time jobs are often acquired through personal channels and therefore are informal. One of the most popular part-time jobs among Thai students is working at a Thai restaurant.

Irrespective of the professional field, an important source of white-collar migrants is the population of Thai students enrolled in tertiary education abroad. Currently, the main study destination for Thais is Australia, followed by the United States, the United Kingdom and other European countries, New Zealand, Canada, Japan, Singapore and, increasingly, China.<sup>3</sup> However, it seems that the number of Thai students remaining after the completion of their study to work in the destination country is relatively few as most Thai students eventually return home.

Thai students play an important role in transferring knowledge and skills and in acting as a liaison between their country of origin and their respective destination countries. Thai students and professional associations, including the Thai Student Association in various countries such as in the US, Europe, Australia and Japan, not only support a sense of community to Thais abroad, but also aim to promote bilateral relations and stimulate the advancement of scientific knowledge, technology and education in Thailand. As Thailand continues to integrate into regional and global community, it can

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3 BuyUSA.GOV US Commercial Service available at [www.buyusa.gov/asianow/theducation.html](http://www.buyusa.gov/asianow/theducation.html)



be expected that there will be a growth in the volume of students studying abroad (Sciortino & Pung, 2009).

### *Migration process*

Thai workers deployed overseas may face difficulties or problems at various stages of their migration process. The first stage is before departure, at which they may encounter unreliable or unlicensed recruiters. The second stage is during travel, during which they may meet with problems related to smuggling or trafficking, and some may end up paying for extra travel costs related to corruption of the authorities. The third stage is during settlement at the labour destination. The migrants may not be able to work immediately or may have to stay with strangers, and may not be able to deal with cultural adjustment at the destination. The fourth stage is during employment when the migrants may face labour exploitation including sub-standard wages, delayed payment, working long hours, violence or discrimination in the workplace. The last stage is returning home, when the migrants may face problems of inadequate funds for travel costs or lack of job prospects at the country of origin.

The Thai Government has acknowledged benefits of labour migration for Thai farmers/migrant workers as berry pickers in Sweden. However, the mechanism that protects or improves formalization of the berry pickers is time-consuming and requires considerable resources. There are many cases of failure in which farmers pay high recruitment fees and are subjected to labour exploitation, or had to return home in debt (Kamolthip Kallstrom, 2011).

A study conducted by Woolfson et al. (2011) found that respondents (many of whom were Thai berry pickers) reported that they were persuaded to go to Sweden by Thai women married to Swedish nationals. Although, they entered the country on tourist visas in order to avoid tax obligations to the Swedish Government, they did not receive any labour protections in terms of wage rate, working hours or social welfare. Wages for berry picking are extremely low, the quotas set for gathering are high, and the financial rewards, as measured by the weight and quality of berries gathered, are well below what would be regarded by a Swedish employee as an acceptable minimum. As for working conditions, the pickers sometimes have to wake as early as 2 a.m. in order to travel up to several hundred kilometres to reach a berry patch and may not return to their living quarters until after 9 PM. These migrant labourers often live in overcrowded communal dormitories located in vacant schools in rural villages where they also have to prepare their own food.

In addition, the cost of travel to and from Sweden, accommodations, as well as transport and food for their sojourn can be as high as 100,000 baht (approximately of 2,300 Euros). Many migrants have to borrow from money lenders of various kinds in order to finance the trip, even mortgaging their land with agents (Woolfson et al., 2011).

In Poland, the unlimited picking quota in combination with a decrease in the number of Polish workers willing to work in hard labour has encouraged more Thai workers to enter this sector. The workers are able to change their visa status from “travellers” to “guest workers”, which allows them to work in Poland. The migrant workers have to pay fees including transportation, meals, and accommodation even though the quantity of berries harvested cannot be guaranteed (ILO, 2010).

To reduce risk in the migration process, there are ways to mitigate these problems, which do not rely only on the migrant’s knowledge and education, but also on mechanisms at the local, national and societal levels. For example, the Ministry of Foreign Affairs (MOFA) emphasises that interventions should focus both on solutions and prevention. It is essential to identify the true need of migrants, particularly unskilled workers travelling internationally. If necessary, there should be G2G (government to government) agreements in order to lessen the burden of paying a commission, which the migrants normally have to pay by themselves. It is also noted that mental health services and legal support are required (ILO, 2010).

In order to improve the process of migration, enforcement of legislation and regulation of recruitment practices are crucial. In regulating recruitment, McDougall et al. (2011) pointed out there are four challenges that should be taken into account: 1) Dissemination of information. The messages should include both general information and warnings on recruitment scams, malpractice and fraud, particularly problems related to trust in unlicensed recruiters; 2) Pre-departure orientation. The orientation needs to indicate the migrant's rights and responsibilities overseas, and expected living and working conditions; 3) Limited government capacity. There is a shortage of Ministry of Labour (MOL) personnel, particularly at the provincial level, which results in less efficient protection of job seekers from deception and fraud; and 4) Law enforcement. There is inadequate enforcement of existing laws, which results in unreasonably high recruitment fees and a large number of unlicensed recruiters. The laws should aim to serve job seekers rather than facilitate the activity of the illegal recruiters or brokers.

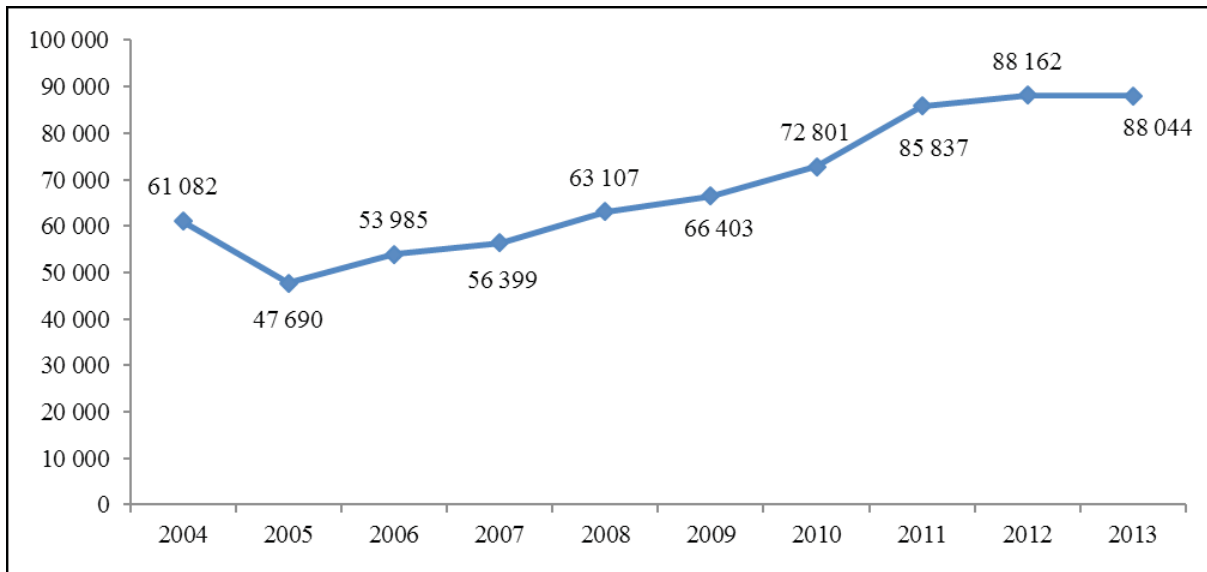
Furthermore, it is suggested that negotiations between the sending and receiving countries should emphasise limitations of the entry visas, reduction of visa fees, and duration of the permission to stay in country. The destination or receiving countries should have mechanisms to encourage compliance by employers, while the origin or sending countries must prepare for prevention and protection of their nationals from exploitation, smuggling or trafficking (ILO, 2010).

### *Remittance*

Most of the Thai migrant women are, or have been married to European men. In Europe, in addition to caring for their new family members, Thai female migrants work in manufacturing, the service sector (including in the sex industry) or as housekeepers in order to attain economic security for themselves and their relatives in the country of origin. Some women have children who follow them to the destination country. Nevertheless, the Thai female migrants continue to remit funds to their parents and children who remain in Thailand (Plambech, 2007; Suksomboon 2007).

Remittances not only improve the migrant's home family livelihoods, but also help maintain their family ties and fulfil traditional family obligations. On the other hand, remittances can further strain existing gender norms as females tend to remit more than male migrant workers (Osaki, 2003; Curran, Garip, Chung & Tangchonlatip, 2005). Moreover, the amount of remittances is an indicator of the level of success of the migration. Some migrants may not wish to disclose failure or hardship in the destination country, thus distorting the situation for other potential migrants in the home community.

In Thailand, remittances are related to the number of Thai workers deployed overseas each year (Huguet & Punpuing, 2005). In the latest decade, Thailand received about 683,510 million (Thai baht) or about 15,214 million Euros in remittances. The value of remittances ranged from a low in 2005 of about 48 million baht to a high of 88,162 million baht in 2012, or about twice the value in 2005 (Figure 17).



**Figure 17** Migrant worker remittances to Thailand, 2004-2013 (million Thai baht) (Source: Bank of Thailand, 2004-2013)

### *Assistance to Thai migrants*

Thai migrant workers deployed overseas receive limited protection from trafficking and exploitation under international law. Assistance to Thai workers overseas is provided primarily by the MOL and the Ministry of Foreign Affairs (MOFA), although, the United Nations human rights instruments apply to all migrants, as do the ILO fundamental rights and principles at work.

The Office of Labour Affairs (OLA) of the Permanent Secretary Office of the MOL, provides support to migrants through 13 offices in eleven countries and territories. Through its labour attachés, the OLA provides support by giving advice, counselling and assistance to Thai workers who encounter problems regarding wages, health issues or personal safety, and some access to legal recourse for Thai migrants who face problems while working overseas.

The labour offices mainly supervise documented migrant workers, while most undocumented workers that experience difficulties abroad are reluctant to ask for any assistance. It is not unusual that the irregular or undocumented Thai migrants overseas receive little assistance through formal channels and are not covered by domestic labour laws or bilateral agreements. Although, the MOFA has a budget to make advance payments for repatriation of irregular migrants, the migrants are required to pay the MOFA back, which adds to their cost of unofficial migration.

During the last ten years (2003-2013), the MOFA assisted 35,478 Thais who were working, studying or living abroad. The support included general assistance for those in difficult circumstances, those requiring repatriation, and compensation for relatives/friends of the trafficked persons who died as a consequence of migration. Table 25 shows data on the amount of compensation for Thai migrants paid by the MOFA.

**Table 25** Assistance to overseas Thai workers, 2003-2013 (Source: Ministry of Foreign Affairs, 2014)

| Assistance                                                                     | 2003         | 2004         | 2005         | 2006         | 2009         | 2010         | 2011         | 2012         | 2013         |
|--------------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| General assistance for Thai migrants in difficult circumstances                | 3,639        | 2,633        | 2,899        | 2,114        | 1,293        | 1,067        | 1,624        | 1,392        | 2,566        |
| Assistance for Thai migrants in difficult circumstances requiring repatriation | 624          | 484          | 198          | 1,708        | 868          | 208          | 33           | 53           | 114          |
| Assistance to Thai fisherman                                                   | 629          | 639          | 387          | 183          | 125          | 53           | 126          | 73           | 66           |
| Assistance in the event of migrant death and benefits for relatives            | 1,061        | 1,108        | 1,203        | 881          | 300          | 366          | 102          | 394          | 193          |
| Assistance to Thai who victims of trafficking                                  | 37           | 318          | 295          | 297          | 309          | 208          | 49           | 103          | 192          |
| Other assistance                                                               | -            | -            | 669          | -            | 32           | 66           | 1,414        | 22           | 61           |
| <b>Total</b>                                                                   | <b>5,990</b> | <b>5,182</b> | <b>5,651</b> | <b>5,183</b> | <b>2,927</b> | <b>1,968</b> | <b>3,348</b> | <b>2,037</b> | <b>3,192</b> |

### *Migration impact on the origin country*

According to the Job Placement and Protection of Job Seekers Act B.E. 2528 in 1985 and its amendment in 1994, the overseas Thai workers are supposed to be in good health, have the necessary skills to perform in a foreign setting, go through physical examinations, pre-departure tests and orientation sessions. Therefore, they can expect to receive adequate compensation, particularly wages and others under the 1985 Employment Act. For example, they should get a reimbursement if the jobs and wages are not as specified in their contract. In other words, contract migration workers are considered relatively safer than those who work abroad illegally.

However, overseas Thai workers continue to encounter many challenges in their migration efforts. At recruitment, they remain at risk of being overcharged and exploited, despite improved Thai government commitment to ensure legal compliance by both public and private agencies. On the other hand, costs of recruitment and travel are high, while wages earned are often moderate. In some cases, the workers need to be tested for HIV/AIDS, communicable disease or even pregnancy, which are conditions of excluding them from the programme (Wiwanitkit & Ekawong 2006). At the destination countries, if the workers found guilty or did not meet the conditions of the host countries, they cannot easily go back if conditions are not as expected because of logistical difficulties and the fact that fee reimbursements would not cover all the costs incurred, nor the lost opportunities. Many migrants complain about receiving wages below the contract agreement; working overtime without pay; exposure to health hazards due to unsafe working conditions; and abusive treatment, physically and mentally, by their employers. Furthermore, limited proficiency in English and local languages is a major barrier to performing their jobs and adapting in the new country, which lead to the fact that migrant workers are discriminated and looked down by the surrounding society.

Thailand, like many of the Thai labour-importing countries, has not signed the ILO-international migrant conventions, overseas Thai workers (and their co-nationals who have migrated independently) cannot expect for much protection while working abroad (Suapang 2001; Chalamwong 2005). The assistance and help provided through MOL and MOF through embassies and consulates are, however, provided to help overseas Thai workers who were suffered only.

However, it is found that the overseas Thai workers are willing to endure an often strenuous situation, is because of their wish for better lives for them and their families back home. Chantavanich

(2001:177-178) indicated that incomes earned from working abroad are not only used for repaying debts, but also allow migrant households to repay and build new houses, pay for education of children, purchase consumer goods, invest in small-scale business, and acquire land and other assets. At the macro level, the migrants' remittances are important as a source of foreign exchange and day-to-day consumption.

On the other hand, problems from the absence of migrant workers often lead to a strain on remaining household members. If the overseas workers are men, their migration may impact on wives and children. The women have to take over traditionally male responsibilities in running households. The long separation from their spouse and family may cause marital problems, which may occur during migration, or upon the return of the migrant workers. For the single migrants, it certainly impacts on their parents and siblings who have to adjust to the change. In the rural area, households are faced with the loss of manpower necessary for farming (Sciortino & Punpuing, 2009).

## Migration from Europe to Thailand

### *Skilled labour migration*

The majority of labour migration to Thailand is low-skilled workers from neighbouring countries such as Myanmar, Lao PDR and Cambodia. As such, the majority of research and policy concerns are focused on controlling and administering migrants from these countries. Migration of professional skills of foreign nationals from developed countries is rarely on the national agenda and receives much less attention.

Since multinational and transnational companies operating in Thailand are important for the country's economic growth, professional skills of foreign nationals are relatively welcomed. One of the most important policies regarding the import of foreign professionals is under the Investment Promotion Act 1977, amended in 1991 and 2001. Under this Act, the Board of Investment is authorised to grant incentives, guarantees and protection to foreign professionals. Incentives granted include tax exemption/reduction of import duties on machinery, reduction of import duties for raw or essential materials, among others.

The UK makes up the biggest share of European skilled labourers who come to Thailand, followed by France and Germany. An increasingly popular industry in the past decade is the education sector, where these foreign professionals come to Thailand as teachers/lecturers/professors. The trade and manufacturing sectors are still important areas that have many foreign professionals.

An important issue concerning labour migration from Europe to Thailand is those who work in Thailand without a work permit. Many decide to work past the expiry date of their work permit, or some enter Thailand as tourists and overstay their visas. Popular jobs include becoming an English teacher or operating their own businesses (Howard, 2009: 194; Sciortino & Punpuing, 2009: 16). These businesses are unauthorised and many make profit by scamming other foreign tourists.

### *Marriage migration*

Cross-cultural marriages between Thai women and Western men have gone through a major change in terms of social acceptability. Thai women with Western men were once associated with prostitutions as many of these women work in the entertainment sector. Nowadays, finding a Western husband has become a trend, particularly in the North Eastern part of Thailand (Adskul, 2007; Mekbusaya, 2004). After marriage, some remain in Thailand with their Western husband (often already retired), while some move with their husbands to their country of origin.

A growing concern regarding marriage migration involves a misconduct of match-making agencies. These agencies are blossoming in Thailand with very little supervision from the authorities. They take advantage of Thai women's demand to find a Western husband by charging expensive fees



without fulfilling their promise of a decent Western husband. Many agencies, if closed down due to allegations of misconduct, can easily be set up again under another name.

### *Health migration*

Thailand is an attractive destination for medical tourism for several reasons. First is the government's support, which has drafted a second strategic plan to enhance and promote Thailand's health services for international patients. The main target populations include international patients with high purchasing power and foreign retired citizens residing in Thailand. Second, Thailand has a large number of hospitals accredited by JCI, with highly skilled medical professionals. Third, the private sector is active in participation. Fourth, the lower health provider wages and less expensive medicines contribute to significantly lower costs than in many European countries. Finally, Thailand is well-known for its hospitality and friendliness of people, the key ingredients to Thailand's success in the service industry.

In addition, many health insurers in the sending countries are now willing to cover the medical expenses incurred in Thailand, as long as the quality of the services is comparable to that of the sending country. Insurance companies find it to be more cost-effective for them to cover the expenses for patients seeking quality health care abroad (even after including their airfares in many cases), instead of incurring expensive medical care expenditures in their own countries. A potential increase in insurance coverage for medical expenses abroad will encourage an expansion of medical travels in the future (Kanchanachitra, Pachanee, Dayrit, & Tangcharoensathien, 2012: 72).

Issues arising from the growth of medical tourism for the health system in Thailand include appropriate use of skilled health workers, the allocation of financial resources, and the distribution of health care (Connell, 2011: 261). Using the WHO threshold of critical shortage at 22.8 health workers per 10,000, Thailand is at the margin at 27 health workers per 10,000 people nationwide. However, the distribution of health professionals is biased, with more health professionals in the private sector in urban areas, leaving the availability of doctors quite scarce in remote areas. Most of concern from medical tourism is the negative impact on the domestic rural populations and the urban poor, where foreign and wealthy local patients attract health resources. Medical tourism is likely to enhance the national imbalances of health access between the rich and the poor within the country, where doctors and other health professionals are highly concentrated in urban private hospitals—a phenomenon often dubbed as 'internal brain drain' (Connell, 2010).

## **Overview of Migration Policies**

### **International-level policies**

This section focuses on the situation of international migration as it affects Thailand and, therefore, largely on Thai legislation, policies and programmes. The Thai Government participates in and plays a leading role in regional consultations on international migration in South-East Asia and in the Greater Mekong Subregion. This participation is related to the magnitude of both inflow and outflow of migration to/from Thailand. There is no bilateral or multilateral agreement or MOU that Thailand has signed with countries in Europe.

Thailand already signed the United Nations Convention against Transnational Organized Crime and the accompanying Protocols in 2001 but has not ratified them. Thailand has ratified 15 ILO Conventions, three of which are core conventions (C.100 on Equal Remuneration, C.138 on Minimum Age and C.182 on Worst Form of Child Labour). The latest ratification was on 11 October 2007, of C.159 Vocational Rehabilitation and Employment (Disabled Persons).

Thailand and 176 other member countries adopted the ILO "Resolution concerning a fair deal

for migrant workers in the global economy” at the International Labour Conference in 2004, which includes a rights-based approach to migration (ILO, 2004). The ILO work program, UN Partnership Framework and the Thai Government work in collaboration to promote Decent Work in Thailand, which was incorporated in the 10th National Development Plan (2007-2011) (ILO, 2014).

Thailand as well as the major labour-receiving countries of Thai migrant workers has not signed International Migrant Conventions such as the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Thai Government plays an active role at the regional level in order to improve the situation of international migration. Based on the rights-based approach, the different policy formation strategies were implemented according to the priority issues.

In April 1999, Thailand hosted a symposium on “Towards regional cooperation on irregular/un-documented migration”, which has adopted the “Bangkok Declaration on Irregular Migration”. This declaration calls for a comprehensive analysis of the social, economic, political and security causes and consequences of irregular migration in the countries of origin, transit and destination. It also encourages countries to pass legislation to criminalise the smuggling of and trafficking in humans, especially women and children, including persons as a source of cheap labour. It is suggested that Thailand try to implement the Bangkok Declaration through bilateral MOUs with Cambodia, the Lao People’s Democratic Republic (PDR) and Myanmar.

Thailand is an active participant in the ‘Bali Process’, which was initiated by the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, first organised in Bali, Indonesia, 2002, and then followed by a series of conferences in 2003, 2004 and 2005. The ‘Bali Process’ aims to establish a foundation for coordinated regional action to reduce the transnational crimes of people smuggling and trafficking in persons, and to address challenges presented by unregulated migration and the impact it has on society.

The Thai Government also initiated a sub-regional process to address issues of trafficking in persons among members of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). In October 2004, the six members of COMMIT signed an MOU, which set priority actions to address human trafficking, and establish a network for repatriation of the victims.

In May 2003, the Thai Government and the Government of Cambodia signed an MOU on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking. The MOU adopts the international definitions of trafficking. It states that the two governments will undertake necessary legal reform to ensure that the legal frameworks in their respective countries conform to the major international conventions on human rights, the rights of the child, and discrimination against women.

The MOU with Cambodia states that trafficked children and women shall be considered victims, not violators or offenders of immigration law. That means that trafficked persons shall not be prosecuted for illegal entry into the country, they shall not be held at immigration detention centres but provided care at government shelters, and they shall be treated humanely throughout the process of protection, repatriation and judicial proceedings. Victims of trafficking are permitted to claim compensation from the offender. The law enforcement agencies in both countries, especially at the border, shall work in close cooperation to uncover domestic and cross-border trafficking of women and children. The governments shall make all possible efforts towards the safe and effective reintegration of victims of trafficking into their families and communities. In July 2005, the Thai Government also signed a similar MOU with Lao PDR on Cooperation to Combat Trafficking in Persons, Especially Women and Children (Morris, 2004 cited in Hugué & Punpuing, 2005).

Thailand has not signed the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, although Thailand has long been providing shelter to groups fleeing political conflict from neighbouring countries. However, the Thai Government collaborates closely with UNHCR in managing

asylum seekers by registering asylum seekers or refugees as “persons of concern to UNHCR” and accords them protection.

The 1979 Immigration Act (amended in 1992) allows the executive branch of the Government to circumvent the strict application of the Act through Article 17, which stipulates that “[u]nder special circumstance[s], the Minister [of Interior], by the consent of the Cabinet, may authorise an entry into the Kingdom subject to any condition or exempt any alien from compliance with this Act”. Under this Article, administrative rules have been adopted to regulate the admission into and stay in Thailand of specific groups, including refugee groups. This flexibility has permitted the Thai Government to allow about 117,000 displaced persons from Myanmar to reside in camps inside Thailand, although they are not considered refugees by the Government and do not undergo the formal refugee status determination procedures of UNHCR.

The influx of irregular migrants to Thailand, particularly from its three neighbours (Myanmar, Cambodia and Lao PDR) has been increasing since the early 1990s.

In general, Thailand’s legislation allows individuals of certain professions to enter the country and obtain work permits but does not provide for the unlimited entry and employment of unskilled migrant workers. However, given the increasing demand for unskilled labour, a series of Thai Cabinet decisions have been made to allow temporary work permits (1 or 2 years) for unskilled migrant workers.

At the same time, the Thai Government has attempted to regularise migration from these three countries through bi-lateral MOUs. The MOUs aim to: 1) Transition the existing undocumented migrant workers into documented migrant workers status through ‘Nationality Verification’, and 2) Import unskilled workers from these countries as needed. In October 2002, the Thai Government successfully signed the first of these MOUs with Lao PDR, and in May 2003 with Cambodia, followed by Myanmar in June 2003.

The experience of implementation of these MOUs in the first five to eight years suggests that this approach was not successful because a majority of undocumented migrants were not able to complete the nationality verification process, particularly for migrants from Myanmar. In addition, the definition of ‘domestic work’ or ‘domestic worker’ under these MOUs has become more complicated while there is increasing demand for this work. The International Labour Organization (ILO) has adopted the protection standard of domestic workers in ILO Convention No 177 and ILO Recommendation 184 in year 1995. Although the Thai Government has not ratified ILC 177, the MOL has enacted the Ministerial Regulation on Protection of domestic workers B.E.2547 (A.D.2004) under the Labour Protection Act B.E.2541 (A.D.1998). Highlights of the regulation include prohibition of employment of a child under 15 years old, requirement of an employment contract, prohibition of hazardous work and wage discrimination, and requirement to adhere to minimum wage law, weekly and annual days off, overtime, and access to the social security system (WIEGO, 2014).

For the protection of Thai migrant labour at the destination country, Thailand has established bilateral agreements with Taiwan, Province of China, and Japan, which are the major destinations for Thai workers. Moreover, MOUs were set up with various receiving countries including Israel, Malaysia, Republic of Korea, and the United Arab Emirates. Recently, work packages with Libyan Arab Jamahiriya and Canada were negotiated. The agreements aim to regulate recruitment, testing and certification of applicants, employment sectors and quotas, and conditions of employment and social security arrangements.

Legislation of outbound labour migration in Thailand is grounded in Chapters III, IV and V of the Recruitment and Job-Seekers Protection Act of 1985, revised in 1994 and 2001, which protects Thai migrant labour rights. The Act regulates recruitment in order to prevent the deception or exploitation of job seekers, and to restrict illegal migration. It also calls for the protection of Thai workers overseas and sets the conditions for carrying out foreign employment services, including pre-departure

examinations and training. The Act establishes a 'welfare fund, which is used for the following: 1) Arranging for abandoned job seekers to be repatriated to Thailand; 2) Providing aid to workers overseas or those planning to go overseas; and 3) Implementing the selection process, skills testing and pre-departure orientation. This Act protects the migrants if the working/or living terms and conditions at the destination are not consistent with those promised. The assistance to Thai workers overseas is provided primarily through the MOL and MOFA (Kang, 2012).

The Recruitment and Job-Seekers Protection Act of 1985 has created a system in which governmental agencies, employers and host-country governments can facilitate and regulate the recruitment and placement of Thai workers. However, in practice, Thai migrants continue to be exploited and deceived during various stages of the migration process, and face a difficult time upon their return to Thailand.

It is suggested that the Thai Government create an inter-ministerial committee including, at a minimum, the MOFA, MOL, Ministry of Education, and Ministry of Commerce in order to develop strategies that maintain consultations with destination countries to promote fair Thai labour migration. The government needs to strengthen overseas labour migration management by adhering to international norms and mechanisms, negotiating bilateral or multilateral agreements, strengthening consular services for migrants overseas, and combating fraud and exploitation in the recruitment process as to enhance the benefits to migrant workers (McDougall et al., 2011).

## National-level policies

In Thailand, there has been no specific agency that deals with migration issues, but instead various governmental institutes and agencies are responsible for overseeing migration movements in and out of Thailand. The key agencies/organisations include:

- Ministry of Interior
- Immigration Bureau
- Ministry of Labour (including Office of Foreign Workers Administration, Department of Employment, Thailand Overseas Employment Administration (TOEA))
- Ministry of Foreign Affairs (Consuls and Embassies)
- National Economics and Social Development Board
- Thai International Labour Office
- The Illegal Alien Workers Management Committee (IAWMC)
- Private sectors (Employers and NGOs)

Overall speaking, Thailand lacks migration policies, particularly those that reflect the long-term economic and social goals of Thailand (Rukumnuaykit, 2009:9; Huguet, 2008:8; Hall, 2012: 24). As a result, Thailand's migration policies have mostly been attempts to deal with short-term issues arising from migration, or as a response to a short-term issue in economic necessity; with the responses often lagging behind circumstances (Huguet, 2008:2; Hall, 2012: 23). The following sections review Thailand's policies/legislation related to migration at the national level.

### *Thailand's immigration policies*

Immigration into Thailand is governed by the Immigration Act of 1979, and it is administered by the Immigration Bureau of the Royal Thai Police Department under the Ministry of Interior. A foreigner entering Thailand must obtain a visa from a Royal Thai Embassy or Royal Thai Consulate prior to arrival in Thailand, unless exempted. The Royal Thai Embassies and Royal Thai Consulates may issue six types of visas for foreigners visiting Thailand: Transit Visa, Tourist Visa, Non-immigrant Visa,

Diplomatic Visa, Official Visa, and Courtesy Visa. Transit and Tourist Visa holders are not authorised to work in Thailand, while the Non-immigrant Visa is intended for applicants who wish to perform official duties, to conduct business/to work, to invest or perform other activities relating to investment, to study, to perform missionary work, to conduct scientific research or training or teaching in a research institute, to undertake skilled work or to work as an expert or specialist, and for other activities such as to stay with family, to stay after retirement, to receive medical treatment, among others. Holders of the Non-immigrant Visa are initially granted a period of stay in Thailand not exceeding 90 days, unless otherwise instructed by the Office of Immigration Bureau. Qualified persons can obtain an extension of stay of one year at the discretion of the Immigration officer (Ministry of Foreign Affairs, 2014). To work in Thailand, all foreign nationals must obtain a work permit

Current Thai Visa policies rely on two main laws namely; Section 34 and Section 37 (1) of the Immigration Act of 1979. Section 34 states that aliens entering into Thailand for a temporary stay may enter for the following activities: Diplomatic or Consular Missions, performance of official duties, touring, sporting, business, investing, transit journey, study or observation, mass media, missionary work, scientific research, practice of skilled handicraft and other activities as prescribed in the Ministerial Regulations of such Act. Section 37 (1) of the Immigration Act states that people who have received a temporary entry permit shall not engage in the occupation or temporary employment unless authorised by the Director General or other competent official. Visitors are therefore not allowed to seek or accept employment in the Kingdom

According to the Alien Employment Act of 1978 and 2008, foreigners must hold a valid visa and a work permit prior to starting work. Foreign labours can be classified into four categories (Gullaprawit, n.d.):

- Temporary permit aliens: The duration of this work permit does not exceed one year. It is for aliens who have resided in Thailand or who are permitted to enter the country for temporary stay to engage in work.
- The Board of Investment section: These include workers hired by companies promoted by the Board of Investment and are permitted to entry to work under the Investment Promotion Act. The duration of work permit depends on the regulation of those companies. Special treatment is granted for workers under this Act such as being able to be rapidly issued work permits, and may commence work immediately (Ratprasatporn & Thienpreecha, 2002).
- Section 12: The foreign labour in this category include i) those under deportation order who have been permitted to engage in profession at a place in lieu of deportation or while awaiting deportation, ii) those whose entries into Thailand have not been permitted under the law on immigration and are awaiting deportation, iii) those who are born within Thailand but not Thai nationality, and iv) those whose Thai nationality have been revoked. Under Section 12, these foreigners shall be permit to stay in the Kingdom no longer than one year.
- Permanent section: any foreigner already resided in Thailand under the Immigration Law and had worked before December 13, 1972 is valid for a lifetime except if he/she changed his/her occupation.

It would be incomplete to discuss Thailand's immigration policies without mentioning low-skilled workers. The vast majority of migrants in Thailand are low-skilled, with approximately 3.2 million migrants (from a total of roughly 3.5 million migrants) coming from neighbouring countries. Low-skilled migrants started to flow into Thailand since 1992, when Thailand initiated a policy to register workers from Myanmar in ten provinces along the national border. The policy has now expanded to cover low-skilled workers from Lao PDR and Cambodia as well (Huguet, Chamrathirong & Natali, 2012: 2).

National security is often the centre of discussion when it comes to policies concerning the large influx of unskilled migrants. There are two main policy responses to regularise labour migration. The



first method is a national verification (NV) of registered, but illegal, workers in Thailand. The NV process will enable these workers to acquire a legalised status under the use of temporary passports and hence apply for a work permit in Thailand. The second method is through signed Memoranda of Understanding (MOU) with Myanmar, Lao PDR and Cambodia. Through the MOU, migrant workers are recruited in their country with temporary passports to migrate regularly to Thailand for employment. (Huguet, Chamrathirong & Natali, 2012: 2; Hall, 2011: 19).

The Alien Employment Act of 2008, allowed low-skilled labours to work in the country for a longer period of up to two years (Sciortino & Sureeporn, 2009: 21). The Act regulates migrants according to temporary legal or temporary illegal status. Other attempts include a series of bilateral and multilateral agreements and amnesty registration drives to regularise and deport undocumented migrants.

Skilled and professional migrants to Thailand received a relatively warmer welcome in Thailand, although there is still no clear national policy to proactively recruit these skilled and professional workers. There are, however, some provided incentives for skilled and professional workers to come and work or invest in Thailand. Under the Investment Promotion Act 1977, amended in 1991 and 2001, the Board of Investment is authorised to grant incentives, guarantees and protection. Tax incentives such as exemption/reduction of import duties on machinery (Sections 28/29), reduction of import duties for raw or essential materials (Section 30), exemption of juristic person's income tax and dividends (Sections 31/34), among others. For non-tax incentives, foreign nationals are permitted to enter Thailand for the purpose of studying investment opportunities (Section 24), to bring skilled workers and experts to work in investment promoted activities (Section 25/26), to own land (Section 27) and to take out or remit money abroad in foreign currency (Section 37).

For companies that are not promoted by the Board of Investment, there is a quantitative restriction of foreign employment based on the company's registered capital. Currently the company is allowed one foreign worker for every two million baht of registered capital, with a maximum of 10 million baht or five foreign workers (Manning & Sidorenko, 2007: 1102).

Medical tourism is another arena that is attracting more international patients every year. The government of Thailand supports the development of Thailand as a medical hub through the Prime Minister's Special Committee and the Ministry of Public Health. The Ministry is responsible for the promotion and development of the country as a world centre for health services, and has drafted a second Strategic Plan (2012-2016), emphasising four main products, namely medical services, health promotion services, Thai traditional and alternative medicines, and herbal and health products. Moreover, the government provides further incentives for private hospitals with 50 beds or more, where they are eligible to apply for three to eight years of corporate income tax exemptions, and exemptions from or reduction of import duties on machinery to be used in the hospital (Kanchanachitra, Pachanee, Dayrit, & Tangcharoensathien, 2012: 70).

In terms of retirement migration, Thailand has allowed foreigners to retire in the country since 1988. The retiree must be at least 50 years old and must have been granted a Non-Immigrant Visa. Moreover, the retiree must verify his/her financial status of not less than 65,000 Baht per month or 800,000 Baht per year.

### *Thailand's emigration policies*

Thailand rarely included emigration policies in the national agenda, with the exception of the Fifth National Economic Plan in 1982, where provisions for the export of Thai labour were explicitly stated. During that period, Thailand faced rising unemployment problems within the country, and the promotion of labour exports was formulated to address the unemployment issues (McDougall, Natali & Tunon, 2011: 39). Similarly during the economic recession in Thailand in 1997 when there was a

substantially high unemployment in the country, the government changed its policy to promote Thai migrants wishing to go abroad for employment. The Ministry of Labour announced a 1 billion baht (approximately US\$25 million at the time) from the Workers' Social Welfare Funds grant a loan with lower interest to cover the works' expenses for travel and other preparations. Moreover, the Minister of Labour and Social Welfare established Labour Offices in major receiving countries to look after Thai (documented) workers abroad (Kang, 2012: 11-13).

The Recruitment and Job-Seekers Protection Act of 1985, revised in 1994 and 2001, regulates recruitment and employment in Thailand as well as overseas employment of Thai workers. The Act calls for protection of Thai workers overseas and sets the conditions for carrying out foreign employment services. The Act's main purpose is to regulate recruitment to prevent cheating and exploitation of prospective migrants. The protection aims to cover the pre-migration phase, destination phase, and return and reintegration phase.

Systems of recruitment depend on the destination country. The Thai Government has had bilateral agreements and MOUs with many receiving countries and recruitment procedures are commonly a part of the agreements. For example, labour migration to South Korea and Israel must be carried out through government channels. Recruitment for Thai workers going to Japan, on the other hand, has to be done through Japan International Training Cooperation Organization (JITCO). Other countries allow recruitment through licensed private agencies.

There are several channels in which job seekers may find employment. These channels are through the services provided by the Ministry of Labour, through direct contact with employers or through recruiting agencies. The most popular channel among job seekers is through private recruiting agencies, while services by the Ministry of Labour are the least popular option. Private recruiters must be registered with the Ministry of Labour in order to operate in Thailand according to Employment and Recruitment Act of 1983. To apply for an overseas recruitment license, the company must be a limited or a limited public company, registering a paid-up capital of at least one million baht and provide a financial guarantee or bank guarantee of at least 500,000 baht. There are currently approximately 200 recruiting agencies around the country. The Thailand Overseas Employment Administration (TOEA), under the Department of Employment (DOE) of the Ministry of Labour (MOL), is the primary agency assigned to ensure the enforcement of the Act. The Inspection and Job Seekers Protection Division, the Ministry of Interior (Police Bureau), the Ministry of Foreign Affairs, and the Ministry of Public Health are involved in regulating recruitment, pre-departure training and services for migrant workers.

Another issue that is often raised in terms of its practicality is the pre-departure orientation, which is mandated by the Employment Recruitment Act of 1983. The pre-departure orientation is aimed at prepping prospective migrants on conditions of employment, living conditions, language and immigration and foreign labour laws in destination countries. In practice, however, the training is usually cut short to only one or two days, which is inadequate to provide them with the necessary information (Kang, 2012; McDougall, Natali & Tunon, 2011).

The most common problem regarding private recruitment companies is that they tend to charge very high fees with a promise of high-paying jobs. Not uncommonly, that the workers eventually discover that the jobs promised are not as described, or in some cases, never existed. The Recruitment and Job-Seekers Protection Act regulates the employment and recruitment of workers in Thailand as well as abroad. The Act provides protection to workers wishing to work abroad by regulating private recruitment companies. According to the Act, if the recruitment agency is unable to send the worker abroad, it must reimburse all collected fees and expenses within 30 days of the proposed deployment date. If the worker arrives in the destination country, but the job as prescribed in the contract is not available, then the recruitment company must be responsible in returning the worker back to Thailand and pay all associated transport, food, and accommodation costs. If the employment offered differs

from the contract or at a lower wage, the migrant has the option to accept or decline the revised conditions. If the worker accepts, and the wage is lower than in the initial contract, the recruitment company must reimburse the recruitment fee to cover the shortage in wages. If the worker chooses to decline the revised condition, the recruitment company must return the worker back to Thailand. The worker has 90 days to make the request, and if the recruitment company cannot be reached, the worker may send a notice to the Royal Thai Embassy or the Consulate in the destination country.

Despite governmental attempts to protect overseas labour migration from the exploitation of recruitment companies, there are still many Thai workers being cheated each year. Between 1996 and 2002, the Chairman of the House Committee on Labour estimated that around 43,807 workers had been cheated, amounting up to 2.3 billion baht in value. The region with the highest concentration of dishonest businesses is the Northeast, where populations are poor and less educated (Kang, 2012: 13-15).

Although workers may file complaints to the Ministry of Labour, which has the authority to give a warning to those agencies, and to revoke their licenses if the agencies continue to operate improperly, in practice, however, the Ministry of Labour has trouble in revoking the licenses as these businesses oftentimes belong to influential people. Even if the Ministry is successful in revoking the license, a common procedure for the business is to reopen under a new name (Kang, 2012). Authorities in Thailand thus have limited control over private recruitment agencies to protect migrant workers.

## Conclusion

There has been a long history of migration between Thailand and Europe. Although Europe is not a main destination for Thais, but the flow has been quite steady. Thais migrate to Europe for various reasons including work, family reunion and study. On the other hand, a growing number of Europeans are migrating to Thailand particularly for work, marriage, retirement, medical tourism among others.

Despite the ongoing migration patterns between these two regions, Thailand has never had a specific host agency responsible for migration issues, nor does it have migration policies that reflect the long-term economic and social goals of the country. Migration policies in the past have mostly been a response to a short-term issue arising from migration or the economy.

As for emigration policies, the following actions are suggested to ensure protection for Thais overseas:

- Strengthen protection of overseas Thai workers at all stages of the migration process.
- Devise information systems to better document irregular conditions of Thais abroad and strengthen strategies to assist those in need.
- Devote greater attention to family law issues that relate to migration, in particular to migration-by-marriage.

In terms of immigration, the vast majority are from Myanmar, Lao PDR and Cambodia, accounting up to 3.2 million migrants from a total of roughly 3.5 migrants. Migration-related policies in Thailand are therefore concerned with workers coming from these neighbouring countries. National security is the main concern regarding the large influx of these migrants, with two policy responses in place: national verification (NV) and Memoranda of Understanding (MOU) with the neighbouring countries.

Skilled and professional migrants, on the other hand, are relatively more welcome, although a clear policy in recruitment is still lacking. There are some provided incentives such as under the Investment Promotion Act where the workers and investors receive incentives, guarantees and protection.

One area of migration that has received attention among policy makers in recent years is medical tourism. The Thai Government is in support of the development of Thailand as a medical hub through

the Prime Minister's Special Committee and the Ministry of Public Health. With a clear policy direction, it is likely that Europeans travelling to Thailand for health purposes will increase in the future. However, there are concerns arising regarding resource allocation and its possible effect of health care provision to the local people.

For policies concerning the deployment of Thai workers abroad, Thailand rarely included them in the national agenda. Efforts have been made, however, in protecting Thai workers wishing to go overseas. Through the Recruitment and Job-Seekers Protection Act, the regulation covers the pre-migration, destination, and return and reintegration phase. Despite the efforts to protect the migrants, exploitation is still common and a more comprehensive plan of action may be needed.

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## 4.10 TEMPORARY MIGRATION IN TURKEY

Ilke Şanlıer Yüksel and Ahmet İçduygu

### Introduction

Turkey's migration scheme has witnessed a paradigm change since the beginning of the 2000s in terms of legal framework along with socio-political transformations. Temporary movements of people in the transnational space had marked this multi-dimensional change. Turkey has become a country of immigration and transit migration in addition its traditional status as a country of emigration. The majority of migrants are temporary, circular, and seasonal (even irregular) because of globalised networks, easy travel opportunities, access to information technologies, and dynamic characteristics of populations. Due to Turkey's geographical location, both emigration of Turkish-citizens to neighbouring regions and elsewhere and immigration into Turkey from various countries with diverse purposes help to explore the transnational space between Europe and Asia.

Turkish migrant stock has always been a very large figure as guest-worker programmes has validated since the beginning of 1960s in Europe. Even though that specific programme of temporary migration has ceased by the end of 1970s, emigration of citizens of Turkey has continued through family reunification schemes resulting in permanent migration. Figures in show an interesting trend that some of those who migrated permanently and their descendants with hyphenated identities are returning to Turkey for the last ten years. During the last decade contract-dependent labour migration has constituted a large part of Turkish temporary emigration mostly to CIS and MENA countries rather than European countries even though Europe historically was the major destination. Highly skilled migrants and student mobility as other types of temporary migration also show an increasing trend.

Turkey is becoming more immigrant country than an emigrant one. Immigration in the last decade is marked by the mobility of ethnically non-Turkish people, compared to earlier flows. In this period, temporary immigration could be characterised by patterns of regular migration, irregular migration, and asylum flows. Migrants coming for work from countries such as China, Ukraine and many CIS countries, student mobility mostly from CIS and neighbouring countries and life-style migrants mostly from European countries and Russian Federation constitute regular migration scheme. Various economic sectors in Turkey particularly textile, sex and entertainment, construction, and tourism rely on the form of cheap labour provided by irregular migrants, while upper and middle-class Turkish families employ female domestic helpers as babysitters or care-givers for the sick and elderly. Another group of irregular migrants involves transit migrants who come to Turkey mainly from the Middle East (Iran, Iraq and recently Afghanistan), and from Asian and African countries (Pakistan, Bangladesh, Sri Lanka, Nigeria, Somalia, and Congo). Turkey has been a key actor in international transit migratory movements for the last two decades due to its strategic location on European-Asian transnational space. Thousands of migrants, with the intention of temporary stay, enter Turkey and find their way to the developed countries in the West and North. The last category for immigration is asylum seeking temporary migrants.

The changing patterns of migration into and out of Turkey, and Turkey's efforts to become a member of the EU are generating pressures for a renovation of migration policies. So, this report includes ways in which Turkey's legal system frames and understands 'temporariness' of mobility. The aim of this review is to highlight the relevant issues concerning temporary migration for promoting better management and practices.

## Existing Research on Temporary Migration and Turkey

This section includes a brief historical background about migratory movements in Turkey, and a general review of scholarly work on temporary migration in Turkey, mostly published during the last decade.

### Historical background

#### *Emigration*

Although Turkey has a long history of migratory flows, within the context of temporary emigration in ethnic and national sense, large-scale labour emigration to Europe began with a bilateral agreement signed by the governments of Turkey and Federal Republic of Germany in 1961. West German economic boom was the reason for the labour recruitment agreement and it coincided with the growing internal migration in Turkey from rural regions to major urban areas. The agreement intended to provide the Germany's growing economy with temporary unskilled labour, called as "guest workers", which implied only a temporary stay without permanent settlement. Turkish state also perceived this programme as a temporary process, especially from a developmentalist perspective, because the workers were expected to return to Turkey with new skills and they would help re-establish the Turkish economy from rural agriculture to industry. So, Turkey signed similar bilateral migration agreements with other European countries, including Austria, Belgium, Holland, France, and Sweden. According to the official records in Turkey, 649,000 of immigrants went to Federal Republic of Germany, 56,000 to France, 37,000 to Austria and 25,000 to the Netherlands, making the total of 800,000 workers who were hired in Europe through the Turkish Employment Service (TES) between 1961 and 1974 (İçduygu, 2009: 4). Many of these guest workers baffled expectations of being temporary by settling down and even bringing their families to join them. Drawing on numbers of arrivals of Turkish citizens in several migrant-receiving countries, an approximate estimate would be nearly 100,000 emigrants left Turkey annually by the mid-1970s (İçduygu, 2013). Most of them left Turkey to go to Europe and nearly half of them due to family ties with those already living abroad. Their stay ranged from long-term visits for at least three months to long-term residence permits for a year or family reunification schemes.

During the first tide of emigration, female participation was very low according to Abadan-Unat (2011). In time, women became migrants themselves and host countries made migratory policies towards family reunification. As a result, women migrant population increased in Europe. For instance, while only nine per cent of the emigrants in Germany were females in 1962, this proportion had reached to 25 per cent of all emigrants in about ten years.

As it is mentioned, this early flow of labour emigration is perceived and framed in state-led developmentalist policies. As İçduygu and Aksel (2013) observes, the benefits of the European labour requesting countries were to respond to the post-war labour shortage via short term migration from less developed countries, while the expectations of the labour requested countries were to send migrants abroad, in order to benefit from emigrants' economic (export of surplus labour power and remittances) and social (transfer of knowledge) capitals that they would accumulate in Europe. For both European countries and migration sending countries, this type of migration was assumed to be temporary. The total number of migrants from Turkey, who were involved in this form of temporary migration, is estimated about 2 million (Pusch and Splitt, 2013: 133).

Labour recruitment programme of Western European countries ceased because of the economic recession due to the oil crisis in 1973, accompanied with an economic boom in the Middle East demanding labour. Turkish workers started to emigrate to countries such as Libya, Saudi Arabia, and Iraq and some North African countries. The total number of emigrant workers in the MENA countries



was over 700,000 from the mid-1970s to the mid-1990s. However, the Gulf War in 1991 has led to a reduction of Turkish labour migrants in those countries. Therefore, by 2000s, the number of Turkish workers in the MENA countries was less than 100,000 (İçduygu, 2009). This migration programme was temporary and generally did not involve emigration of family members.

In the meantime, 1990s marked by a third wave of labour migration. Turkish companies signed construction and industrial contracts in the Russian Federation and in other CIS countries, making possible for construction workers, engineers, and managers to migrate as contract-based and therefore of a temporary nature. According to İçduygu et al. (2013), the volume of Turkish labour migration to these states started to increase steadily from 8,000 workers in 1992 to over 20,000 in 1993, and later to over 40,000 in 1994. It declined to 26,000 in 1996. In 2005, there were more than 70,000 Turkish workers employed in the CIS countries. Overall, in the period of 1990-2005 there were over 150,000 workers who left Turkey to work in the CIS countries.

Along with labour emigration scheme, since the beginning of the 1980s, Western Europe was primary destination for asylum seekers who have been looking for protection from the consequences of the *coup d'état* in 1980 in Turkey and the increase in the violence surrounding efforts by Turkish state to suppress the Kurdish movement. According to official statistics, approximately 350,000 people were forcibly moved from their residence because of the violence surrounding the Kurdish issue in Turkey from mid-1980s to end of 1990s. However, the research conducted by Hacettepe University Institute of Population Studies reveals the number of displaced people between 950,000 and 1.2 million (HÜNEE, 2005: 5). The majority of these displaced people were Turkish citizens with Kurdish origin. According to Fassman and İçduygu (2013), "over the last three decades, while nearly 700,000 asylum seekers from Turkey arrived in Europe, only approximately 17% of these were able to get refugee status." Some of those who are not granted with refugee status managed to stay in Europe as irregular migrants.

As a more current aspect of emigration, the last decade have witnessed an increase in the number of highly skilled migrants and tertiary level students moving to Europe and the CIS countries. There were also long established emigration flows to Australia, Canada and the United States mostly with intention of permanent stay (İçduygu, 2012). Today, it is estimated that there are around 3.7 million Turkish nationals living abroad according to Eurostat data, of whom approximately 3.3 million are in European countries, making an important increase from 600,000 in 1972 (Fassman and İçduygu, 2013: 353-354).

After the start of accession negotiations with the EU by December 2004, the debate of Turkish immigrants in European countries and further emigration possibilities from Turkey have appeared among major issues. While several in Europe believe that large numbers of Turkish immigrants have actually integrated well, participating in political arena and are also seen as contributing to job creation, others consider that many Turkish immigrants have failed to merge with their host communities.

### *Immigration*

While the actual tendency of migratory flows from Turkey has been declining, immigration patterns of non-Turkish origins to Turkey emerge as a new phenomenon especially for the last three decades. Historically, migratory flows into Turkey were used as a strategy to create a country with a homogenous sense of national identity, in an ethnically and culturally diverse land, by the founders of the modern Turkish nation-state. Therefore, first Muslim Turkish speakers, and later people who were considered to belong to ethnic groups that would easily fade into a Turkish identity (such as Albanians, Bosnians, Circassians, Pomaks, and Tatars from the Balkans) were encouraged and accepted as immigrants. According to Kirişçi (2007), more than 1.6 million immigrants came and settled in Turkey from the establishment of Turkey in 1923 till the end of 1990s and these immigrants were



successfully intergrated into the “Turkish” national identity. In the same period, only an insignificant number of immigrants came from outside this specific geographic area and mentioned ethnic/religious groups. Law on Settlement of 1934, the major legislation that governed this policy, actually limited immigration to Turkey to people of “Turkish descent and culture.”

State-supported immigration flows has been discouraged by the early 1970s, “on the grounds that Turkey’s population had grown enough and that land to distribute to immigrants had become scarce” (Kirişci, 2007: 93). However, the constraints were not affective for 300,000 Turks and Pomaks who were expelled from Bulgaria in 1989. As Kirişci (2007) points out, one third of these refugees returned to Bulgaria after the regime change and the rest acquired Turkish citizenship.

For the last 25 years, Turkey has received different migrant groups (transit migrants, irregular workers, professionals, students, retirees, asylum seekers and refugees) from diverse ethnic and religious backgrounds migrating for various purposes both regular and irregularly. This type of mobility turns Turkey into a country of destination as well as transit in addition to its traditional emigrant characteristic. In terms of regular migration, according to the Ministry of Interior, of the 320,000 residence permits granted to foreigners in Turkey in 2012, 42,000 were for work, 57,000 for study, and 61,000 were granted for family reunification purposes (İçduygu, 2013). The regular migration into Turkey includes different categories. One category is the migration from the Former Soviet Union countries, the Balkans and the Middle East. Most of them are ethnic-Turkish foreign nationals who come to Turkey for work, study and family purposes. Other categories of the regular migration flow are the return migrants mostly EU citizens of Turkish origin, professionals who receive residence permits in Turkey, foreign students and lastly, life-style migrants, mostly from the EU and Russian Federation, who buy property in Turkey.

Especially for the time period from 1995 till the end of 2000s, the number of irregular migrants using Turkey as a transit route to Europe has increased. These people are mostly nationals of neighbouring countries in the Middle East such as Iraq, Iran, and Syria, as well as Afghanistan and Pakistan. According to official sources, there were nearly 95,000 reported cases of irregular migration in 2000 (İçduygu, 2009). İçduygu estimates the number of migrants using Turkey as transit is more than 50,000 by the beginning of the 2000s, considering the data available on migrants detained by security forces. The number has dropped to 40,000 by 2013<sup>1</sup>. Migrants from countries like Georgia, Armenia, Iran, Azerbaijan, Ukraine, Moldova, Russia, and the Central Asian countries may enter to Turkey rather freely either without visas or with visas that can easily be acquired at the borders. Most of these immigrants are involved in small-scale trade, forming shuttle or circular migration as a form of temporary migration. However, some overstay their legal status and work as irregular labourer in domestic housework, entertainment and sex, construction and tourism sectors (İçduygu and Yüksek, 2012). Some EU countries are putting pressure on Turkey to cut this transit migration including human trafficking, mostly women. Although it is very hard to gather sound data, since the numbers of irregular migrants have been in decline, one can assume that government actions may be resulted in reducing the use of Turkey as a transit route. Turkish government added new articles to the Penal Code criminalizing human smuggling and trafficking in August 2002.

In terms of receiving characteristic, Turkey is also a country of asylum. Although Turkey has signed the 1951 Convention relating to the Status of Refugees as one of the endorsers, it still maintains “geographical limitation” as asylum management. According to the geographical limitation, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy:

*The first tier centres on Europe and is deeply rooted in Turkey’s role as a western ally neighbouring the Soviet Union during the cold war. During that period, in close cooperation with the UNHCR, Turkey re-*

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<sup>1</sup> Turkish National Police, <http://www.egm.gov.tr>, retrieved on 2 April 2014.

*ceived refugees from the Communist Bloc countries in Europe, including the Soviet Union. During their stay in Turkey, such refugees enjoyed all the rights provided for in the Convention. However, only a very small number were allowed to stay in Turkey, often as a result of marriages that took place with Turkish nationals. ...the Ministry of Interior (MOI) has indicated that some 13,500 asylum seekers benefited from the protection of the Convention between 1970 and 1996. In addition, approximately 20,000 Bosnians were granted temporary asylum in Turkey during hostilities between 1992 and 1995 in the former Yugoslavia. Since the adoption of the Dayton Peace Plan, many of these refugees steadily returned to Bosnia. In addition, in 1998 and 1999, approximately 17,000 Kosovars fled to Turkey and enjoyed protection from the ethnic strife in their homeland. The majority have since returned. The second tier of Turkey's asylum policy deals with people arriving from outside Europe... For a long time, the government allowed the UNHCR considerable leeway to shelter these asylum seekers temporarily, with the tacit understanding that they would be resettled out of Turkey if the UNHCR recognized them as refugees, and that those whose claims were rejected would be deported.... The situation was also aggravated by mass influxes of Kurdish refugees from northern Iraq, in 1988 and 1991, which amounted to almost half a million (Kirişci, 2007: 94-95).*

Until 2011, according to official figures, the number of asylum seekers reaches about 15,000 annually. Since the crisis outbreak in Syria in 2011, the figures have risen. Turkey grants asylum seekers temporary protection, however still continues to resettle those who are recognized as refugees outside of Turkey, mostly to North American and Scandinavian countries as well as Australia and New Zealand. Those whose applications are rejected are supposed to be deported to their country of origin, but many continue to stay in Turkey or try to move on to European countries without necessary documentation.

## Research related on temporary migration

Lack of clear definitions and empirical data are the major problems of research on temporary migration in Turkey. Although academic-oriented or policy-related literature on migration exists for a long time, conceptualization of temporary migration seems to be less referred. Nevertheless a significant amount of scholarly work has been done on various categories and indicators of temporary migration especially during the last decade. İçduygu (2008) elucidates this relatively new interest on temporary migration as, although it is an old phenomenon, volume and rate of temporary migration has increased since the beginning of 2000s because of transnational dynamics. "One of the particular differences distinguishes the new climate of international migratory flows from their predecessors is the significantly altered pattern of stay and return of migrants", İçduygu (2008: 12) states. These new patterns emerge in both emigration and immigration directions.

As for migration from Turkey, the labour movement to the Middle East, North Africa, Russian Federation and other CIS countries was different from the migratory movements to Western European countries because of its temporary nature of exclusively male workers' contract-based mobility (İçduygu, 2009). These workers were usually employed for duration of two years or their stay was completed by the end of work. Since a small proportion of those workers could be hired for a new project, return rate of them was very high. İçduygu and Karaçay (2012) define the contract migration consisting of usually unskilled or semi-skilled foreign workers who are admitted for a limited period, and it includes temporary contract migration, seasonal migration and project-tied migration. This type of temporary migration brought the changing dynamics of Turkish foreign policy by introduction new migrant worker profiles to different regions. These policy changes will be reviewed in the third section of this report.

Another study aiming to explore potential positive contributions of migrants includes highly skilled migrants, namely Turkish engineers living abroad as a category of temporary migration (Gökbayrak, 2009). According to this study, a contribution to the country of origin can be obtained from skilled labour migration in the forms of cooperative projects, establishment of networks, forums, and consultancy services to Turkish companies, independent from their return intentions. When it comes

to returnees, Bürgin and Erzene-Bürgin (2013) conducted a research on migration motivations of Germany-trained migrants with Turkish origin. The main finding is that family related reasons are the most important factor in migration to Turkey as a returnee. In contrast, a negative career outlook and/or experience of discrimination in Germany, highlighted in public discourse, played only a secondary role in return intentions. In another research on students' return tendency, Güngör and Tansel (2007) categorised various factors in determining return intentions: Having compulsory academic service requirement; respondent's initial intention to return; last visit to Turkey left a positive impression; social life abroad is assessed to be "worse or much worse" than in Turkey; inability to find a job abroad are among those factors. Furthermore, their findings reveal that probability of having strong return intentions declines with the length of stay in the host country.

As Tolay (2012) emphasises, immigration towards Turkey has become a significant phenomenon attracting more scholarly interest in recent years (such as Kirişçi, 2007, 2008; İçduygu, 2000, 2008; İçduygu and Yüksekler, 2012; Brewer and Yüksekler, 2009; Parla, 2007; Daniş, 2007; Südaş, 2011, 2012; Kaiser, 2012; Wissink et al., 2013). Some of these studies focus on different categories of immigration such as labour migration, migration of highly skilled professionals, refugees and asylum seekers, students, and life-style migrants, while others examine migration patterns according to its status of 'regularity'. İçduygu and Yüksekler (2012), categorizes refugees as a form of irregular migration along with transit migration, and shuttle or circular migration based on the purpose and manner of migration.

Turkey functions as a destination for migrants mainly coming for work purposes from countries like Moldova, Ukraine, Georgia, Romania and Russian Federation. These immigrants are mostly working in domestic sector, sex and entertainment, construction, textile and tourism sectors on temporary basis. According to İçduygu (2009: 10), these migratory movements "take place, in a sense, in the form of circular migration or shuttle migration with multiple trips back and forth by the same person" as a form of temporary migration. Majority of this type of migration is irregular. Post-1990 migration from Bulgaria to Turkey was another type of labour migration, started as regular but eventually turned in irregular type until 2003 law regulating work permits for foreigners, foreign nationals were not allowed to work in the domestic labour sector. According to Parla (2007), one possible reason for the predominantly temporary nature of this labour migration, is its feminization and the children left behind. Labour migration, regardless of its regular or irregular status, is the main form of temporary migration in Turkey.

Based on ethnographic inquiry, there are several studies on transit migrants including Iranian migrant networks (Koşer Akçapar, 2010), and Iraqi Christian migrants' religious networks (Daniş, 2007). In her theoretical and methodological discussion, Hess (2012) coins the conceptualisation of 'precarious transit zone' in order to explain the immigrant's constant mobility as a part of continuous temporariness. Similar to Hess's work, based on an empirical investigation in Izmir as a transit migration hub in Turkey, Wissink et al. (2013: 1087) discusses that "migrants' intentions in this transit migration hub are highly fluctuating because of their embeddedness in socio-institutional environments, which continuously affect migrants' social capital, risk perceptions and coping strategies" resulting in new migration intentions to emerge.

Refugees and asylum seekers, a category of irregular migration (İçduygu and Yüksekler, 2012), is frequently referred and studied as a form of temporary migration literature in Turkey, especially because of the Turkish legislation providing only temporary protection for non-European asylum seekers. Although most of the scholarly work on this type of temporary migration is policy-related (Kirişçi, 2001, 2002, 2006) there are also empirical researches. For instance, Koşer Akçapar (2006), based on her fieldwork, studies how conversion from Shi'a Islam to Christianity is used as a migration strategy by Iranian migrants and how and to what extent these asylum seekers use religion. More recently in a Migration Policy Centre's report, Özden (2013) provides an overview of Syrian migra-

tion to Turkey since the start of the revolt in Syria in March 2011.

As for regular temporary migration, there are two other types of migrants: life-style and students. The seasonal migration of retired Europeans and people from countries like Russian Federation towards the coastal areas of Spain, Portugal, France, Italy and as well as Turkey has marked especially the last decade. According to Südaş (2011, 2012) the Mediterranean and the Aegean coastal zone of Turkey have emerged as a new destination for life-style migrants from Northern Europe, especially from the United Kingdom and Germany. As migration for educational purposes, there are a few studies focusing on international students in Turkey. In a qualitative research conducted by Kondakçı (2011), student migration is examined in order to understand the geographical mobility patterns.

## Temporary Migration Policies

Since Turkey embrace both emigration and immigration (including transit) patterns, migration policy regimes in Turkey can also be overviewed in both directions. In terms of emigration, especially following the mass labour mobility towards Europe, in the 1970s, Turkey came up with three development programmes in order to both sustain temporariness and maximize economic growth by channelling remittance savings into employment-generating activities (İçduygu, 2012).

First, Turkish authorities supported the establishment of workers' joint stock companies that would invest in the less developed regions of the country in order to channel the funds to the less developed areas rather than developed ones. It is also aimed to create job opportunities to returning migrants. At the same time these companies would serve as a device for the economical use of migrants' savings as an efficient way of industrializing the regions of origin. More than 600 workers' companies have thus been created, with varying capital and numbers of shareholders. Unfortunately their role in fostering the development of less developed regions has been rather minimal due to various problems faced, such as project identification, financial and technical planning and management, and inadequacy of communications.

As a second programme, Village Development Cooperatives are created and supported by the state in order to reintegrate the return migrants' savings into the local economies. However, most of the co-operatives were really used as tools to facilitate more migration, because many of them aimed to secure jobs for their members rather than to realise productive investments in the villages through remittances. A third method to attract the savings of the migrants was the establishment of the State Industry and Workers' Investment Bank in 1975. The bank advocated enterprises organised by the state and private capital, including workers' remittances. However, this effort has also failed in channelling the investment resources into the less developed regions (İçduygu, 2012).

In the context of immigration, Turkey is an important actor in terms of migratory regimes because of its strategic location in between Europe, Middle East and North Africa. Paçacı Elitok (2013) outlines Turkey's immigration-oriented policy context in three levels: international, regional and national levels. On the international level, Turkey is one of the signatories and parties to many international agreements related to transnational migration such as the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and 1951 Convention Relating to the Status of Refugees.

In terms of regional context, Turkey ratified bilateral visa liberalisation agreements with some countries in the Caucasus and Middle East, including Syria, Lebanon, Albania, Libya, Tajikistan, and Azerbaijan. The number of irregular immigrants has increased due to relatively free mobility. In order to control the irregular migration flows, Turkey also signed readmission agreements with countries such as Bosnia, Greece, Russia, Moldova, Romania, Ukraine, and Syria. Turkey has also chaired Budapest Process, which is a consultative intergovernmental forum with over 50 governments and 10 international organisations aiming at developing comprehensive and sustainable systems for migration



governance. As Paçacı Elitok (2013: 164) states “the Budapest Process has adopted a new approach in the course of Turkey’s chairmanship: that the most effective way of preventing irregular migration is to lift the obstacles in front of legal/regular migration.”

When it comes to national level, especially since the accession negotiations started, Turkey has also been rearranging its migration policy framework in accordance with the common EU migration and asylum policies. To realise this effort, Turkish parliament passed two major laws: Law on Work Permits of Foreigners in 2003 and Law on Foreigners and International Protection in 2013 (to be implemented by April 2014). By doing so, Turkey attempts to regulate and institutionalise its migration framework for the first time. Other efforts include new legislative revisions of the Citizenship Law in order to protect immigrants’ rights in 2002 and changes in the Turkish Criminal Code increasing penalties for human traffickers in 2010 (Paçacı Elitok, 2013).

## Triggering factors in national migration policy formation after 2000s

The last decade has witnessed to a dramatic change in Turkish migration policy. Policies on both permanent and temporary migration have been restructured due to a variety of factors including shift on the migration profile of Turkey and willingness to conform the EU membership criteria. Turkey is known for a long time not having a descent migration policy scheme and especially regulations concerning immigration. Historically, the country was only interested in reaching out to its former nationals especially living in Europe, tying them to their “homeland”, and regulating remittances and the flow of human capital. Turkey’s actual transformation from an emigrant to an immigrant country urged the policy-makers to act upon to institutionalise immigrants’ rights.

Transformation of Turkey’s migration profile is coincided the EU accession process and both were effective in Turkey’s attempt to change its migration framework which is neglected for a long time. Initial start of the process of legislative changes in order to meet EU criteria at the beginning had been reoriented to Turkey’s implementation of reforms for its own sake. These changes include many social, economic and cultural issues including human rights and migration management. European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) had also played important role in compliance with EU criteria. According to Paçacı Elitok (2013: 166), “the high number of adverse verdicts and high amounts of compensation had also an accelerating impact on Turkey’s implementation of further improvements, especially in the case of asylum and forced migration.” In order to control irregular migration, provide a more clear regulation on asylum seekers and handle the issue of human trafficking, which are the major concerns with EU, Turkey had to come up with a new policy formation. Furthermore, radical changes in the migration regime were unavoidable because of the new forms of migration categories such as temporary migrants, circular migrants, highly skilled migrants, students, and life-style migrants.

## Legislative transformation in migration regime

There is no official definition of ‘temporary migration’ in policy or legislation documents in Turkey. Therefore, we use the definition provided by European Migration Network. According to EMN (2011: 14), temporary migration is defined as “migration for a specific motivation and/or purpose with the intention that, afterwards, there will be a return to country of origin or onward movement.” This definition includes two indicators of temporary migration, namely purpose of migration and duration of stay, which will be analysed from Turkish legislation documents.

Foreign nationals were not allowed to work in many sectors including the domestic sector, until the Turkish state enacted the *Law on Work Permits of Foreigners (Law No. 4817)* in 2003. This law facilitated labour migrants to acquire their legal documents in Turkey more easily. The enactment of this law enables immigrants to search for work and employment opportunities in Turkey and



messengers the state's more welcoming approach towards migrants. As İçduygu and Aksel (2013: 180) emphasises "the law aims to ensure that the work permit acquisition process in Turkey matches international standards, in particular to those of the EU." The concept of temporariness is framed in article 8 of the law and limited to "foreigners who will temporarily come to Turkey for a period of over one month with the aim of scientific and cultural activities, and for a period of over four months with the aim of sports activities". So, other than scientific, cultural and sports activities, migrants are not referred with temporary status.

In the framework of the Law on Work Permits for Foreigners and the law's application regulation, foreigners may not only work with an employer dependently, but also work independently on their own behalf. According to the law, there are three types of work permits granted by Ministry of Labour and Social Security: work permit for a definite period of time, work permit for an indefinite period of time and independent work permit<sup>2</sup>.

*Working permission for a definite period of time* is given to be valid for at most one year, according to the duration of residence permit of the foreigner and the duration of the service contract or the work, to work in a certain workplace and in a certain job. The Ministry may extend or narrow down the area of validity of the work permit restricted by terms by taking as basis the city, administrative border or geographical area. After the legal working duration of one year, duration of the working permit may be extended up to three years, on condition of working in the same workplace and in the same job. At the end of the three years legal working period, the terms of the work permit may be extended for a maximum of further three years to work in the same profession and with any employer of his/her discretion.

Foreigners having been residing in Turkey legally and uninterruptedly for at least eight years or having undergone a total working period of six years in Turkey may be granted a *work permit without terms*. While evaluating whether the condition has been fulfilled that the foreigner has legally and uninterruptedly resided for at least eight years, periods passed during education are not taken into consideration. The residence permit periods of foreigners, who have been given the work permit without terms, shall be determined by the Ministry of Interior in accordance with the regulations related to the foreigners' residence and voyages in Turkey.

*Independent work permit* may be given to the foreigners, who will work independently, on conditions that they have resided in Turkey legally and uninterruptedly for at least five years and their working shall have a positive effect on employment and economic development. While evaluating whether the condition has been fulfilled that the foreigner has legally and uninterruptedly resided for at least five years, periods passed during education are not taken into consideration.

There are exceptional cases for a foreigner to be automatically eligible for a work permit. For example, European Union citizens (and family) may be granted for longer than standard periods; or foreigners married to Turkish citizens categorised as having settled down and gain right to work after three years of marriage. An amendment to Article 5 of the *Citizenship Law* (Law No. 403, dated 11 February 1964) which had consequences for controlling irregular migration and protecting immigrants' rights was made on 4 June 2003. Previously, marrying a Turkish national could be enough in acquiring Turkish citizenship immediately. According to amendment, foreign nationals who are married to Turkish citizens will be able to become citizens of Turkey in three years after their marriage and citizenship is conditional on the continuity of the marriage over three years. In addition to the challenges mentioned, the precondition of being from "Turkish descent" of settlement in Turkey legislated by *Law of Settlement*, dated 1934, remains debatable. Although the law was revised in 2006, being "Turkish" is essential requisition in defining migrant.

Concerning social security rights, according to the 2006 *Social Insurance and Universal Health*

<sup>2</sup> In addition to the text of law, information is gathered from Ministry of Labour and Social Security, Department of Work Permit for Foreigners' website, <http://www.csgeb.gov.tr/csgebPortal/yabancilar/eng/>, retrieved on 11 May 2014.

*Insurance Law* (as amended in 2008) migrant workers, who conclude an employment contract such as seasonal workers who work at tourism sector for a certain period of time (there is only temporary permission) have to be socially insured for short and long-term social risks.<sup>3</sup> Self-employed migrants are also socially insured according to the law.

Turkey adopted the *Action Plan on Asylum and Migration* in March 2005 in order to complete the harmonisation with of EU legislation. According to European Council's decision on Accession Partnership process (European Commission, 2008), Turkey is expected to lift the geographical limitation to the Genoa Convention, to strengthen protection, social support and integration measures for refugees, to adopt of a comprehensive asylum law including with the establishment of an asylum authority and to control irregular migration in line with international standards. Turkey stated its intention to realise these reforms in the *Action Plan*, but secured the lifting of the geographical limitation to possible EU membership. The plan outlines tasks and the timetable of actions Turkey will take.

Ministry of Interior has announced an amnesty programme in 2012 for the regularisation of irregular migrants living in Turkey. Conditions to be able to subject to this amnesty programme included having a valid passport, being entered to Turkey legally and having paid the fine if they violated residence permit. Eligible migrants were allowed to get residence permit for six months and for once only. Unfortunately, the number of actual migrants who are amnestied was not announced by the Ministry. This amnesty programme was the first attempt by Turkish state to regularise the irregular migrants as an official action.

Among the reforms harmonising Turkey's legislation with EU *acquis*, the most important step has been the adoption of the *Law on Foreigners and International Protection* (LFIP, Law No. 6458, approved on 4 April 2013), to introduce a new legal and institutional framework for migration and asylum flows. The new law framed as institutionalisation of migrants' rights instead of status-quo of securitisation and emphasis made on controlling of irregular immigration and the attraction of highly skilled immigrants. Residence permits are granted according to the new LFIP. Article 19 of the law states that "foreigners who intend to stay in Turkey longer than the visa or visa exemption period or in excess of ninety days are obliged to obtain a residence permit"<sup>4</sup>. There are over six types of permit each specific to a foreigner's situation. They include permits for extended tourism, for work, for study, permits for the family members of a Turkish citizen and permits for foreigners buying property in Turkey. Table 26 shows types of residence permits, those who are eligible and durations granted. Only "long-term permits" are permanent, and all others are temporary among those six types of permit.

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3 C.f. Article 4 of the Social Insurance and Universal Health Insurance Law.

4 [http://www.unhcr.org/tr/uploads/root/law\\_on\\_foreigners\\_and\\_international\\_protection.pdf](http://www.unhcr.org/tr/uploads/root/law_on_foreigners_and_international_protection.pdf).

**Table 26** Types of residence permits and durations

| Types of residence permits                              | Granted to those who                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Duration                                           |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Short-term residence permit                             | <ul style="list-style-type: none"> <li>• intend to conduct scientific research,</li> <li>• possess immovable property in Turkey,</li> <li>• intend to set up commercial connections or establish a business,</li> <li>• intend to participate in in-service training programmes,</li> <li>• intend to come to Turkey for education or similar purposes under the scope of agreements that the Republic of Turkey is a party to or in the framework of student exchange programmes,</li> <li>• intend to stay for touristic reasons,</li> <li>• will receive medical treatment on condition that they do not carry an illness considered to be a risk to public health,</li> <li>• are required to stay in Turkey at the request or decision of judicial or administrative authorities,</li> <li>• are changing their residence permit from a family residence permit to a short-term residence permit,</li> <li>• intend to participate in Turkish language courses,</li> <li>• who intend to participate in study, research, internship or courses in Turkey through the mediation of public institutions,</li> <li>• apply within six months as of graduation date, among foreigners who have completed their higher education in Turkey.</li> </ul> | Maximum one year at a time (renewable)             |
| Family residence permit                                 | <ul style="list-style-type: none"> <li>• are family members of Turkish citizens,</li> <li>• are family members of foreigners holding one of the residence permits,</li> <li>• are family members of refugees and temporary protection status holders.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Maximum two years at a time (renewable)            |
| Residence permit for students                           | <ul style="list-style-type: none"> <li>• intend to pursue foundation, undergraduate, graduate or postgraduate studies in an establishment of higher education in Turkey.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | One year (extended throughout the course of study) |
| Long-term residence permit                              | <ul style="list-style-type: none"> <li>• reside in Turkey with a residence permit uninterruptedly for at least eight years (<i>except</i> those who are granted refugee status, conditional refugee status, holders of humanitarian residence permits and those who are granted temporary protection).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Permanent                                          |
| Humanitarian residence permit                           | <ul style="list-style-type: none"> <li>• foreign nationals who is in need of humanitarian protection and registered by the authorities without seeking the fulfilment of the requirements of residence permit.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Maximum one year                                   |
| Residence permit issued to victims of human trafficking | <ul style="list-style-type: none"> <li>• are victims of human trafficking.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 30 days                                            |

This new law is perceived as a sign of Turkey’s efforts to establish a migration governance system in line with EU standards. As İcduygu and Aksel put it, “with the new law, Turkey commits itself to taking necessary steps towards integrating immigrants into the country and treating asylum seekers and irregular migrants according to international norms” (2013: 181-182). The EU has recognised

and appreciated Turkey's adoption of reforms on migration related policies, especially in the middle of the Syrian refugee influx. These reforms are framed as "Europeanisation" of migration policies (Aydın and Kirişci, 2013).

Since Turkey did not have a law on international protection for asylum seekers, one of the most important contributions of the new LFIP is its section on international protection. In terms of asylum policies, in order to keep its geographical limitation condition to Genoa Convention, LFIP introduces the new status of "conditional refugee" for those to reside in Turkey temporarily until they are resettled to a third country. This new status facilitates refugees to acquire the basic rights in international standards. Those rights include access to education and health services.

Law on Work Permits for Foreign Nationals has already removed previous restrictions on immigrants to be employed in particular occupations. By the enactment of the LFIP, work permissions will be granted according to market determinants rather than the nationalities of the immigrants which result in the promotion of highly skilled temporary migration. Furthermore, concept of "harmonisation" is used, in line with EU's integration policies, aiming coexistence of foreigners and beneficiaries of international protection with Turkish society through a list of activities introduced in the Article 96 of LFIP. The new law also delivers a participatory approach for the first time by including intergovernmental organisations, NGOs and scholars in to migration management mechanisms. With the new law, Turkey is to ensure that migrants are not exploited then it needs to implement safeguards into its programmes and policies.

## Formation of new administrative institutions

Legislative framework on Turkish emigration was designed earlier in relation with labour-related reasons, family reunification and the regulation of the remittances. The policies related to the citizens abroad were not clearly defined and institutionalised. The Presidency of Turks Abroad and Related Communities affiliated with the Prime Minister's Office was established in 2010 in order to provide coordinated services and to conduct relations with citizens living abroad in line with the restructuring of Turkey's foreign policy. So, the Presidency carry out wide range of activities ranging from offering the required services to citizens living abroad to international scholarship programmes offered by Turkey in coordination with non-governmental organisations.

Another important attempt on institutionalisation of migration administration is the formation of the Asylum and Migration Bureau and the Border Management Bureau under the Ministry of the Interior in 2008. The Asylum and Migration Bureau is tasked with improving the quality of the national refugee status determination procedures and other asylum related issues. Later, the new LFIP officially declares the foundation of the General Directorate of Migration Management, which is established under the Ministry of Interior and will be a hub for implementing and regulating the entry, stay and exit from Turkey for foreign nationals, and for the protection of the rights of migrants and asylum seekers. Formation of such an organisation indicates an essential change at the operational and institutional levels in Turkey's migration related policies.

Formation of General Directorate of Migration Management by the LFIP is also a major attempt to improve the collection and compilation of data on international migration in Turkey. General Directorate will employ a computer-based data management system (*GÖÇ-NET*) to connect local and international duties. This electronic network will hopefully include all the necessary information on any mobility in and out of Turkey. Moreover, as it is mentioned in LFIP, an annual migration report including migration statistics will be published regularly by the co-operation of General Directorate and Turkish Statistical Institute. It is announced that the first report will be disseminated in February 2015. After a long time, these attempts are concrete signals to systematise any significant progress in gathering data on international migration.

## Bilateral and multilateral agreements

Besides the national legal framework, a few critical issues have been tried to be resolved through bilateral agreements: visa policy, asylum policy and social security issues of Turkish workers abroad as a part of temporary migration arrangements.

Visa policies are vital, since the visas are influential tools for nation-states in order to control migration flows. In order to restrain irregular temporary migration, Turkey has been using border control and surveillance mechanisms including visas. Turkey signed visa liberalisation agreements with a number of its neighbours in the Caucasus and Middle East, i.e. Syria (2009), Lebanon (2010), Albania (2009), Libya (2009), Jordan (2009), Tajikistan (2009), Azerbaijan (2009), Georgia (2011). As Özler (2013: 52) observes, “by granting visa liberalisation to its neighbours, [Turkish] government intends to intensify trade and tourism opportunities as well as to improve neighbourly relations at a time when Europe is suffering from a severe economic crisis”. Visa liberalisation policy almost tripled the numbers of entry from neighbouring countries between 2003 and 2012. This means increase on shuttle migration, the number of over-stayers and also Turkish business/labour flow to immediate neighbours.

EU has been using visa liberalisation to expand its soft power. The visa liberalisation process with EU follows a pattern of conditionality whereby Turkey should fulfil a benchmark before the abolition of the visa regime. With respects to EU visa policy towards Turkish citizens<sup>5</sup>, a Readmission Agreement (RA) is under negotiation. To establish a visa-free regime, EU and Turkey signed the RA and launched a roadmap on the visa liberalisation dialogue “in a combined and parallel manner” on 16 December 2013 in Ankara. The roadmap includes two specific issues: a set of requirements in the area of readmission, and a reinforced consultation with the Council, member states and EU agencies. The agreement will regulate procedures on irregular migrants transiting through Turkey to reach EU destinations and that are caught in EU member states will be repatriated to their home countries after temporary stays in Turkey. This issue has been received with scepticism in Turkey (Kirişci, 2014) especially in terms of Turkey’s EU accession, since visa liberalisation discussion fall into the framework of EU’s policy of conditionality.

Concerning social security issues, bilateral social security agreements (BSSA) are signed with the countries where Turkish citizens live in order to guarantee their social security rights both in home country and host countries. Turkey has ratified 17 BSSAs with European countries (United Kingdom, Germany, Netherlands, Belgium, Austria, Switzerland, France, Denmark, Sweden, Norway, Macedonia, Romania, Bosnia and Herzegovina, Czech Republic, Albania, Luxemburg, and Croatia), the first one of which dates back to 1959. Half of the conventions were concluded with countries that are currently EU Member States. The early social security conventions have been modified (i.e. the agreements with Germany, Belgium and the Netherlands) or even completely replaced (the agreement with Austria in 1966 and 1982; the agreement with Denmark in 1999). Turkey has also signed BSSAs with five non-European countries: Azerbaijan, Georgia, Libya, Quebec, and Canada.

Traditionally BSSAs were connected with labour recruitment policies of European countries and were done with labour exporting Third Countries such as Yugoslavia, Turkey or the North African countries. Since the main intention was to attract the labour force for a temporary period of time, BSSAs usually did not legislate the conditions of integration. Instead, these agreements aimed to protect rights when the migrant workers returned to their home-countries or for family members who remained there during the activity of temporary work.

Even though a comprehensive bilateral social security agreement has not been concluded yet, an

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<sup>5</sup> Visa applications from Turkey to EU countries have increased by 38% in the period from 2009 to 2012, from 480,000 to 670,000, with a 4.5% refusal rate. It makes about 4% of total Schengen visas issued (European Commission, 2013).



agreement, which allows the pension of Turkish citizens retired in Bulgaria to be transferred to Turkey, was signed between Turkey and Bulgaria. There are also on-going negotiations on BSSAs with Algeria, Belarus, Bulgaria, Ireland, Morocco, Poland and Ukraine.

Turkey also ratified European Convention on Social Security as the only non-EU country. This convention has the function of a binding multilateral agreement for Austria, Belgium, Italy, Luxembourg, Netherlands, Portugal and Spain as the signatories. In general, The BSSAs and the Convention allow Turkish citizens to be equally treated by related authorities abroad in terms of their social security rights and responsibilities, and also provide them with opportunities to unite their insured services in Turkey to secure their return.

## **Conclusions and Recommendations**

Turkey is both emigration and immigration country, and at the same time a transit country between Europe and Asia. Beginning with Turkey's historical background on migration, the report reviewed the literature on temporary migration. This literature review revealed the major categories of temporary migrants in Turkey. Most of the migration appears temporary and it is gendered along different sectors of employment. Turkey's changing migration patterns, namely becoming a more immigrant country, has resulted in new legislation efforts especially since the beginning of 2000s. Especially the enactment of the Law on Work Permits of Foreigners in 2003 is comprehended as a breakthrough since it enables foreign nationals' search for work and employment in Turkey.

Another important development in Turkish legislation concerning immigrants is the adoption of the Law on Foreigners and International Protection which introduces a new legal and institutional framework for migration and asylum scheme. The new law is very important in introducing a new understanding of migration management policy coordinating with intergovernmental organizations, NGOs, and scholars. These reforms are framed as conforming to European migration policies. Yet, some concerns arise on the actual implementation of new Law on Foreigners and International Protection: whether the law will be able to provide a balance between a humanitarian approach and the security perspective is not clear yet, especially because Turkish legislation is still far from right-based understanding. Another concern is Turkey still holds 'geographic limitation' criteria on 1951 Convention Relating to the Status of Refugees, though the new law is meant for a better legislation of asylum seekers. Another conclusion is the state tends to define the status of people as temporary migrants even their own intention may become permanent, although there is no official definition and reference of 'temporary migration' in Turkish policy or legislation documents. Present legal framework outline migration patterns by influencing length of stay, and routes of entry. Turkey seems to protect the scheme of temporary migration by introducing new bilateral and multilateral agreements on such as pension transfers, and visa liberalisations.

Despite the international and national recognition of temporary migration in the scholarly works and new legislation in Turkey, temporary migrants themselves have received little attention in the institutionalization of their rights. The lack of conceptual recognition is noticed initially which reflects political and legal invisibility of this form of migration and available legislative framework is far from responding the potential and flexibility of temporary migration. Since irregular immigration and border management remains important issues in order to achieve the goal of conforming common EU policies, implementation of new laws and practices of newly emerged institutions seem more important.

As for recommendations to policy makers and other stakeholders, complementary policies in pension transferability are necessary to facilitate temporary migration flows and the benefits from such migration. National policies are needed in order to attract especially high skilled migrants. For the last three years, the influx of Syrian migrants reaching the number of one million refugees marked

immigration pattern in Turkey. Turkish government's non-transparent policies towards Syrian refugees and evidence of anti-immigrant rhetoric raise concerns on both Syrian refugees and Turkish citizens. Especially concerning Syrian refugees, income generation projects, training and educational programmes should be developed and carried out in cooperation with local and regional stakeholders.

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## 4.11 TEMPORARY MIGRATION IN UKRAINE

Petro Chorniy, Oksana Hodovanska, Ihor Markov, Svitlana Odynets, Danylo Sudyn, Anna Trofimova, Ganna Zaremba

### Introduction

#### Historical background of migratory movements and policy responses in Ukraine

Researchers studying Ukraine usually mention a misconception regarding its physical and political geography. Some of them treat Ukraine as a central European country, while others view the country through the prism of a buffer zone between the East and the West (Lysiak-Rudnytsky, 1994). Long periods of political uncertainty in Ukrainian society, continuing political upheavals caused by both internal and external factors are related to this.

On the other hand, Ukraine has always been a transit country due to its geographical position: for instance, in IX–XII centuries the trade route “from the Varangians to the Greeks”, which connected northern and southern parts of Europe at that time, took place through modern-day Ukraine. Nowadays, experts claim that Ukraine is a trans-territorial zone with the largest transit coefficient in Europe<sup>1</sup>. International transit and export-import flows go across the country.

Almost all types and forms of migration known from history are characteristic for Ukraine. This country has one of the largest Diaspora, mostly formed by three huge “migration waves” in Western and Eastern directions in XIX–XX centuries<sup>2</sup>.

One of the largest migration corridors in Eurasia goes across Ukraine, and migration was especially intensive at the edge of historical epochs. Let us compare: the great migration of peoples to the territory of Roman Empire from the fourth to the sixth centuries went across Ukraine in its current political borders and resulted in creation of ethnic structure of Europe which remained relatively stable until the XXI-st century. According to the World Migration Report from 2013, migration corridor “Russia–Ukraine”, and “Ukraine–Russia” yielded only to the world’s largest migration corridor Mexico–USA in view of the number of immigrants who passed them in 2010. Ukraine, together with the United States, the Russian Federation, and India belongs to the top migrant-sending and receiving countries in the world. For South–South, the largest after South–North migratory flow (Euro–Asian transnational space belongs to it too) such countries as the Russian Federation, Ukraine and India are both major donor and recipient countries (World Migration Report, 2013).

Ukraine received a specified position in the global migration record during the previous 20 years after the collapse of Communism and the Soviet Union, and further transition of the new independent states to market economy. The former mitigated the “Iron Curtain” of totalitarian regime that deprived people of the possibility to move from one country to another, while the latter stimulated them to intensify movements, i.e., to migrate in search of work and higher income. The renewal of the possibility of free movement across the borders and across the territory of Ukraine, and Ukraine’s de facto open eastern border with Russia soon re-established its geo-strategic advantages of location between historic East and West in the sphere of migration: 1) all time forms of trans-border migration became characteristic for Ukraine – circular migration in the regions close to the border, seasonal and long-term migration, permanent emigration and immigration, transit migration; 2) the moving of

<sup>1</sup> According to economists, Ukraine holds the top rank in Europe in terms of transit routes (the transit index of Ukraine is – 3.75, Poland – 2.92 (second position).

<sup>2</sup> According to IOM, the number of people from Ukrainian Diaspora is between 12 and 20 million. The countries with the largest Ukrainian Diaspora are: Russia – approx. 2 million people, Canada – approx. 1.5 million people, USA – 900,000, Brazil – 600,000, Kazakhstan – 500,000, Moldova – 350,000 (Migration in Ukraine: Facts and Numbers, 2013:7).



people related to Ukraine became a component of global migration movements.

The above stated suggests an interesting viewpoint on Ukraine as “an open field of external migration”. Additional circumstances – independence achieved quite recently, absence of clearly defined migration policy of Ukraine and lack of adequate regulatory mechanisms in the sphere of external migration including relevant categorical apparatus of social and legal classification of flows and groups of migrants, – all these make such approach more distinct.

## The characteristics of temporary transnational migration

We consider modern Ukraine as the country which embraces “two circles” of transnational migrations, of which one can supposedly be called “inner” and another “outer”. The first one includes the migrations of Ukrainians starting from the 90’s of the last century and lasting till now, – these are the majority of the groups of migrants selected by us: intellectual migrants (students, researchers and academics, skilled specialists), labour migrants, immigration and transit migration, humanitarian migrants (refugees, human trafficking), lifestyle, potential and return migrants.

Among the Ukrainian researchers, there are two approaches to assess temporality of modern Ukrainian migration: 1) “linear” approach by which temporality of migration (temporary or constant) is measured by the number of years modern Ukrainian migrants spend outside Ukraine: for example, a modern worker living in the host country for a certain period of time, say, over 10 years can be considered a representative of the Diaspora, however, retaining Ukrainian citizenship (not to mention adopting the nationality of the host country); 2) the development of Ukrainian migration process on a “horizontal circulation” is a periodic movement of migrants from one country (or region) to the other in search of better living and working conditions in which the country of origin becomes one of the “links” of movement. This means that even a return to the country of origin (return migration), as well as the specific time period of stay in the host country for more than a year / decade – for migrations after 1991 should not be considered a criterion for migration transition from “temporary” to a “permanent” state. Within this second approach to temporality we have to say that the starting factor combines several known types of migration, integrating them into a new quality, which poses a need for new typology of temporary mobility.

The second characteristic of temporality external migration is supported by our research group, based on numerous field studies of Ukrainian external migration in the EU and Russia. From the perspectives of the researches for 25 years the scholars agree on gradual increase in the number of Ukrainian migration and rise in duration of migration.

The second, “outer” circle of Ukrainian transnational migration is immigration and transit migration through Ukraine from the East and from the South to the West, mainly to the EU. These migrations in Ukraine are almost unexplored.

The representatives of CIS countries are prevailing among the migrants. These are Georgians, people from Southern-Eastern Asia and Middle East, Africa. In recent times, the illegal migrants have been arriving even from the region of Caribbean (Malynovska, 2010).

The existing data show that immigrants most often consider their stay in Ukraine as a possibility of further immigration to the EU countries, or, vice versa, the primary intentions of further moving to EU change to a permanent residence in Ukraine. The latter example also indicates “the relativity of permanence” and allows using the principle of temporariness for all groups of immigrants in Ukraine, except for the nations and ethnic groups which were deported by Stalinist regime and those returning to Ukraine after the declaration of its independence in 1991. According to state statistics, the classification of immigrants can look like this: migration for business and diplomatic purposes; tourism; migration for private purposes; study migration (students); migration with purposes of employment; immigration; migration for cultural, sports or religious purpose. Still, the data received in sampling

studies show that officially declared reasons for in-coming and outgoing migrations are often not true. Therefore, the data of the official statistics must be used with caution, and the goal of our future research is to compare the ratio of the examined by us groups of external migrants from Ukraine with immigrants and transit migrants

## The Current State of Research

### Research overview

The thesaurus of works by Ukrainian scholars in the field of migration for the period of twenty years embraces main spectrum of themes pertaining to it. In the first place, these are: modern massive labour migration of Ukrainians, immigration into Ukraine and transit migration through its territory, human trafficking, migration policy of Ukraine and donor-countries and migrants recipient countries, migrations within Ukraine, the history of Ukrainian Diaspora. The researches tackle key characteristics of migration process: types, geography and scale of migration, regional, social, age, educational-professional, gender and other aspects, not to mention the problem of influence upon labour market.

Some Ukrainian researchers and institutions compiled synthetic and encyclopaedic publications in the sphere of migration (Rymarenko, 2003; Poznyak, 2007). Recently the Kyiv Institute of Law of the National Academy of Science issued the first in Ukraine manual for university students edited by O. Malynovska (Malynovska, 2010).

Regional, national and international forums dedicated to various aspects of migration often take place in Ukraine. Their participants are representatives of government, academic institutions and non-government organizations. The results of the research are usually presented in the form of reports, presentations or surveys<sup>3</sup>. Some of them (for example, international scientific-practical conferences dedicated to Ukrainian migration organized by the International Institute of Education, Culture and Cooperation with Diaspora at National University “Lviv Polytechnics”) are conducted on a regular basis (Onyshchuk, 2010).

A special feature and at the same time a drawback of Ukrainian migration studies is the fact that most researches are focused on the so-called “fourth wave” of mass external migration of Ukrainians in the previous 150 years (the “fourth wave” began after the collapse of the Soviet Union and declaration of independence of Ukraine), while immigration and transit migration attract little attention.

Moving out of Ukraine to find work near and far abroad, predominantly to the EU in its current borders, and to Russia, became the most widespread type of migration of Ukrainian citizens. Starting from 1992–1993 (the beginning of mass labour migration of Ukrainians abroad) and up to now Ukrainian scientists and journalists are trying to trace the evolution of this process. We offer a short overview of research publications further.

In 1994 and in 2002 two ethnology researches of labour migration were carried out in the city of Chernivtsi and the village of Prylbychi (Lviv region) with the use of in-depth interview method. The results of research allowed making a comparative analysis for learning the scale and characteristics of labour migration from Ukraine during 8 years (Pyrozkov 2003). Comparative results show the development of migration from retail trade pendulum trips for several days (purchasing goods in one country and selling them in another) to seasonal and often even longer labour migrations; changes in educational level of the migrants (first they had university degrees, and later migrants had only high school education, and these were mostly young people). Also, the researchers noticed increase of the list of countries the migrants travel to: Italy, Spain, and Portugal were added to the neighbouring Poland and Russia, and socio-economic influence of migration on the improvement of life standards was also detected.

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3 See: <http://www.openukraine.org/en/programs/migration>

Labour migration is a form of self-organization of the society, and the migrants belong to the most socially active and entrepreneurial segment of society who abandoned paternalistic illusions. Researchers who participated in the mentioned research project are: S. PyrozHKov, O. Malynovska and O. Khomra (PyrozHKov, 2003: 127). They drew attention to the flaws and gaps in Ukrainian legislation, inability of the government to show relevant reaction to the new social phenomenon. Spontaneous nature of the labour migration and drawbacks of the legislation also resulted in criminalisation of migration: numerous breeches of law, corruption and racketeering.

The results of the survey were used for offering major governmental strategies for migration issues, aimed, first and foremost, at protection of interests of labour migrants during their stay abroad; giving better conditions for their return and creating opportunities for their self-realisation in their native country.

In 1990–2000, Ukrainian scientists carried out a range of researches on labour migration: migration potential of the regions of Ukraine, the influence of labour migration on political orientation of its participants, changes of migration behaviour of the residents of localities near the state border after visa regime was introduced for Ukrainian citizens to travel to neighbouring states, socio-demographic characteristics of the migrants, geography of their travel, employment procedures, employment abroad (Pribytkova, 2002; 2009; Khomra, 1993; 1996). A research on development of migration exchanges between Ukraine and Belarus was carried out under the supervision of E. Libanova, academician of the National Academy of Sciences of Ukraine (Libanova, 2002).

Summing up the survey conducted among the residents of western Ukrainian border, O. Malynovska came to a conclusion that the introduction of visa regime by the neighbouring states will have negative impact on “the level of trans-border cooperation, socio-economic situation in the regions close to the border, intensity, character and direction of migration movements of the population”. The researcher allowed for the migration to anyway take place in its distorted forms after visa regime is introduced, as soon as there is a need for workforce in European countries. The researcher offered several hypotheses which were proved later: due to a growing need for workforce in European countries, Ukrainians will enjoy an advantage of their high qualifications and minimal cultural differences comparing to migrants from other countries; transition of workforce from Central European countries to Western European countries will open a market niche in many industries, and the demand for both qualified workforce and labourers from Ukraine in the new EU member countries will increase (Malynovska, 2004: 151–152). O. Malynovska stated that state control measures from European countries aimed at holding immigration back, turned out to have low results. Their high costs and low effectiveness create the need in new approaches to regulation of migration, expressed by the term “controlled openness” (Malynovska, 2004: 83).

A monitoring research by Ternopil regional employment centre in 2001, 2004, and 2008 focused on migration in rural areas deserves special attention. The researchers extrapolated the results to all Ukrainian population, and having estimated the rate of migration in Ternopil region as an average, calculated that 2,000,000 of Ukrainians work abroad (Dovzhuk, 2007).

During last decade, a large number of researches on return and reintegration of migrants was carried out in Ukraine (*Social Indicators Centre*, 2008). Another field of interest is the studies of public opinion on labour migration in Ukraine. Studies on life of migrants’ children who stay in Ukraine raised a wide discussion. Another difficult issue related to labour migration is human trafficking.

Specialized all-Ukrainian research on labour migration and its consequences for Ukraine was conducted by State Statistics Committee of Ukraine. The first research was conducted in 2001, with 8,000 households surveyed in eight regions close to the state border of Ukraine. The results of research allowed estimating the size of labour migration as minimum of 1,000,000 of persons. In June 2008, the State Statistics Committee of Ukraine conducted and in 2012 repeated the national sampling research of the households on issues of labour migration. The research encompassed all regions of Ukraine and

was based upon territorial probability sample of the households (Libanova, 2009; 2013). The survey of 22,000 of the households all over Ukraine was carried out “with the purpose of evaluation of the scale, dispersion and geographical directions of the flows of external labour migration, socio-demographic characteristics of the migrants and their employment for formation of socio-economic policy regarding this social issue” (Libanova, 2009).

The researchers (academician E. Libanova, O. Poznyak et al.) claim that 1.5 million of Ukrainian citizens worked abroad between 1 January 2005 and 17 June 2008<sup>4</sup> and 1.2 between 1 January 2010 and 17 June 2012 (ILO, 2013)<sup>5</sup>. Supervised by E. Libanova, these two studies were the largest ever national researches carried out among Ukrainian households. The main destination countries of Ukrainian labour migrants were the Russian Federation (43.2%), Poland (14.3%), Italy (13.2%), the Czech Republic (12.9%), and Spain (4.5%) (ILO, 2013). The majority of labour migrants in the second SSCU survey (57.7 per cent of the total number of migrant workers) originated from the western regions of Ukraine: Volyn, Rivne, Khmelnytsky, Ternopil, Ivano-Frankivsk, Chernivtsi, Transcarpathian and Lviv (Libanova, 2009). More than half (54.3%) of the total number of Ukrainian migrants came from rural areas. Western regions had the highest proportion of female migrants (38.3%), the South had the lowest (20.8%) and the Northern regions (20.4%) (ILO, 2013). In the 2009 Survey almost a third (31.8%) of migrants from the western regions worked in the Russian Federation during 2005–2008. Only every seven migrant worked abroad for more than 12 months between 1 January 2010 and 17 June 2012. There were more women (24.1%) than men (8.9%) in the category of long-term migration and it was also dominated by urban residents (18.1% urban migrants vs. 10.8% rural) (ILO, 2013).

At the same time (2006–2011), a research group of International Charity Foundation “Caritas Ukraine” in the cooperation with the Ethnology Institute of the National Academy of Sciences of Ukraine and the Laboratory for Social Research in Lviv conducted a comprehensive study of the processes of Ukrainian migration in the EU and the Russian Federation. In design, the study was to embrace a full range of relations of Ukrainians on earnings abroad: living and working conditions, especially the formation of immigrant environment in the host country, their relationships with migrant workers from other countries, with employers, citizens and authorities of the host countries, the motives and ways of leaving Ukraine for other states for work and employment there, the development of migrant networks involving Ukrainians and social partnerships in host countries, forms of self-organization of modern Ukrainian immigrants and their ties with homeland, the development of spiritual culture, changes of factors of social choices shaping life strategies, the formation of migration policy of Ukraine and host countries – the EU and Russian Federation.

The study covered seven EU countries, the most crowded of immigrants from Ukraine: Italy, Greece, Spain, Portugal, Ireland, Poland and the Czech Republic. The basis of the research is a combination of qualitative and quantitative methods. Within the project the researches attempted to apply the methodical triangulation, i.e. the combination of information flows (including statistical analysis and all sorts of circumstantial evidence) obtained by different methods or, in a broader sense, all the information available. The main focus is the problem of changing social identities in the dynamics

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4 The first quantitative study “External Labour Migration of the Ukrainian Population” conducted by the State Statistics Committee in Ukraine in 2009 was the largest national survey on migration (Libanova, 2009). It was supported by Arseniy Yatseniuk Open Ukraine Foundation and the World Bank and carried out by a team of researchers of the Ptukha Demography Institute (NAS) led by Ella Libanova (Libanova, 2009). The main source of data was a questionnaire-based survey of working age members (women aged 15–54 years and men aged 15–59) of 22,000 Ukrainian households over three and a half years from 1 January 2005 to 1 June 2008.

5 The second quantitative study “External labour migration of the Ukrainian population” conducted by the State Statistics Committee in Ukraine in 2010–2012 provides an overview of the migration dynamics in different regions of Ukraine and shows the socio-demographic characteristics of migrants (age, social background, pre-migration skills, types of employment in host countries, and so on). The main source of data was a questionnaire-based survey of working age members (45.5 thousand people aged 15–70) of 23 500 Ukrainian households over two and half years from 1 January 2010 to 17 June 2012.



of the migration process. The results of research revealed the level of current external migrations of Ukrainians – approx. 4, 5 million persons. The majority of Ukrainian labour migrants travel to EU countries and Russia, less – to America, Asia and Australia. The new Ukrainian migration has encompassed dozens of countries, having become a part of global migration flows (Markov, 2009). The study of Ukrainian migration process in several host countries allowed forming a hypothesis regarding its development according to the principle of “horizontal circulation”, i.e., periodical movements of one migrant from one country (region) to another, including the country of origin, in search for better conditions of life and work, – and is based on self-renewal of migration despite its initial reasons (for example, low wages and unemployment in the country of origin) due to the inclusion of potential migrants into social networks and migration systems which link Ukraine with many host countries.

The migrants fill in such employment spheres without which social life and development of the host countries becomes impossible. They are often regarded as a threat to sociocultural identity and legal relations of host societies, but in fact, the main challenge both for the host countries and countries which are migration donors (in our research each country is both a donor and recipient at the same time, as Ukraine is) is the fact that new migrants and migration systems form a separate space of interpersonal communication – a social reality which exists *in parallel* to the states and host societies and is not controlled by their defining influence.

While the research was still carried out, Ukraine and Germany shared the first and second rank in Europe as for the number of emigrants and immigrants (according to Eurostat) (Gianpaolo Lauzieri, Population and social conditions EUROSTAT. Statistics in focus – <http://ec.europa.eu/eurostat>). Nevertheless, while for Germany this meant introducing harsh legal limitations for migration, for Ukraine this was an absence of defined migration policy and functioning of migration corridors across its territory according to their own “internal” rules. Therefore, the authors of the project recommended government officials to concentrate upon forming a prospective vision of modernizing economy and state which would mean adding up social capital at the crossroads of migration flows from Ukraine, via Ukraine and to Ukraine, not only creating ideological, institutional and legal bases for migration policy but using international legal instruments and efforts of the NGOs for legal protection of Ukrainian migrants in the host countries.

On the other hand, closing the borders from the side of EU will stimulate irregular migration and will not foster return migration. The “border filter” will not so much stop migration from outside, as hinder migration flow of returning migrants. Concentrating on the border as major instrument for regulating migration to the EU and between some EU countries deepens segregation of the host society and the migrants inside the country. Legal mechanisms for regulation of migration must *ensure* free movement of people. Modern regulation policy will not have a lasting effect if it establishes barriers on the way of horizontal circulation of the migrants and does not establish a constructive cooperation with the donor country in all spheres of implementation of rights and freedoms, self-realisation and protection for the migrants who return or move to “third” countries. According to the research, the most adequate regulatory influence on migration processes by the host countries is the formation of civilized ways of horizontal circulation of the migrants on the level of close cooperation with the host societies (in this case, the EU). This requires establishing legal forms of the dialogue between the host state and migrants regardless of their status and presupposes cooperation between the governments, independent experts, and employers, representatives of the civic society, the migrants, and donor and recipient societies. Alongside with liberalisation, an important condition for the success of this process is coordination and unification of migration rules on the EU level (Markov, 2012).

Another study of external labour migration of Ukrainians in the host countries was the one dedicated to Ukrainian labour migrants in Greece. This was the first research which led to better understanding of the influence of economic recession on Ukrainian migrants in Greece – the country which was the most affected by the recession. The research included not only interviewing migrants, but



also studying the situation in Ukraine and Greece, and surveys among Ukrainians on migration and intentions to migrate. Surprisingly, it turned out that mass return to Ukraine would not take place. The responses showed that most actively people were leaving Greece before the crisis, when there were hopes for economic development in Ukraine, chances for employment or starting one's own business. The major reasons for return were family and personal reasons: old age, health condition or nostalgia. Some migrants who lost their job in Greece and returned to Ukraine did not manage to re-settle and went back to Greece. The recession forces Ukrainian migrants to move to other EU countries where the recession was not so strong and wages for unqualified labour were higher (Levchenko, 2009).

## Feminisation of migration

Official Ukrainian statistics does not give a relevant estimation of the quantity of Ukrainian female migrants abroad, but according to the expert estimation, only from 2010 till 2012 at least 450,000 of females crossed the Ukrainian border at least once (Libanova, 2012). Nevertheless, this number does not provide an idea even of an approximate quantity of Ukrainian female migrants abroad: just to compare, there are 176,000 officially registered Ukrainian women working in Italy (Caritas, 2012).

Feminisation of external Ukrainian labour migration is one of the most essential phenomena, which describes the same global tendency: today, women constitute almost half of all international migrants worldwide – 95 million, or 49.6% of all migrants (UN, 2010) Ukrainian women started their migration abroad in the early 1990's. It was a short-term pendulum migration and retail trade cross-border migration<sup>6</sup>. After 1995, migration patterns of Ukrainians expand, and they start going to neighbouring countries – Poland, Czech Republic, Russia (Markov, 2009) in circular migration regime. Both patterns represent short-term migration which lasts less than 1 year. Still, starting from mid-1990's, Ukrainian female migrants start moving to the countries of Southern and Western Europe – Greece, Spain, Italy, Portugal, crossing the border usually as tourists (Markov, 2009). There had never been a large Ukrainian diaspora in these countries before. Female migrants remain in the status of illegal migrants in recipient countries, and initiate creation of wide social networks, which made possible the mass migration of the early 2000's.

Despite rapid feminisation of Ukrainian migration and the large number of female migrants abroad who initiated serious transformations in their original social environment and in their host country (changes in the relationships with family, relatives, friends, and neighbours, lifestyle changes, etc.), the current research on Ukrainian female migration is still insufficient. Some Ukrainian studies of post-Soviet labour migration from Ukraine to the EU are discussed to provide a broader context for female migration to the EU countries. Among the first surveys of Ukrainian female migrants in this part of the world were surveys on change of family roles under the influence of migration (Volodko, 2011). Until recently (2008–2009), researchers were primarily interested in general causes and personal reasons for Ukrainian women's migration. In particular, the original study by Fedyuk (2011), who examines female migration “beyond the motherhood” and analyses many aspects of women's personal transformations getting not enough attention in public discourses in Ukraine and Italy, e.g., transnational families as “sites of conflicts”, the ways of personal and professional relationships with Italian men and so on.

While some Ukrainian scholars explain the reasons for the large scale female migration as a survival strategy (Tolstokorova, 2013; Malynovska, 2010), Western European researchers argue that economic reasons for migration are mixed with various personal motives; for example, to “escape alcoholic and violent husbands” – a consequence of the “crisis in masculinity” (Nare, 2008), or to escape professional devaluation and deterioration of family relationships (Vianello, 2009). Nare also

<sup>6</sup> Pendulum (cross-border, retail trade) migration is daily or weekly trips from the places of residence to work or study in institutions located in different places. A large segment of urban and rural population takes part in pendulum migrations. The radius of pendulum migration for cities is approx. 40–70 km, and 25–30 km for towns (Libanova, 2002).

points out that personal hope for changing one's life for better is a strong motif for Ukrainian women's migration for their comparably long-term stay in Italy. Many migrant women believe that migration could give them a chance for self-realisation and personal freedom which they lack in Ukraine. Thus, self-esteem is as important as higher income in their decision to migrate to work abroad (Nare, 2003).

Nare (2008) points the devaluation of the professional level of many Ukrainian women in Italy as important issue for future research. She considers the dichotomy between "low/high-skilled" which is especially relevant in the case of Ukrainian domestic workers in Italy, 18% of whom have a university degree. There are tensions between scholars' results, which often contradict each other, concerning the impact of migration on the changing roles of mother and father in the family. Some scholars (Yarova, 2006) argue that female migration changes family and gender roles and the institution of parenthood (as a whole) while others (Tolstokorova, 2009; Vianello, 2009) believe that the family roles actually remain the same. Public opinion stigmatizes Ukrainian migrant women, and it does so in a paradoxical way: on the one hand, the emphasis is put on self-sacrifice for the sake of their children and on the other – the Ukrainians are accused of family dissolution, child neglect and parental omissions (Fedyuk, 2012).

In general, scholarly discussion of Ukrainian female migrants in the EU is primarily concerned with:

- ties with the host country (and partly with the home country) including social networks of female migrants;
- the impact of labour migration on the transformation of family and gender roles and the experience of transnational parenting; and
- changing attitudes towards migration in the Ukrainian public discourse.

Likewise, some discussions concern the role of the Church and social networks on the personal choices and life strategies of female migrants: between emancipation and the reinforcement of traditional gender roles, which need to be studied further.

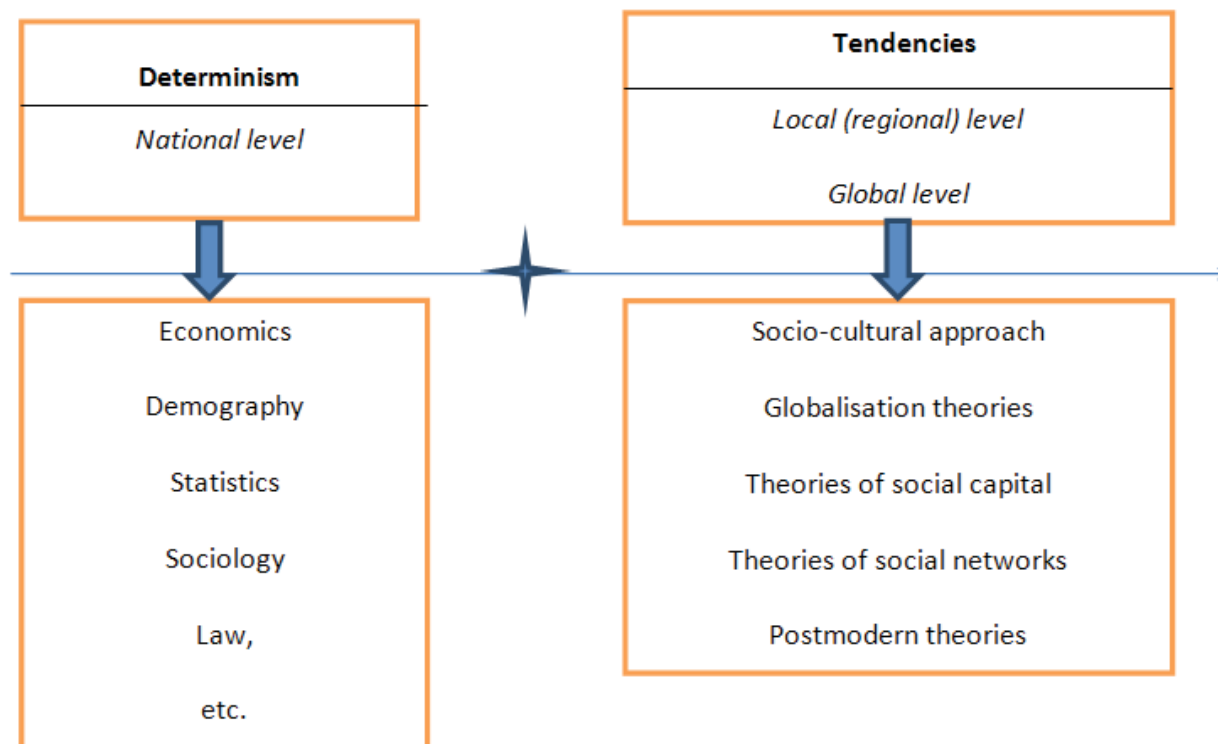
There is scarcity of in-depth research of complex processes of reconfiguration of transnational family roles (changes in family gender roles, childcare practices, new forms of interpersonal links and communication between migrants and other family members, etc.) associated with migration of women.

Future research should focus first of all on the changes in social identities of women and transformations in migrant system of values taking place at different levels of their social contacts, changes on the societal transformations caused by the large scale of female migration. Redistribution of control over money in a migrant family, the different forms of functioning of transnational migrants' networks and forming new social milieu in the host country; new careers of migrant women in a host country; cultural influences of migrants' new knowledge and experiences onto everyday practices and lifestyles in their home country (new habits and fashions, novelties in the food ways, upgrades and improvements in their households, increased sensitivity to the common communicative practices, etc.) are just few of many important aspects of Ukrainian female migration awaiting to be explored in future.

## The tendencies in external labour migration research

Today, the research of external labour migration from Ukraine is carried out on the so-called "point in between" – between the Soviet research approaches which cannot be applied to modern migration patterns and modern methodologies which overcome the limits of "container vision" of migration processes in the country of origin and destination country. On the one hand, migration is seen as national phenomenon in the context of socio-economic determinism (and this approach prevails).

On the other hand, scientific analysis leaves the limits of one-country focus and defines migration with local (regional) characteristics in interaction with global world due to socio-cultural approach, globalisation theories, social capital, social networks, postmodern theories, etc. Current distinctive features of the process of movement from the “IN BETWEEN” viewpoint will allow us to define certain further tendencies in external labour migration research. This is shown in the following chart:



So, the underlying feature of existing studies of external labour migration of Ukrainians is determinism, mostly a socio-economic determinism, which was characteristic for the researches in the times of Soviet Union. In fact, here we can see typical research and gathering statistical data on kinds and forms of migration (M. Ptukha Institute of Demography and Social Research of the National Academy of Sciences of Ukraine headed by E. Libanova, O. Poznyak, etc.), socio-demographic portrait of the migrants (I. Markov, I. Prybytkova et al.), reasons for migration (O. Ivaschenko-Stadnyk, O. Malynovska, E. Libanova, N. Parchomenko, O. Poznyak, I. Prybytkova et al.), influence of migrations on the socio-economic situation in Ukraine and migrants’ remittances channels (O. Malynovska, U. Sadova, O. Pyatkovska), etc.

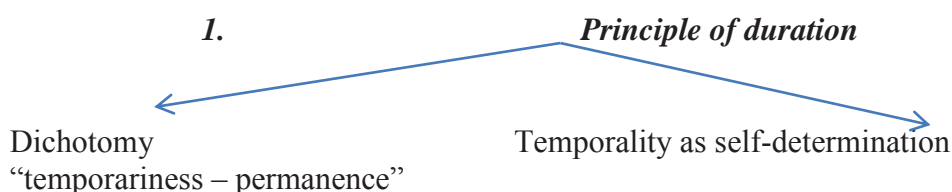
A characteristic feature here is the perception of a migrant as a member of a socio-professional group (I. Prybytkova), and of the process of migration as of inter-state exchange with members of this group. Also, the principle of duration of migration is interconnected, first of all, with socio-economic reasons for migration, socio-economic situation in the country of origin, thus ‘basing’ only on macro-level of research in this field – the national “container” (E. Libanova, O. Malynovska, O. Poznyak). In terms of duration, the researchers name such types of migrants: labour migrants, who returned to Ukraine; short-term labour migrants; employed emigrants. Therefore, the dominant principles for these categories of researchers are the principle of duration and geographical principle of spatiality with features of socio-economic determinism.

On the other hand, there exist an approaches that go beyond the limits of “container” cause-effect analysis of processes of external labour migration, and focus on personal and local levels: studies of transformation of the migrants’ identities (S. Odynets, O. Rovenchak), value systems of Ukrainian migrants (V. Volodko, O. Ivaschenko-Stadnyk), forming communication networks and social net-

working of Ukrainian migrants (O. Ivankova-Stetsyuk, I. Markov), feminization of Ukrainian migration (V. Volodko, S. Odynets', F. A. Vianello), intellectualization of migration (O. Abreu Bastos, V. Koshulko), migration in context of transformation of social mobility (I. Markov), the influence of migration on globalisation and vice versa (I. Markov, B. Yuskiv), and also, not only the research of the state and processes of migration, but also development of migration theories in the current dynamic conditions.

In this case, a migrant is a subject of permanent self-determination in globalised world (B. Yuskiv, I. Markov). This does not only broaden the former principle of spatiality, bringing in the role of communications, on the one hand, but on the other hand, dealing with mobility of values, etc. both in global and local conditions.

The understanding of temporality in the categories is linked to the territory of origin (stay): temporary – “circular” or those who left and returned, – temporality in the dimension of self-determination. Summarizing the state and specific features of scientific works on the topic of external labour migration of Ukrainians, we can distinguish the following main principles:

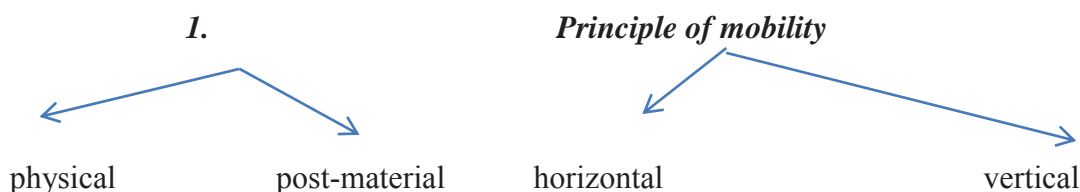


Participants of the session of the National Advisory Board (NAB) in Ukraine held on April 10, 2014 in Lviv, in particular, O. Malynovska clearly named the duration as a factor which determines migration, in particular, its forms and types. By its nature the duration is a dichotomy of “temporariness-permanence”, i.e., temporariness is a definition of duration. NAB members determine the passage from partial (circular, temporary) migration to moving into another country (permanent migration).

In other words, it is completely clear that the principle of temporariness gradually crystalizes into an independent principle of temporality.



Geographical principle of spatiality is characterized by “container” approach. According to this principle, the space is clearly concentrated in between the country of origin and the country of stay, and sometimes – transit countries, while the usage of communication principle of spatiality opens the global level of research of the processes of external labour migration with their local specific features, allowing to follow the permanence of communications, social networking development and connections between the migrants, next potential migrations, etc.



Principle of mobility is completely connected with the previously mentioned principle of spatiality.

Regarding the principle of physical mobility, here it is appropriate to use a term “movement”, the so-called physical relocation of a person, while the principle of post-material mobility of a person presupposes mobility of values, life strategies, symbolic capital, connections, possibilities, etc. The research of formation, transmittance, and transformation of post-material mobility in the modern fast-changing conditions gain current importance.

While vertical mobility is characterized by the principle of “container” inclusion, i.e., the analysis of formation and transformation of phenomena and processes in a space with clearly defined borders (the notion was first offered by U. Beck in his concept of the first and second Modern), then horizontal mobility is an example of de-territorization of social relations, formation of horizontal space and communications.

To summarize, we would like to make an attempt and describe certain tendencies which relate to the research of migration processes:

- “De-territorization” of migration research, leaving the confines of “container” research. The research space will be formed between locality and globality. Therefore, horizontal mobility of migrants becomes inter-connected with interdisciplinary approach.
- The retreat of temporality from the dichotomy is now determined by duration – “temporari-ness-permanence”. Temporality as self-determination is characterized by individual perception of time in global space. Thus, temporality as self-determination will be multiplex and variable depending on the type or form of migration.

## **Inventory of National Policies and Practices**

The issue of migration policy has probably been more deeply researched by scientists and much wider discussed by all interested in the subject than any other problem related to migration processes in Ukraine. Numerous monographs, theses, articles in scientific journals and the media, as well as the resolutions of numerous parliamentary hearings, governmental resolutions, international, national and local conferences give account of the current state and regulation of migration in Ukraine, including goals, tasks, ways and principles of migration policy, as well as legal, institutional, financial and informational means of provision. However, almost all of the studies for the last twenty years, as well as official government documents, ultimately read the following: there has not been any particular state migration policy in Ukraine so far.

### **The current state of migration policy**

Official migration policy of Ukraine is concentrated mostly on permanent migration and integration of migrants into Ukrainian society. An immigrant is seen as a foreigner or a person destitute of nationality who received a migration permit and came to Ukraine for permanent residence, or received such permit during legal stay in Ukraine, and resides in Ukraine permanently. A foreigner or a person destitute of nationality is given a long-term visa with a prospect of permanent residence in the future<sup>7</sup>.

Foreigners and persons destitute of nationality who legally stay in Ukraine enjoy the same rights and freedoms as Ukrainian citizens, and also have the same obligations. Besides, those foreigners and persons destitute of nationality who stay under jurisdiction of Ukraine despite legality of their stay, have a right of recognition of their juridical personality and universal rights and freedoms of people<sup>8</sup>.

The understanding of permanent and temporary migration in Ukrainian legislation can be seen via the system of permits for temporary and permanent residence issued by the state institutions.

The first registration of a foreigner or a person destitute of citizenship entering Ukraine’s territory

<sup>7</sup> Law of Ukraine “On immigration”. – Online: <http://zakon4.rada.gov.ua/laws/show/2491-14>

<sup>8</sup> Law of Ukraine “On legal status of the foreigners and persons destitute of nationality”. – see online: <http://zakon4.rada.gov.ua/laws/show/3773-17>



is performed by the State Border Guard Service at the border crossing points. Citizens of the states who have the right of staying in Ukraine without a visa fill in the migration cards.

Foreigners and persons destitute of nationality, who legally arrived in Ukraine, can stay on its territory:

- during the term of visa validity if not provided otherwise by the international agreements of Ukraine;
- no more than 90 during 180 days since the date of first entrance for the states with visa-free entrance, if not provided otherwise by the international agreements of Ukraine;
- for the period of duration of visa, but no more than 90 days during 180 days from the date of first entrance with the visa issued before September 11, 2011<sup>9</sup>.

A longer duration of stay is guaranteed for students, persons who immigrate or have a status of a Ukrainian living abroad, or are family members of a Ukrainian living abroad and travel with them.

In order to stay in Ukraine on a legal basis, a migrant must receive a certificate of permanent or temporary residence regardless of the aim of his or her stay in Ukraine. The migrants coming from the countries with which Ukraine has bilateral or unilateral (on the right from their side) agreements on visa-free entry, have the right to arrive in Ukraine without visa. Still, if they wish their stay to be legal, they need to meet certain legal requirements – after their registration, they must receive a certificate of temporary or permanent residence. It is available to migrants who correspond to the following groups according to the purpose of their visit:

- persons who carry out economic activity and received a work permit;
- persons who need protection, political asylum, refugees or asylum seekers in Ukraine. The term of their regular temporary stay in Ukraine is three years since their status was conferred, and for those who were destitute of nationality when they arrived in Ukraine – for three years since the date of entrance;
- Representatives of religious organizations;
- employees of the branches of foreign NGOs;
- scientists, cultural and educational activists and volunteers;
- journalists;
- persons who visit Ukraine due to family matters (family reunion or in case of marriage before immigration permit was issued – up to two years);
- tourists.

First, all these categories of migrants receive a temporary residence permit. A permanent residence permit (an immigrant status with a possibility of receiving citizenship) can be given only in case of legal uninterrupted stay in Ukraine for five years. Citizenship can be granted after a shorter period of stay to those foreigners and persons destitute of nationality who are married to a citizen of Ukraine for a period longer than two years<sup>10</sup>.

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<sup>9</sup> Regulation on the duration of stay and prolongation and reduction of term of temporary stay of the foreigners and persons destitute of nationality at the territory of Ukraine. Approved by the regulation of the cabinet of Ministers of Ukraine. February 15, 2012 . № 150. – see online: <http://zakon4.rada.gov.ua/laws/show/150-2012-%D0%BF>

<sup>10</sup> Law of Ukraine “On the Citizenship of Ukraine” 07.06.2001. – Online: <http://zakon4.rada.gov.ua/laws/show/2235-14/page>

## Legislation

The list and a short summary of the major laws of Ukraine on external migration allow determining the following characteristics:

- The laws can be rather called a local reaction to current migration challenges than an attempt of regulation over migration processes.
- There are signs of democratization of migration laws, in particular, under the influence of ratified international conventions, however, it is not supported by the relevant regulatory mechanisms, and so the changes are rather declarative.
- Interests of national security and migration control prevail over understanding migration as a factor of development of the country<sup>11</sup>.

We can also identify such problems as corruption and low workability of the bureaucratic procedures for migration control, which mostly are a leftover from Soviet times. Shortcomings of the legal regulations of external migrations in Ukraine and a large number of gaps in the national legislation are shown in the following table:

**Table 27** Categories of migrants used in the Ukrainian legislation and international conventions ratified by Ukraine

| Used in Ukrainian legislation                                                                                                                                                                                                                                                                                                                                                        | Used in international conventions ratified by Ukraine <sup>1</sup>                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Immigrant: a foreigner or a person destitute of nationality who received an immigration permit and arrived in Ukraine for permanent residence, or received such permit while legal stay in Ukraine and has stayed in Ukraine for permanent residence.                                                                                                                                | Migrant worker: a person, who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national and in which he or she does not reside.                                                                              |
| Foreigner: a person who does not have citizenship of Ukraine and is a citizen (a national) of any other state or other states.                                                                                                                                                                                                                                                       | Frontier worker: a migrant worker who works at the frontier territory of one Party and retains his or her permanent residence in a frontier territory of the other Party to which he or she normally returns every day or at least once a week.                               |
| Foreigners and persons destitute of nationality who permanently reside in Ukraine: foreigners and persons destitute of nationality who received a permanent residence permit, unless otherwise provided by the law.                                                                                                                                                                  | Seasonal migrant workers: persons who are citizens of a Party of the Agreement and carry out an activity which is dependent on seasonal conditions on the territory of the other Party of the Agreement, with a contract of employment or by fulfilling specific work (duty). |
| Foreigners and persons destitute of nationality who lawfully stay in Ukraine: foreigners and persons destitute of nationality, who, in accordance with the legal demands established by the legislation or by an international agreement of Ukraine, entered the territory of Ukraine and temporarily or permanently reside on its territory, or are temporarily staying in Ukraine. | Seasonal worker: a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.                                                                                                                              |

<sup>11</sup> Experts of the Institute for Strategic Studies note that immigration policy is still largely restrictive, the authorities consider external migration mainly as an issue of control and law enforcement tasks. Ukrainian government does not consider the immigration process as well as labour migration of Ukrainians to be a factor of economic development of the country— see <http://old.niss.gov.ua/monitor/march/13.htm>

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Foreigners and persons destitute of nationality who temporarily stay in Ukraine: foreigners and persons destitute of nationality who are staying on the territory of Ukraine during the period of visa validity or the period, established by the legislation or an international treaty of Ukraine, or if duration of their stay was extended as required by the law.</p>                                                                                                                                                                            | <p>Self-employed worker: refers to a migrant worker who is engaged in an individual remunerated work and according to the legislation each of the Parties of the international agreement is applicable to the state social insurance programmes.</p>                |
| <p>Foreigners and persons destitute of nationality who temporarily reside in Ukraine: foreigners and persons destitute of nationality, who received a temporary residence permit, unless otherwise provided by the law.</p>                                                                                                                                                                                                                                                                                                                              | <p>Member of the family of a migrant worker: a person married to a migrant worker, as well as their dependent children and other persons who are recognized as members of the family by applicable legislation of the receiving State.</p>                          |
| <p>Illegal migrant: a foreigner or a person destitute of nationality, who had crossed the state border not at the established border crossing points or at a border crossing point but with avoidance of border control and did not immediately appeal for the status of a refugee or claim asylum in Ukraine, and also a foreigner or a person destitute of nationality who had legally arrived in Ukraine, but after expiration of the term lawfully established for their stay lost the legal grounds for further stay and evade leaving Ukraine.</p> | <p>Emigree: a person who has a right to acquire citizenship of Ukraine by attribution of citizenship of Ukraine or renewing the citizenship of Ukraine.</p>                                                                                                         |
| <p>Person destitute of nationality: a person lawfully not considered a citizen by any state.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>Members of the family of an emigree: the husband (wife) of a displaced person, dependent parents, the underage children thereof, and other relatives who belong to the household with the emigree, are dependent on the emigree, and have a joint household.</p> |
| <p>Family members of a foreigner or a person destitute of nationality: the husband (the wife), underage children, including underage children of the husband (the wife), dependent parents and other persons considered family members according to the law of the country of origin.</p>                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                     |
| <p>A person who became a victim of human trafficking: any individual who became a victim of trafficking and was recognized as such as required by the law of Ukraine “On Counteracting Human Trafficking”.</p>                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                     |

As we can see from the table above, definition and categorization of temporary migration, formulated in accordance to current migration challenges, is not represented in the national legislation.

All emigration during the last ten years is mostly considered as temporary. This is proved by the key note of media discourse on mass migration of Ukrainians: are they going to return to their Motherland? Migration is often discussed in Ukrainian media through economic perspective only (as a chance for higher income), and therefore its duration is seen in linear perspective: leaving the country – work in the EU – and, necessarily, return to Ukraine. Personal experiences of those Ukrainians who moved to the EU countries, received citizenship, or intend to stay in the destination countries, rarely participate in public discourse. Educational migration which is often reviewed by journalists and researchers as a brain drain from Ukraine, as well as *return migration*, is much less featured in public discourse. *Transit migration* is analysed in perspective of illegal migration of refugees and asylum seekers to Ukraine as a potential national threat. All other types of migration do not receive enough attention in academic, media and social discourse.

Nevertheless, in the recent years public discourses have gradually been restructured, and new tendencies in establishing migration categories are met more often, including the media discourse. In particular, since mid-2000's, differences between men's and women's migration are being discussed, and this also activates the discussion on transformation of family life and social influences on the micro- and meso-levels of society. These discussions are carried out taking into account the factor of physical time, and also social transfers in which Ukraine is involved as a country of origin. The understanding of migration is being broadened, and is perceived not only through the perspective of economic activity, but also social and cultural global phenomenon. Not only labour migration, but also other types of migration are discussed more and more often, including short-term educational migration, or integration of Ukrainian-Italian families which migrated to Ukraine. Therefore, due to better understanding of migration types, the reception of its major characteristics also takes place. These tendencies are fixed, in particular, in the draft laws on labour migration of Ukrainians.

Attempts of adopting the tenets of migration policy in Ukraine on legislative level have taken place since 2004. Still, the suggested draft laws ("On the Tenets of State Migration Policy of Ukraine"<sup>12</sup>; "The Concept of State Migration Policy of Ukraine"<sup>13</sup>), aimed at regulating migration after 1991, including temporary migration, were declined by the Parliament. On May 30, 2011, "The Concept of State Migration Policy of Ukraine" was approved by the decree of the President. According to the experts, it is a set of general ideas and notions in the sphere of current migration regulations which do not offer any strategic goals or directions for migration policy in Ukraine, any legislative mechanisms or financial sources of its implementation. Three years after it was adopted, the Concept had no its continuation in migration laws, and amendments to the acting laws are quite fragmentary.

Three parliamentary hearings in the period from 2004 until 2014 were dedicated to migration issues, all pertaining external labour migration only<sup>14</sup>. Despite the time slot of ten years between the first and the last session, the approaches, topics, theses and even key recommendations of the hearings remained unchanged.

The major topics discussed were statistical estimation of the number of Ukrainian labour migrants abroad (3 to 5 million persons); regulating the rights of Ukrainian labour migrants abroad on the level of national legislation, and also by signing and ratifying international bilateral agreements with the destination countries, and also the relevant international conventions which would allow recognition of university diplomas, tenure record, social insurance, labour relations; creating relevant mechanism of legal involvement of remittances into the economy of Ukraine; financial support of cultural life of the migrants abroad; opening specialized social centres for the children and relatives of the migrants in Ukraine; improving the services given to the migrants by diplomatic institutions of Ukraine in the destination countries.

In 2013, though, a draft law of Ukraine "On External Labour Migration", prepared by Ukrainian NGOs and migrants' organizations in the host countries was presented<sup>15</sup>. Despite the above listed issues of social and legal protection of labour migrants and members of their families, the draft law also includes the ensuring of voting rights of the migrants who stay abroad, the migrants' reintegration after return to Ukraine; and introduction of the state standard of social services in external labour migration. The draft law gives the first definition of the notion "a labour migrant" and related notions:

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12 Draft laws of Ukraine "On the tenets of state migration policy of Ukraine". – see online: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=4227-1&skl=5](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=4227-1&skl=5); [http://search.ligazakon.ua/l\\_doc2.nsf/link1/JF56900A.html](http://search.ligazakon.ua/l_doc2.nsf/link1/JF56900A.html)

13 Comparative table to the draft law of Ukraine "The concept of state migration policy of Ukraine". – see online: <http://unhcr.org.ua/img/uploads/docs/ConsPaper07U.doc>

14 Parliamentary hearings: the state and problems of legal and social status of the modern Ukrainian labour migration (November 7, 2004); "Foreign Ukrainians: current situation and perspective for cooperation"(October 14, 2009); "Ukrainian labour migration: the current state, problems and solutions" ( July 3, 2013)

15 Draft Law of Ukraine on External Labour Migration [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=156583&-cat\\_id=34946](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=156583&-cat_id=34946)

“external labour migration”, “members of the family of Ukrainian labour migrant”, “country of origin”, “country of employment”, and “reintegration”. The draft law is the first in Ukrainian legislation which offers categories for temporariness of migration and defines temporary migration on the level of legislation.

Unfortunately, this draft law, similar to other draft laws on migration, is still not offered for consideration in Ukrainian parliament.

Despite the constant presence of migration, and Ukrainian external migration in particular, in public discourse of Ukrainian society, there is a continuity gap in political practices when the developed conceptual approaches and suggested draft laws do not proceed into legislation and institutional and legal mechanisms, but are delayed or nullified with the sequential presidential or parliamentary elections.

## State institutions

Main institutional departments implementing state policy on migration are the State Migration Service and Ministry of Social Policy of Ukraine.

Ministry of Social Policy of Ukraine is the main legislative body in the system of central institutions of executive power on forming and implementation of state policy on employment and labour migration. At the same time, State Migration Service of Ukraine is a central body of executive power with a task of implementing the state policy regarding migration (immigration and emigration), including counteraction illegal (unlawful) migration, citizenship, registration of private individuals, refugees and other categories of migrants named in the legislation of Ukraine”. State Migration Service is not an independent institution; it is directed and coordinated by the Cabinet of Ministers via the Minister of internal affairs. Meanwhile, the Ministry of social policy can directly regulate and implement the policy in the sphere of internal and external migration via State Employment Service of.

To summarise, the tasks of regulation and implementation of migration policy in Ukraine is shared by two governmental bodies: the Ministry of social policy deals with its major segment from Ukrainian side – labour migration, while the State Migration Service controls all other processes with a considerable accent on controlling and repressive functions.

The following institutions have a mediated influence on migration policy in Ukraine:

- Department of consular service of the Ministry of foreign affairs of Ukraine – coordinates the work of the Ministry in protecting legal rights and interests of the citizens of Ukraine abroad.
- State Border Guard Service of Ukraine combats organized crime and counteracts illegal migration at the state border of Ukraine and in the areas close to the border.



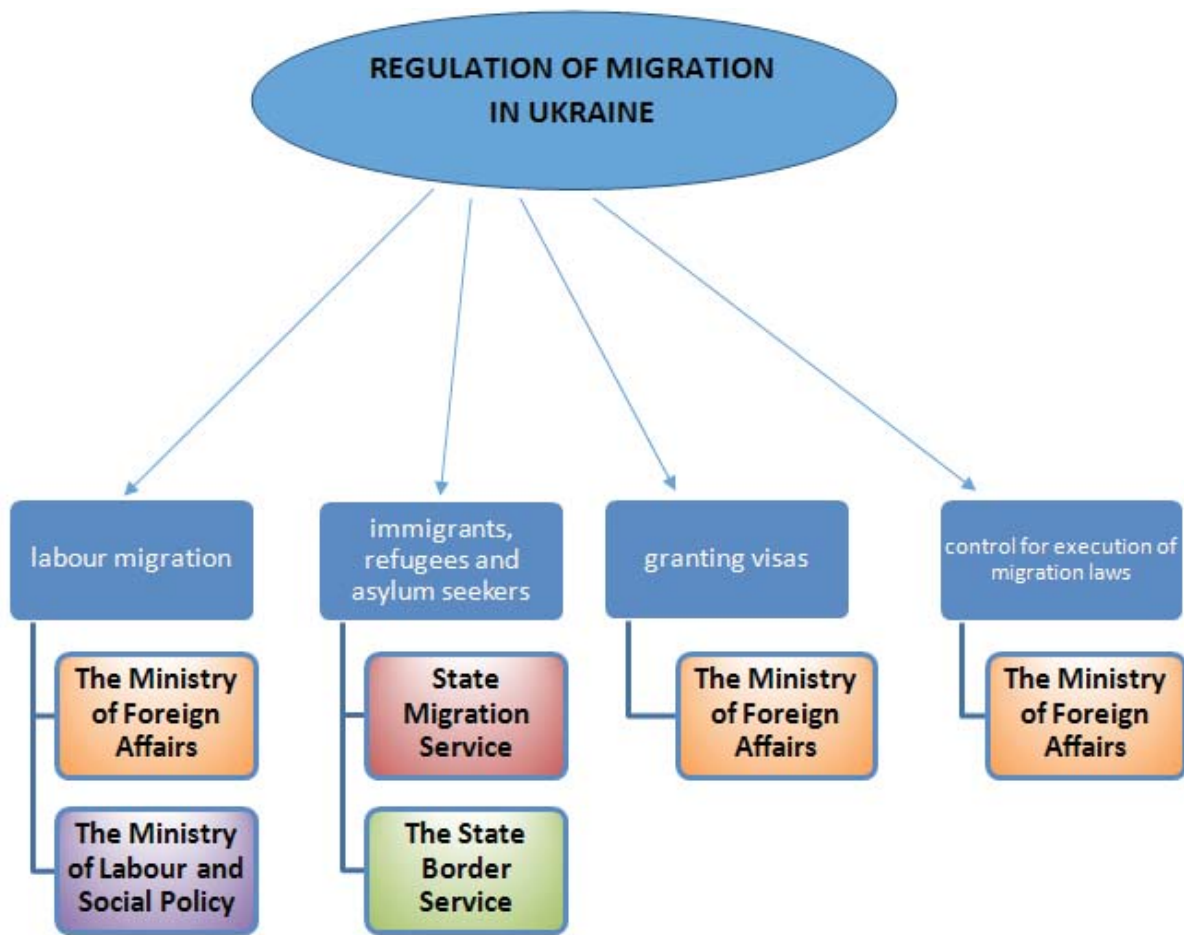


Figure 18 The chart of functions of institutions implementing state executive power regarding regulation of migration processes in Ukraine

## Non-governmental actors

Ukrainian governmental and non-governmental organizations, agencies and councils facilitating temporary transnational migration and mobility can be classified according to several directions of their work:

**Development of migration policy, lobbying migration legislation, advocacy.** At the national level, in 2010, the *Council for Labour Migration of the Citizens of Ukraine* was founded at the Cabinet of Ministers of Ukraine. The Council deals with preparation of suggestions for state policies in social protection for labour migrants. Nevertheless, its activity today is quite formal.

Another influential centre is International Women’s Rights Centre *La Strada*, employees of which takes part in developing international legislation regarding migration and also participates in improving national legislation.

*Civic Initiative Europe without Barriers* performs monitoring of issuing visas to the citizens of Ukraine by consulates of the EU countries. Experts of the initiative estimate the quality of implementation of the EU and Ukraine Agreement on the Facilitation of the Issuance of Visas and lobby internal reforms connected with the need of achieving criteria of visa-free country in the relations with EU. Geographically, member organizations represent cities (regions) where consulates of the EU countries are located: Kyiv, Lviv, Odesa, Donetsk, Uzhhorod, Lutsk, and Kharkiv.

**Counteracting human trafficking, social work with the refugees and asylum seekers.** *La Strada* Centre must be mentioned first in this respect, as it works with the victims of human trafficking, counteracts sexual exploitation of children, violence and discrimination in society, and monitors effectiveness of humans' rights protection. International Organization for Migration is another active participant in this field with an aim to manage border movements and migration processes, facilitate integration of the migrants, work with refugees, supplying medical services, and help with reintegration. It also offers the services of Ukrainian National Enquiry Telephone Line on the issues for migration and counteracting human trafficking.

*Caritas Ukraine* has now opened four specialized centres in Khmelnytsky, Ivano-Frankivsk, Drohobych, and Odesa which provide reintegration help to the victims of human trafficking. In 2012, such help was provided to approx. 300 persons who suffered from trafficking; over 7000 persons received consultations.

Starting from 2006, a civic project "Without Borders" deals with support and protection for asylum seekers in Ukraine, and counteracting xenophobia and racism in Ukrainian society. Legal advice for the refugees and asylum seekers, monitoring cases of xenophobia and racism, legal assistance for victims of hate crimes and discrimination, trainings and educational campaigns are the major directions of the project's work.

An individual project worth mentioning is a project which has been conducted for 14 years by Ukrainian activist Ihor Gnap, who has rescued 36 Ukrainian women from sexual slavery in different countries.

**Re-integration of returnees/repatriates.** There is no state programme in Ukraine which would work on this problem. Usually, the issue of reintegrating is left for charity organizations, and the largest projects for reintegrating labour migrants coming back from EU countries to Ukraine into Ukrainian society have been carried out by Caritas Ukraine for more than 10 years, and this activity is being constantly developed.

In September 2008, in the framework of ERSO (European Reintegration Support Organisations) project, Ukrainian Solidarity Network was created (which includes 30 partner organizations in 15 regions of Ukraine with coordination centre in Lviv), and the structure has facilitated the work of reintegration projects for providing social, informational, psychological, legal and financial assistance greatly. A person receives social support while still being in the country of stay with the help of a network of consultation centres in the countries of the European Union.

In 2011–2013, Caritas Ukraine implemented STAVR (Strengthening Tailor-made Assisted Voluntary Return) project in order to reintegrate migrants from Belgium. 40 migrants and their family members (13 children among them), received social support and legal consultations, business start-up consultations, financial help for a business start-up or improving their housing and living conditions, renting temporary residence and providing help in getting access to medical treatment was also provided.

STAVR project provided help, first of all, to such groups of migrants as children under 18, (providing for study courses or trainings), pregnant women (covering medical expenses and providing childcare goods), and victims of trafficking, other persons who needed help in paying for medical assistance. Another category of migrants who benefitted from the project were those who intended to launch their own business or find a job in Ukraine.

AWO Heimatgarten initiative in this sphere was one more project, which, with the EU support, implemented a large-scale project Saturn (Social Advise, Return and Support Networking Project for Ukraine) in 2007–2009. With the project's assistance, about 200 Ukrainians, aged from 20 to 89, returned from Poland, Romania, and Germany to Ukraine. Participating migrants received 450 euro for their reintegration expenses and their tuition aimed at improving qualification or receiving new

job was refunded. 72 Ukrainians received start-up capital for their business project ranging from 100 to 3000 euro.

**Social work with migrants.** A regional initiative Ukrainian-Italian fund “*Zaporuka*” runs an Information Centre for Migration Issues in Lviv where migrants can receive free legal and psychological assistance, communicate with their relatives’ migrants via Skype, and attend courses on business start-up management.

“Women’s Perspectives” Centre in Lviv is an organization dealing with preventing human trafficking, offering services for victims and potential victims of trafficking, and help to women migrants in host countries, the EU countries in particular. Other “Women’s Perspectives” Centre activities are aimed at promoting gender equality, women’s rights protection, drawing attention to women’s issues and uniting efforts for overcoming problems. This is also done by holding trainings, courses, round table discussions, conferences, etc. A 24-hour consultative telephone line is available. 5 thousand women attended the Centre’s study courses, and over 20 thousand women benefitted from consultations.

**Conducting research.** The most successful way of conducting migration research is cooperation of NGOs and academic establishments. In the latter decade, the largest migration research projects on migration in EU and Russian Federation were implemented due to such cooperation, among them the first quantitative study “External Labour Migration of the Ukrainian Population” conducted by the State Statistics Committee in Ukraine in cooperation with NGO “Ukrainian Centre for Social Reforms” and N. V. Ptukha Institute of Demography and Social Research of National Academy of Sciences of Ukraine, comprehensive study of the Ukrainian migration processes in destination countries, conducted by the International Charitable Foundation “Caritas” in cooperation with Ethnology Institute of National Academy of Sciences of Ukraine (2009), Ukrainian Labour Migration Processes in Russia conducted by AWO “Heimatgarten” with EI NASU (2010).

## Summary

Ukrainian experts, public persons and politicians believe that Ukraine has no immigration policy and give three main arguments to support this claim:

- Ukraine lacks strategic vision of the migratory processes and their regulation. The version of the Concept of migration policy approved by the President’s decree resembles rather a set of slogans reflecting the concept of migration policy and a list of currently known instruments for its implementation than goal setting, objectives, mechanisms, results of migration policy and a presumed basis for its funding.
- Ukraine lacks necessary legislative support for migration policy. Analysts and community activists point out the lack of a single law on labour migration in Ukraine, the need to adopt a uniform law on immigration, which would unite the legal provisions scattered in many areas of current legislation. The necessity to adopt the Law of Ukraine on the legal status of Ukrainian labour migrants is also emphasized, as a clear demand of a law which would define both the legal status of Ukrainian migrant workers and their families and the legal and social guarantees during their stay abroad.
- Ukraine is to create a unique specialized central executive body with local subdivisions – the State Migration Service of Ukraine, which would perform a full range of administrative functions in the field of migration. “This has to be a civil service which would also control the entry and stay of foreigners, carry out constant monitoring of the migration situation, analyse its development, and, on the basis of this, define general and specific management tasks, develop im-

plementation mechanisms, its legal registration, provide financial and organizational resources for it. The Service must also perform management activities at all stages of the migration process – the formation of migration mobility, moving, adaptation to new living conditions. It must take care of all major external migration flows ...” (Malynovska, 2005).

- As there is no adequate migration policy, NGOs working with migrants usually operate due to financial support from the EU and other Western countries and only manage to fill in scarce number of segments in the vast sphere of assisting the migrants. Most initiatives aim at preventing human trafficking, facilitating reintegration of migrants, in some cases also providing social support for migrants and their family members. Assistance to women migrants, including victims of human trafficking, is a special sphere in NGOs activities, which are able to provide help only to a small percentage of migrants. Several organizations conduct their own migration research, and lobby migration legislation based on the results.

Experts agree that migration should become one of the factors of socio-economic development of Ukraine. From our viewpoint, prospects for the modernization of the Ukrainian economy and state under current globalization tendencies should be grounded on combining the social capital formed at the crossroad of migration streams from, through and to Ukraine. We can presume that modern-day Ukraine is an open field for external migration which, at the same time, seems to be closed for a foreign eye, and still regulated by internal grey rules, often spread onto the sphere of state controlling system.

## Conclusions

### Understanding temporariness of mobility

What is the relationship between temporary and permanent migration? When is the moment where temporary migration becomes permanent? To what extent the decision of the migrant plays a role here? And finally: What is the relationship between temporariness and inclusion-access to rights in the receiving country?

As we have mentioned before, among external migrations originating in Ukraine, having their destination here or going through Ukraine, eternal migrations are studied more thoroughly, while immigration and transit migration are very poorly researched. We have literally several major works on the subject reflecting only certain aspects of the process (Braichevska et al 2004; Malynovska 2003). Therefore, we will form our suggestions on understanding the principle of “temporariness” of external migration in Ukraine mostly basing on the experience of studying the “fourth wave” of Ukrainian migration in the host countries.

### Temporariness from the perspective of Ukrainian migration

The research of Ukrainians of the “fourth wave”, the so-called economic migration in the EU countries with the help of qualitative research methods (first of all, in-depth semi-structured interviews) brought us to conclusion that its dynamics and content will be predominantly determined not by labour market condition in host countries and donor countries, it is going to be determined primarily by transformation of the space of social mobility, which will shape the life strategies of many Ukrainian citizens.

The flows of new migrants and migration systems form a mobility space that exists in parallel with the recipient societies, donor communities and respective states and functions independently of these factors and their decisive influence. A key difference between the latest Ukrainian migrations and the previous ones we define within the concept of horizontal circular migration. It emphasizes the “autonomy” of modern transnational migrations that self-replicate and spread regardless of causes which

induce to migrate in sending and receiving countries. Contemporary migration is one of those threads that define social circulation in horizontal space of relations. We determine the Ukrainian transmigration by the term “horizontal circular migration” in the perspective of further transformations of the social mobility space. Therefore, the future of Ukrainian external migrations will be determined by the changes of the types of mobility and formation under these transformations models of social behavior of Ukrainian citizens.

The recipient societies, donor communities and states – the key notions in the migration studies – have an important relation to the concept of “time” and understanding “temporariness” in our project. For example, mass emigration of Ukrainians of the first, second and third “waves” in the nineteenth and twentieth century usually took place by moving from one socio-cultural space to another, often from one historical time into another. A migrant endured “environment of origin”, the basis of which was the family. Due to great physical and socio-cultural distance all further communication of the migrant was *synchronized* with the host environment and, conversely, *diacronized* with the environment of origin. The Diaspora, which was united in societies that cherish Ukrainian customs, traditions and rituals, became an integral part of host society and its cultural landscape.

Instead, current external Ukrainian migration is one of the alternatives to individual choice within the “space of co-existence” of a migrant: providing material needs of the family remains an important motive for migration, but in his heart a potential migrant makes personal decision whether to go to work abroad or not. His (her) way of self-determination can be described as being in correlation with family, home, colleagues and employers in other places and the host countries, which forms the potential for further self-realization. Building effective interpersonal networks that combine all these areas together with a reproduction of social and cultural forms of self-organization inherent in the traditional Diaspora (religious community, cultural, educational, student societies, women’s societies, and media), migrants indicate formation of another established area of social relations, for which migration is a constant feature.

On the other hand, Ukrainian workers are included in the migration system, connecting Ukraine to a number of host countries. Study of Ukrainian migration process in a number of host countries has allowed us to make a suggestion about its current development on a “horizontal circulation” basis, i. e. the periodic movement of migrants from one country (or region) to the other in search of better living and working conditions, in which the country of origin may be one of the “links” of movement. This means that even a return to the country of origin (return migration), as well as the specific time period of stay in the host country for more than a year / decade can not be considered by researchers the criterion of migration transition from “temporary” state to the state of “constancy” for migrations after 1991.

In fact, this establishes a parallel-horizontal, personified understanding of time, mediated by distances, which previously existed as territorial-community and vertically-historical understanding of time and temporariness. Modern media communications converts distance into the function of relations, fixed by the networks (Urry 2012: 50). Horizontal space of social co-existence implies that networks perform the function of social circulation.

Transformation of social limits of understanding of time and temporariness, in our opinion, explains the dynamics of the “fourth wave” of Ukrainian migration, which we mark with a paradigm of “three generations”. These generations of Ukrainians in the united Europe, differ not only by age, but, above all, by “space of co-existence”, the change of which is related to the degree of “attachment” to the “territory” – socio-cultural environment of origin or residence. The “three generations” embracing two decades reflects the transition from territorial migration “from one place to another” to transnational migration, and from there – to geographically off-centered global migration.

The representatives of the “first generation” stay in one of the EU countries, year after year for different reasons, considering migration an “addition” to life in Ukraine and believing they will return



home. The “world of co-existence” of the “second generation” still remains an addition to sustainable socio-cultural environment. Its representatives live in social space between Ukraine and the host country, i. e. “between the times”.

For the third generation of “migrants” children (who, financially supported by their parents, study in Ukraine or in their country of residence), education and training directly transfer into the “capital of mobility”, which leads to the need of obtaining new “parallel” educations (i.e., indirectly and mutually interconnected or previously acquired skills), and during their accumulation a space of the individual self-realization is formed by creation of supra-national and extra-territorial social communications and practices.

As research results reveal, the entry into new communication space is associated with changing the way of social self-determination of the representatives of the “third generation” of Ukrainian labour migrants.

Until now, the key to self-identification referred to the territorial and socio-cultural environment and (common) *past*. Reducing dependence on territorial socio-cultural environment of origin or stay means that the principle of referring to “common past” shifts towards “my here and now” – the key meaning of *articulating the ongoing relationships based on the formation of the of space of self-determination*, and in the direction of *social correlations in parallel “spaces of coexistence”*. An individual perceives the world not as a *palette* of cultural and historical *patterns* (and, as a result of the inevitability of arranging their own life in accordance with conditions of one of them as predefined environment of co-existence) but in the dynamics of self-fulfillment, and in this sense, as a permanently changing and non-realized *fields of alternatives*. The principle of “social correlations”, which replaces the traditional territorial socio-cultural environment patterns in shaping of the way of human social self-determination and life space, means changing types of social mobility.

The representatives of the third generation of migrants while maintaining contacts with their motherland (visits, exchange of information), live where at certain time there exist appropriate conditions (including employment, wages and social security). While migrating they carry the “world of co-existence” with them. The “third generation” lives in a parallel-horizontal time.

It is worth mentioning that the suggested approach to temporality of modern transnational migration does not consider this social phenomenon through the dilemma of temporary/permanent residence (which implies “pendulum” migration and those who “left and returned” versus those who “left for good”), permanently linked to the country of origin and country of stay. As we already have mentioned, an important trend of Ukrainian migration to the EU is horizontal circulation of migrants: the country of exit (return), countries of transit and recipient countries can be regarded as migrants’ “zones of transfers” defined by social networks. This means that all external migrations from Ukraine which we have analyzed, except the Ukrainian Diaspora from previous epochs, and also its new cases mostly from the 1990’s, can be considered temporary.

Therefore, we offer to look at the concept of time and temporariness not from the perspective of countries, recipient societies or donor societies, but through the prism of typology of social mobility and its transformation in European-Asian dimension. This means placing the consistent principle of temporality into the basis of classifying target groups – on the level of the whole project.

## Temporariness of mobility in European-Asian dimension

The notion of “temporariness” in relation to current trans-border migrations in European-Asian social space, in our opinion, can be articulated by:

- The concept of “time-and-space” (“spatial time”). The notion defines a transition from “vertical”, linear historical time of autonomous, historically and geographically distant realities to “horizontal” spatial time realities.

The transformation of traditional society into modern one is accompanied by the transition from the natural, cyclic to a linear historical time. The gradual transition from territorial-social and institutional-networking to media space of global communication in which the leading role is played by the network rather than institutions is the basis of the next period of “transformation” – the “linear” or “vertical” historical time to the “horizontal” time space. Here the past exists “in parallel” and is interconnected with the current self-realization as well as its “resource”. Switch from vertical to horizontal historical time of parallel realities means that time takes the meaning of “space” and becomes, in fact, a social time. The notion of time becomes personified, and gains the meaning of self-fulfillment space of a person. Z. Bauman puts the understanding of this time as a multitude of moments (Bauman, 2013).

Modern migration as a social movement is by definition temporary, as it state “temporality” as a principle of social relations. The next question is: how it will continue to alter them and change the social space and social identity? Research in social dynamics is the study of time relations, or, alternatively, the study of temporality.

In historical time social divisions are formed on the basis of belonging to groups, classes, strata, between which there are institutional-network “lifts” of mutual (Sorokin). In time space the criteria of social differentiation is the presence of “capital mobility” mutual transference (Bauman 2008: 6–7). The development of space mobility, inventory and identification of capital mobility we consider as one of the objectives of the study of transformational impact of temporary mobility.

Members of the Ukrainian project team are unanimous in “person-focused” definition of temporality in relation to contemporary migration: temporality is an organization of human’s time space (D. Sudyn); temporality is a personal perception of time, as well as the social organization of time (G. Zaremba); temporality (through the migration perspective) is one way of self-identification of a *person-in-motion*, action in time space (S. Odynets). As a result, social time is different from the linear and cyclical time because it is determined by eventfulness of personal space by which man estimates his self-existence and “implements” his past-future in it rather than by geographical (regional) factor, time of year, day, “status” or other external, “objective” criteria separated from it.

The ongoing transformation of the social time takes its place in the dynamics of migration relations in European and Asian space. Therefore, we offer to build the in-depth interview questionnaire based on forming of a life perspective by a respondent, staring from their “here and now”, but not on basis of life story.

It is important to consider and take into account the differences in structuring social space and social time in European and Asian societies and in relation to that – when and where “temporariness” is defined in the prospective of this interrelation, what are the differences in territorial identifications of communities and persons, approaches in classifying migration in European and Asian parts of the continent. In our research experience, “permanent temporariness” of migrants is viewed as a feature of their social self-determination in the recipient countries: from the time of departure with an intention to earn money and return home as soon as possible to the “temporariness” as a way of being, which is manifested in different ways in various ethnic groups of migrants.

- All the foregoing makes us repeat the offer to hypothetically consider all foreign workers from the early 90-ies of XX century as temporary ones. Our research of temporality of migration reveals a formal criterion by which modern foreign workers can be attributed to the constant – suppose, a worker lives in the host country for “three generations”. That is, children and grandchildren live with him (her) at the same time there. But even in this case, the types of relationships with the homeland and the host country, and forms of communication among workers who will be included in the results of our surveys, must be considered to identify the temporalities of migration (temporal or permanent). The survey results will allow revealing another criterion of the conversion of temporary migration to permanent one: virtual return of

the daily life of an immigrant to the framework of linear, vertical time of the host society.

- A possibility of considering different migrations in Europe and Asia in parallel. This allows making an assumption that migrations, common for European cultural and territorial, border and time dimensions, are determined and structured differently in Asian space.
- Gradual historical transition of “pendulum” and retail trade short-term trans-border migrations into more “permanent” forms, and the latter – into “horizontal circular migration”.
- The necessity of forming the definition of “border” and make the differences between them “parallel” in terms of further agreement of its sense in common European-Asian dimension.

Reaching consistency regarding the concept of border is seen as the key for creating a time-spatial “measuring system” for describing migration, and the way of determining “temporality” based on such differentiation: while for the Europeans “crossing the border” traditionally means a passage from one time and space to another (migration from one place to another), than what means crossing the border in Asia and which border would be a transition to “different time and space” for an Asian person?

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## 5. CONCLUSIONS

Pirkko Pitkänen and Sergio Carrera

The European-Asian case is illustrative in multiple ways. Asia is a continent with the world's largest population and emigration scales. Although Asia is traditionally known as a source of immigrants, it has recently grown as a region of destination as well. Although the outward migration of Europeans to Asia is relatively small in numbers, the importance of Asia, particularly China, has significantly increased over the last two decades. This is related to global economic transformations and, in particular, to the growing role of China in world's economy.

International recruitment practices are key when considering the transformation processes under way in the European-Asian context. Countries which in the past were largely unaffected by migration are being drawn into an increasingly integrated labour market in which international recruitment is a significant component of human resource planning. Besides high-skilled and skilled workers this concerns tertiary level students, which for countries facing real or prospected skill shortages, represent 'semi-finished'<sup>1</sup> high-skill workers. In practice the student mobility and highly-skilled migration are often closely interconnected: students are either already highly educated and are going abroad for a postgraduate degree, or they will, through their studies abroad, gain an educational qualification which puts them in the highly skilled category (Lall, 2006). The EURA-NET research revealed that the mobility of tertiary level students between Europe and Asia is on the increase. Not just Asian students are increasingly studying in European universities, but also European tertiary level students have adopted increasingly mobile transnational lifestyles.

Sometimes people's border-crossing mobility between Europe and Asia is pendular. This is the case, in particular, what concerns migration for economic and employment purposes. People may live in one country and cross a national border on a regular basis to another, or they can annually stay for a short period in the target country, for example, for the harvest season. As an example, numerous people from Thailand move yearly to Europe and other continents to work in agriculture, services and construction. People's border-crossing movements are not just about a flow between two countries, but much circulation occurs. For example, Chinese and Indian high-tech professionals may be 'citizens of the world' whose main objective is to pursue career opportunities that will enable them to maximise their earnings and savings (Rao, 2001; Vertovec, 2004: 985-987).

Transnationally mobile people and the transnational social spaces they gradually create transform not only the socio-economic conditions but wider social patterns are also in a state of change. The growing role of transnational familial ties and networks is an example in this respect. What is feasible at this point is to ask whether the policy regulations take into account the needs of family members of short-term migrants. Family-based movers form a very heterogeneous group of people whereby the temporariness of residence is rather exceptional and typically depends on the stay and departure of other family members.

Persons leaving their country for the purpose of employment or family reasons are not the only groups of transnational movers who want to improve their quality of life. Lifestyle migration is a heterogeneous phenomenon whereby people (typically citizens of affluent industrialised nations) move, permanently or temporarily, to a country with lower living costs (incl. cheaper property prices) and sunny climates (see Benson & O'Reilly, 2009 a; 2009b). Today some Asian countries, such as India and Thailand, attract increasing number of lifestyle migrants from Europe. Although the phenomenon is relatively small as far as numbers are concerned, lifestyle migration clearly appears to be an emerging social pattern in the European-Asian context.

Moreover, a number of asylum seekers are moving back and forth over Asian and European bor-

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<sup>1</sup> Tapas Kumar Majumdar (1994) has invented the term 'semi-finished human capital' for tertiary level students.

ders. Although their transborder movement may in some cases be determined by economic factors in the home country<sup>2</sup>, the reason why asylum seekers have a dislike to live in their home country is typically a result of discrimination, or of political or ethnical persecution. From the perspective of destination country, an asylum seeker is a non-permanent resident. In case of a negative decision, the person must leave the country and may be expelled, unless permission to stay is provided on humanitarian or other related grounds. Return to initial home country may also be voluntary. Return migration describes a situation where migrants, after a period abroad, return to their home country. Generally speaking, there are two different categories of return migration: migration where the migrants choose the return time and migration where the return time is exogenous.

Finally, a person's border-crossing movement may be irregular<sup>3</sup> in case it takes place outside the regulatory norms of the country in question. There is no clear or universally accepted definition for irregular migration but, in general, an irregular migrant is a person who, owing to unauthorised entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. From the perspective of the destination country it is entry, stay or work in a country without the necessary authorisation or documents required under immigration regulations. From the perspective of the sending country, the irregularity may be seen, for example, in cases in which a person crosses an international boundary without a valid passport or travel documents or does not fulfil the administrative requirements for leaving the country. (IOM, 2014.)

## State-of-the-art Knowledge on Temporary Migration

The term 'temporary migrant' is typically used from the perspective of the receiving country: a person is seen as a temporary migrant, even if he/she leaves the initial home country permanently, as long as he/she remains only temporarily in the host country (Dustmann, 2000). The preceding chapters reveal that there is a lack of research literature analysing the temporariness and transnational characteristics of recent migration flows, whereas the scholarly literature has been relatively large in examining the limits and inherent deficits in any past attempt in normatively defining human mobility as 'temporary migration' and framing it into a policy framework. A key question that EURA-NET addresses is the extent to which or how 'time/time-bound nature' as defined in migration policies relates to or considers socio-economic transformations. Can the socio-economic characteristics of people's mobilities and everyday experiences be imprisoned in static norms or regulations on temporary migration? Further, while considerable attention has been paid by researchers and policy-makers to the quantum of traditional migratory movements, there is a lack of statistical data on temporary border-crossing movements as such. This lack of knowledge on the quality and extent of temporary migration and its relation to time-bound policies constitutes a serious hindrance for policy making. By studying the temporary characteristics of recent cross-border human movements the EURA-NET project seeks to contribute towards a better understanding of temporariness of migration schemes and their impact on socio-economic inclusion of persons in the move.

The EURA-NET research on EU, international and Asian standards on 'temporary migration' and the national reports have showed that there is no commonly accepted definition of 'what' is temporary migration and 'who' is qualified as a temporary migrant. Current concepts and target groups are often very much dependent on national specificities in respect of historical, political, economic and societal backgrounds, as well as different (even competing) interests at play in the setting of priorities and formulation of migration policies. This does not necessarily reflect a 'deficit' in need of a definition,

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<sup>2</sup> The term 'economic migrant' is often loosely used to refer to asylum seeking persons attempting to enter a country without legal permission and/or by using asylum procedures without bona fide cause.

<sup>3</sup> The term 'irregular' is preferable to 'illegal' because the latter carries a criminal connotation and is seen as denying migrants' humanity. Thus, in this report the use of the term 'illegal migration' is restricted to cases of smuggling of migrants and trafficking in persons.

but rather shows the challenges inherent to framing or imprisoning differential or specific societal phenomena with artificial ‘concepts’ and policy agendas such as the one of ‘temporary migration’. A number of country reports have concluded that because a clear definition does not exist, temporary is what is not permanent. Yet, a common definition or understanding of what is ‘permanent’ is equally contested. It is therefore questionable to which extent a common concept would effectively address the issues and challenges at stake behind temporary migration policies. Instead, there are *a number of featuring variables* which seem to play a role in the framing a phenomenon as ‘temporary migration’: skills, activity/kinds of occupation, time, rights/benefits, legal status, changing intentions/expectations of the individual and the security of the state. ‘Time’ therefore is not the only featuring component which matters the most in mobility as temporary migration.

European Migration Network (EMN) which seeks to improve the comparability among the EU Member States by publishing Asylum and Migration Glossary has defined temporary migration as ‘migration for a specific motivation and/or purpose with the intention that afterwards there will be a return to country of origin or onward movement’ (Asylum and Migration Glossary 2.0, 2012: 118). The definition by EMN is a good start but several unsolved questions remain: What is the relationship between temporary and permanent migration? When is the moment where temporary migration becomes permanent? To what extent the intentions of individual migrants play a role here? In practice, temporariness may be voluntary or involuntary (or forced). Some migrants are temporary because they have only a limited residence permit, for example a temporary working contract. Migrants on such a scheme consider the time of departure or return as exogenous. In some cases migrants may be removed from the country of residence (irregular migrants, asylum seekers, e.g.). Another form of temporary migration are migratory movements where the migrants leave the host country by their own choice, and where the return time is a choice variable. Only migrants under this category can be considered migrants with temporary migration intentions. (Cf. Dustmann, 2000.)

The EURA-NET research has revealed that while there are no shared definitions in European or international standards, some (equally artificial) features exist which may provide indications related to some time-bound conceptions of migration. As demonstrated in the Chapter 2 on European and international standards, the EU legal framework on migration uses the period between three months and five years in what could be denominated as ‘temporary’ (up to three months third country nationals holding a Schengen visa may freely travel in the Schengen area), and after five years corresponding with permanent residence as outlined in the Directive 2003/109 on the status of third country nationals who are long-term residents. The UN also counts with specific categories referring to temporariness; short-term migration (between three months and one year) and long-term migration (longer than a year), yet both of them can in practice be ‘temporary’ in nature and have been subject to similar methodological limitations.

## What Role Does Temporary Migration Play in National Policies?

Transnational migration cannot be conceived of without potential senders and receivers. The EURA-NET consortium covers countries at both ends of the migration axis, as well as countries of transit. In principle, China, India, the Philippines and Thailand represent sending and Finland, Germany, Greece and the Netherlands receiving societies, while Hungary, Turkey and Ukraine are seen as the representatives of transit countries. It should yet be taken into account that these characteristics are not entirely exclusive. For instance, Thailand is an immigration country in the Asian context, Greece both an emigration and transit country in the European context, and Hungary, Turkey and Ukraine are not just transit areas but also countries of immigration and emigration. Likewise China is currently both immigration and outward migration country.

In-migration and outward migration are addressed by nation states in their migration laws and



policy programmes. Passports and visas are structural institutions that administer and control people's acts of transnational movement. Every transnationally mobile individual needs to manage this system, in one way or another. Passport works as a certificate of identification, but it is not always a sufficient document to cross state borders between Europe and Asia; very often a visa is required as the document that authorises entry to a target country. By means of passports and other travel documents nation-states have taken the authority to define 'who belongs and who does not', who may come and go, how, when, and where (Thorpey, 1998: 240-253; also Korpela, 2015). As Jansen (2009: 824) argue, 'passports of different states exist in hierarchical relationships according to the degree of passage they secure'. Therefore, although also facilitating, passport system works, perhaps above all, as a prevention mechanism since it is extremely difficult, even impossible, to navigate the international structures of movement without a passport.

In principle, the political goal of nation states is the facilitation of authorised flows of people across national borders and the detection and prevention of irregular entry of non-nationals into a given country. However, the preceding country reports question whether temporary immigration is actually desirable. In all country cases, the immigration policy can be characterised as a *policy of national security*. This particularly concerns the temporary forms of migration. The receiving countries either try to make the temporary residence permanent or try to ensure that temporary migrants leave the country. As an example in the Netherlands, there is a focus in national policy on ensuring that temporary migrants return to their country of origin when their residence permit expires. In the Dutch case, temporary migration mainly concerns medium- and low-skilled workers. Based on the historical experience with guest workers in the 1960s and 1970s (whose stay in the Netherlands was supposed to be temporary, but who ended up becoming permanent immigrants), government policy lays down certain conditions for temporary migrants, aimed at ensuring their departure. Yet in practice, 'temporariness' is not necessarily a permanent status. For many temporary migrants, migration originally intended to be temporary can become permanent through continual renewal of the original residence permit. Once a migrant has accrued an uninterrupted period of five years of legal residence in the Netherlands, he/she becomes eligible to apply for long-term residence. By this way temporary migration may lead the way to permanent settlement in the country. This makes a clear analytical distinction between 'temporary' and 'permanent' migrants difficult.

In many migrant-receiving European countries, the range of people's transnational activities has been addressed with increasing media attention and policy concern, and populist right-wing parties using anti-immigrant rhetoric have achieved increasing popularity. As a consequence, a number of European states (e.g. Finland, Germany, Hungary and the Netherlands) have revised their immigration policies in order to reassert control over migration flows. In all country cases, the migration policy can be characterised as a *policy of national interests*. Whereas the Dutch immigration policy is very restrictive to temporary migration schemes, high-skilled workers are encouraged to settle permanently in the country. Also in Germany transnationally mobile professionals provide the skills required to fill critical labour gaps, and the German society thus try to make their residence permanent. Since 2005 the German government has introduced a set of new migration policies against the background of emerging demographic changes and a related growing lack of qualified specialists in a range of specialised fields. These legal opening mechanisms are selective in nature and are geared for the attraction of certain migrant categories, such as professionals or students from non-EU countries, which have led and lead to the increasing relevance of immigrants from Asian sending countries. Nevertheless, as the German country report (Chapter 4.3) reveals, Germany has a low degree of attractiveness for foreign professionals given too high bureaucratic and cultural barriers. To some degree, there also exists incoherence in the immigration relevant context in Germany: while permanent migration is needed in order to compensate demographic issues, the selective opening mechanism is geared to temporary immigration. In addition to very high bureaucratic and cultural hurdles, the

temporary immigration model seems not flexible enough for the personal and familiar needs of some migrant categories.

In the context of Asia's growing markets and increasingly highly educated population, the German-Asian transnational space has received increasing attention in the German public debate. It seems that the general trend of an increasing importance of mobility between Germany and Asia is related to the expansion of international business relations in the context of globalisation. Migration related to this process generally has got a temporary nature and is based on a circular exchange of highly educated professionals and students. The most important country in the context of international student exchange with Germany is China, in both directions: from Asia to Germany and Germany to Asia. The skilled and student migration also represent categories the groups of migrants which the German government (and other European governments) try to attract in the context of the new legislation, particularly related to the Blue Card.

Like many other European countries, Finland wants to attract high-skilled and skilled labour from abroad. This is mainly due to the ageing of population. The Finnish immigration policy is very selective in the sense that labour migration is allowed only to the fields which are suffering of domestic shortage of labour. For instance, wild berry pickers from Thailand are welcome to Finland as they are crucial for the competitiveness of the respective industry. They typically come to the country with a three-month long Schengen visa while almost all other labour migrants from outside the Schengen area need both a work permit and a residence permit. Finland also attracts increasing number of tertiary level students from Asian countries (education is free in Finland). It is hoped that the students would settle in the country permanently after having completed their studies; but in practice this rarely happens. Degree students reside in Finland with temporary resident permits. After having graduated, they can obtain a six-month-long visa in order to seek employment in the country.

Permanent settlement of newcomers is preceded in Finland by a period of temporary residence; the first residence permit is always temporary. Thus, Finland initially defines all migrants as temporary, even if their intention would be a permanent residence. There are also rather high income requirements for labour migrants who want to move into the country with their family members. As the Finnish country report (Chapter 4.2) argues, there is a trend in the Finnish policy that the country does not really want foreign human beings but just human resources. The researchers ask whether a state with such a restrictive immigration policy can really be attractive in the global competition for talent. This is a relevant question, as the highly skilled experts are welcome to many other regions as well. In most cases the work related mobility from the Asian countries focuses on areas outside Europe (USA, Australia, Canada, New Zealand, the Gulf) whereas the non-English speaking European states face serious challenges in their recruitment practices. For instance from Indians living abroad only 3,5 per cent reside in the non-English speaking European countries.

India is today one of the leading players in the skilled migration. It is also the second important students sending country after China. In Europe the United Kingdom has received around 80 per cent of Indian tertiary level students, and Germany and France have also been rather successful in attracting students from India. The number of Indian students is gradually increasing in other European countries too, especially in those where education is considerably cheap or even free, such as Sweden, Finland, Denmark and Italy. Another group of temporary Indian migrants in Europe consists of 'lifestyle seekers'. Not just European lifestyle migrants are spending time in India but there is also an emerging phenomenon of Indian lifestyle migrants in Europe (particularly in the United Kingdom). Moreover, it is estimated that around half a million irregular Indian migrants enter EU Member States every year. The highest number of irregular migrants from India is in the United Kingdom, followed by Germany and France.

At the same time as European countries try to recruit high-skilled professionals from Asia and other continents, China seeks to attract highly skilled experts from abroad to China. In 2004, China

designed a new programme Regulations on Examination and Approval of Permanent Residence of Aliens in China for attracting foreign experts and facilitating foreign investments in China. Although only a few people are admitted by the programme, there has been a minor increase in human mobility from Europe to Asia in recent years. In most cases these migratory movements have been temporary in nature. In Germany, the importance of Asia, particularly China, as destination for intra-company transferees has significantly increased over the last two decades, and in some European countries (e.g. Finland) there are also particular state-led programmes aiming to promote businesses in Asia.

In the past few years, China has been relaxing the control of persons crossing its border. Immigration to China is temporary by nature and migration policy thus mainly focuses on temporary migration. Also China's visa system mainly serves the management of temporary migration of foreigners. One actual issue causing concern is that China is in short of any integration policy or comprehensive legal system to tackle issues related to the residence and employment of foreigners. As Tian Fangmeng and Hu Xiaojiang write in Chapter 4.1, China needs to deal with a permanent foreign presence in the near future, since ethnic communities of foreigners have been growing rapidly. In particular, many less skilled foreigners overstay or work illegally without proper documents in China. This is the case in Thailand as well. There are numerous workers from Europe and other continents who work in Thailand without work permit and those who continue to work despite the expiry of their work permit.

Skilled and professional migrants are welcome to Thailand as well, although a clear policy of recruitment is lacking. Instead, there is an increasing number of Europeans migrating to the country for marriage, retirement and medical tourism. As Manasigan Kanchanachitra and Sureporn Punpuing write above (see Chapter 4.9), it is likely that Europeans travelling to Thailand for health purposes will increase in the future, as medical tourism has received attention among Thai policy makers in recent years. The researchers argue that despite the increase in immigration, Thailand does not have any migration policy reflecting the long-term economic and social goals of the country. Migration policies in the past have rather been a responses to short-term issues arising from migration or the economy. In particular, national security is the main concern regarding the influx of immigration. This is mainly due to the fact that 3,2 million people have recently migrated to Thailand from neighbouring countries Myanmar, Lao PDR and Cambodia.

In many migrant-sending Asian regions, transnational mobility has become an established livelihood strategy, and border-crossing resource transfer plays a crucial role in the local economy. According to the World Bank, Asia is the top remittance receiver in the world (Mohapatra, Ratha & Silwal, 2011) and, in many cases, remittances have a strategic value for transformation processes under way. For instance India, with a high number of skilled professionals abroad, has rather well placed to take advance of the resources generated by the nationals abroad. Moreover, many Asian states have taken an increasingly active role in regulating outward migration and seeking opportunities for their nationals abroad. The case of the Philippines provides an example on emigration country par excellence on a global scale. The number of Filipinos going abroad every year as new hires or rehires surpasses 1,8 million. During the past forty years, the main objectives of migration policy have been to facilitate overseas labour for Filipino migrants, and to ensure their protection. The Philippines has established a comprehensive set of provisions that embrace the whole migration process: (1) Most migrants use the intermediation of private recruitment agencies, which need to be licensed and to abide by the rules established by the Philippines Overseas Employment Administration (POEA); (2) To help migrants prepare for overseas work, training opportunities have been established, from the pre-employment, to the pre-departure and post-arrival moment; (3) The protection of Filipino workers abroad is ensured by the diplomatic posts; (4) The welfare of migrants is guaranteed by a mandatory insurance and various programmes; and (5) The reintegration of return migrants is assisted by the National Reintegration Center for OFWs (NRCO).

The Philippines has also engaged several countries of destination in bilateral agreements and ratified many human and labour rights conventions. Overseas Filipino migrants have recently acquired more agency, with the capacity to vote in national elections, and have succeeded in sending representatives to Congress. Nevertheless, the Philippine country report (Chapter 4.8) indicates several aspects that remain in need of improvement, such as illegal recruitment and ineffective training courses. According to Graziano Battistella and Maruja M.B. Asis, reintegration remains the weakest component of the migration policy, since it is difficult to know the number of returnees and to offer them appropriate services. The researchers highlight that migration should be better integrated in development plans, particularly at the local level, to maximize its benefits.

In China and India, a number of governmental and non-governmental agencies are targeting the nationals and diasporic communities abroad (Overseas Chinese Affairs Office; Ministry of Overseas Indian Affairs, e.g.). In recent years, China's policy activities targeting overseas Chinese have expanded from rehabilitating their status and utilising their financial and commercial resources to uniting and engaging all overseas Chinese, particularly the new generation of migrants. Similarly in India there is a growing interest in the activities of nationals abroad. In 2013, the Ministry of Overseas Indian Affairs estimated that the Indian diaspora consists of around 25 million people across 189 countries. Also in Thailand, there have recently been some efforts to protect Thai workers who want to work abroad through the Recruitment and Job-Seekers protection Act. The regulations cover both pre-migration, destination, return and reintegration phases. As Manasigan Kanchanachitra and Sureeporn Punpuing write in Chapter 4.9, despite the efforts to protect migrants, exploitation is still a common problem and, thus, a more comprehensive plan of action will be needed.

The EURA-NET research has revealed that, in all migrant-receiving countries, there are many problems in the integration and adaptation paths of temporary migrants. As Sergio Carrera, Katharina Eisele and Elspeth Guild write in Chapter 2, temporary migration schemes seem to allow governments to legally discriminate foreign workers and their families. A common feature identified in the country reports is that existing national concepts and framings of 'temporary migration' allow states to limit access to rights, security of residence and socio-economic inclusion of persons on the move, thereby increasing their vulnerability, deprivations and dependency over migration regulations and state documents like visas and residence permits. Visas constitute a central tool for restrictively managing mobility as temporary migration by the state.

In the Netherlands, in contrast to migrants whose stay in the country is more permanent, temporary migrants are not obliged to fulfil any integration requirements, but the Dutch migration policy focuses on ensuring that temporary migrants return. Integration is today one of the hottest political topics in the country, and political parties take clear and diverging stances towards immigration. Right-wing political parties have entered the political arena and achieved electoral success. This has changed the nature of political debate and has also changed the policies and strategies adopted by the mainstream political parties. This is reflected in the Dutch integration policy: the policy has become very restrictive. Also in Finland, the public discussion has been dominated by critical voices. In the Finnish context, entitlements to social security are a crucial issue in regard with temporary migration. As an example, the Finnish policy towards humanitarian migration has been strict. The most significant problem in the Finnish asylum policy (and migration policy in general) is the long and complicated process of gaining the right to reside in the country.

One of the main migration roads from Asia and Eastern Africa to Europe goes through Greece (often via Turkey). In many cases, migrants stay in Greece more than planned as they cannot go further to the West. As a consequence the number of irregular migrants has increased in Greece rapidly. Many of them have remained totally marginalised and excluded from housing, particularly after 2009 when the Greek economy escalated and the collapse of the construction sector could not absorb any more workers. Besides economic difficulties, populist xenophobia places immigrants in a difficult



position. Temporary migrants in Greece face serious social uncertainty with regard to unemployment, health care, insurance, legalisation of their status, and housing. Labour exploitation and high rates of unemployment – especially in times of socio-economic crises – fuels anger and insecurity within the migrant workforce and triggers hostility and fear among the mainstream population.

Although the true scale of the phenomenon is unknown, it is obvious that Turkey is the main corridor for irregular mobility from Asia to Europe. There is also evidence of cases of human trafficking in Turkey. Turkey is not just a country of transit but since the beginning of the 2000s it has become more an immigration country. During the last decade, there has been an increase in new forms of migration flows (both in- and outward migration), such as seasonal workers, circular migrants, highly skilled workers, life-style migrants and international students. These migratory movements are both regular and irregular. In many cases the state of Turkey tends to define the status of people as temporary migrants even their own intention may be to become permanent. Although not an EU state, Turkey is still strongly committed to Europe and is actively engaged in seeking EU membership. Irregular migration and border management are important issues to achieve the goal of conforming common EU policies. As a consequence, existing policy documents, regulations and laws focusing on migration/mobility management have been reviewed. There are also new formations of governmental institutions which are established for implementing and regulating the entry, stay and exit from Turkey for foreign nationals, and for the protection of the rights of migrants and asylum seekers. Particularly, the adaptation of the Law on Foreigners and International Protection is topical in this respect.

As a Schengen country (since 2008) Hungary has gained growing importance as a country of transit both for Asian companies planning expansion to Europe and for individual people, not only for regular migrants but also for irregular ones. This state of affairs has recently attracted considerable political and media attention in Hungary. The level of xenophobia has risen sharply to a high extent coinciding with other forms of prejudices, such as anti-Roma and anti-democracy feelings. Migration to Hungary is sharply restricted and the policy orientation is defensive supposing that immigration is dangerous and threatening. As a consequence, in Hungary, there is a relatively low level of regular immigration and the number of irregular migrants is relatively high. Foreign newcomers are poorly integrated into the country as there are neither formal requirements nor substantial criteria for integrating migrants into the Hungarian society and economy. It is likely that this lack of any affirmation results in temporariness: in case of labour migrants, the precondition of self-sufficiency considering income, accommodation and healthcare may result in temporariness; in case of students, the tuition fee payment obligations without preference to stay may result in temporariness; and in case of humanitarian migrants, the lack of minimum support may encourage asylum seekers to rely on authorities to stay. One of the current concerns in Hungary is that outward migration from the country seems to be on the increase. The Hungarian government has made efforts to stop this emigration due to the fear of labour shortage of doctors, ITC experts and other professionals.

Similarly Ukraine is a transit country between Asia and Europe. According to the World Migration Report (2013), migration corridor Russia-Ukraine is the second after the world's largest migration corridor Mexico-USA by the number of immigrants who passed them in 2010. Besides, together with the United States, the Russian Federation, India and Germany, Ukraine belongs to the top migrants sending and receiving countries in the world. Although Ukrainian legislation and state statistics do not distinguish temporary and permanent migration, temporariness is observed with regard to emigration: migration changes from temporary to permanent after a migrant does not return home for five years. The Ukrainian research report (Chapter 4.11) reveals that while the outward migration of Ukrainians has been a subject of public and scientific discourse and political debate, the processes of immigration and transit migration are very poorly understood.

Finally, in many migrant-sending countries, there is an increasing number of programmes and practical policies targeting expatriates and return migrants. Administrative, logistical, financial and



reintegration supports concern both voluntary and involuntary return: asylum seekers, victims of trafficking in human beings, stranded migrants, qualified nationals and other migrants who are unable or unwilling to remain in the host country. For example in China, the government has changed its visa policy and residence management system to facilitate returnees' transnational mobility. Both in China and India industrial parks and other endeavours have been designed both by public actors and returnees themselves to nurture high-tech enterprises in the countries. At least to some extent, these strategies have been successful in luring skilled nationals back home.

## An Inventory of European, Asian and International Policies

The EURA-NET research has examined an expanding range of European, international and Asian standards, policy documents and regional processes which engage in different ways in the framing and setting of priorities of cross-border human movements as 'temporary migration'. Supranational and inter-regional processes are affecting and sometimes challenging the margin of manoeuvre and discretion enjoyed by state governments in the management of migration.

The European Union counts with its own approach as regards movement of persons and border controls. Nationals of EU Member States fall within the status of European citizens and benefit from a set of EU freedoms and rights which include the freedom to move and reside in a non-discriminatory manner elsewhere in the Union. The free movement of persons abolished since its inception migration framings of 'temporariness'. With the free movement rules and the abolition of internal border controls, EU and national policy makers aimed at deregulating or de-securitising mobility and in this way encourage EU citizens to move cross-borders without the need to be subject to migration controls and administrative documents like visas, work or residence permits or other administrative barriers. The EU's specificity, which has become one of the main successes of European integration, has been founded on the lifting of temporary migration schemes limiting rights of foreign workers and their families to settle and be socio-economically included in the receiving societies.

In a parallel dimension, the EU has progressively donated itself with a shared policy on visas, external border controls, migration and asylum applicable to third country nationals which is common to the participating EU Member States. This has been particularly the case since 1999, time when the Amsterdam Treaty transferred to share EU competence these policy domains. Temporary migration is not explicitly defined in any piece of EU legislation which has been adopted since then. There is a large variety of conceptual features and factors related to 'temporariness' and time frames in the various legal instruments composing EU migration law (see Annex 1).

As a way of illustration, there are common EU rules on short-term visas as part of the wider Schengen system and which are laid down in the Community Code on Visas. The EU visa policy is based on the existence of a common list of countries whose nationals are required to hold visas before entering EU's territory. EURA-NET countries like China, India, Thailand and the Philippines are subject to this EU Black Visa List. Authorised temporary stays under the Schengen visas regimes only allow for a period of up to three months within a six-month period. Restrictive and inflexible temporary visas regimes pose a number of challenges and practical obstacles for nationals of these countries to enter and/or live regularly in the EU. Moreover, there are EU migration and asylum directives outlining common European rules and standards for entry and residence in the Union of specific categories of foreign workers such as the EU Blue Card 2009/50 Directive or the Seasonal Workers 2014/36 Directive. Importantly, Directive 2003/109 provides for a shared EU status of 'long-term' third country national which is granted after a period of five-years of residence, which corresponds with the EU's understanding of 'permanent residence'.

The resulting picture in the EU is one characterised by a fragmented matrix of European migration directives and regulations stipulating a sectoral set of rules across a dispersed field of pieces of legis-

lation. These exist in parallel with a set of heterogeneous Member States migration national policies and statuses, some of which are even in competition and divergent from common EU standards. Still, EURA-NET research has highlighted how the emerging common European policy framework is inflicting profound consequences over participating Member States' autonomy at times of framing mobility as 'temporary migration' and limiting access to rights and labour standards, security of residence and non-discrimination of third country workers falling within 'temporary' categories.

On the international level there is neither one single definition of what temporary migration actually is. There are however a number of international frameworks and standards conceptualising, referring to or even covering the phenomenon of short-term cross-border mobility. These include for instance the UN, ILO and OECD standards and legal/policy instruments. A detailed overview of each of them has been provided in Annex 2. Some conceptual features and notions have been introduced and discussed for the purposes of calculating international migration statistics. The UN counts with a common definition of 'who' is an international migrant, and differentiates between short-term and long-term migration. Moreover, ILO standards are particularly useful because of their inclusiveness and extension of labour standards and non-discrimination to categories of migrant workers and their families framed as 'temporary migrants'.

The EURA-NET research has assessed the participation of Asian countries in these and other international migration-related instruments. The 2000 Trafficking Protocol and the 1951 Refugee Convention and its 1967 Protocol register high ratifications while the remaining instruments have been ratified by fewer countries. The 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families constitutes a piece of particular importance to the Asian regions because of the predominance of mobility for labour or economic-related purposes. A key common challenge characterizing these international normative perspectives and frameworks which has been identified is the lack of ratification by state governments, particularly those of 'destination', and therefore their weak legal or enforcement status. For instance, the UN Convention on the Rights of All Migrant Workers has not attracted many ratifications on world-wide scale. The States' parties, including those that have ratified the Convention in Asia, are by and large limited to 'countries of origin'. To date, only 47 states have ratified it, including six in Asia, and none of the parties are destination countries. The low level of ratification and effective implementation weakens the effectiveness of these kind of supranational instruments in providing basic protection to migrant workers and their families. The formation of transnational and regional platforms among civil society organisations has been signalled as a key contribution to sustained efforts to raise awareness about migrants' protection, the importance of international instruments and standards and in spearheading multi-level campaigns for the ratification of these instruments.

The study of Asian countries' policies on temporary migration has covered Regional Consultative Processes (RCPs) on various topics related to migration in Asia. These supranational processes show inter-state cooperation processes engaged in the understanding, framing and regulation of human mobility as temporary migration. Illustrative examples include for example the Bali Process, the Colombo Process and the Abu Dhabi Dialogue. RCP play a key role in achieving a 'regional position' and in the transfer of ideas and policy agendas through networking, depoliticisation (Ministerial consultations) and exchange of practices. The informal, non-binding nature of RCPs provides a space where otherwise parties with divergent interests and agendas can dialogue with each other. They importantly create a 'common language/discourse' and setting of priorities regarding 'temporariness' and mobility as 'temporary migration' as a result of meetings, interaction and 'sharing of concerns, perspectives and best practices' (Hansen, 2010).

The Association of Southeast Asian Nations (ASEAN) and the ASEAN Economic Community (AEC) constitute further inter-regional processes in the Asian region. There have been also several initiatives aimed at achieving greater cooperation and reform in the management of migration and the

free movement of skilled labour. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers or the 2012 Task Force on ASEAN Qualifications Reference Framework (TF-AQRF) constitute excellent examples here. Yet the realisation of ASEAN objectives in protecting migrant workers and the implementation of mutual recognition arrangements on professional services remain key challenges (Aldaba, 2013; Huelser and Heal, 2014).

The EURA-NET research has emphasised that the full realisation of the free movement of 'skilled labour' will require hurdling major shortcomings inherent in the AEC, namely, many sectors are limited to nationals and limiting the AEC to skilled workers. More cooperation in extending the MRAs to more sectors, removing the nationality provisions in professions where MRAs have been negotiated, expanding labour market access to less skilled workers, and protecting the rights of irregular migrants will be central at times of reducing these shortcomings. Similar issues have been pointed in ensuring the protection of foreign workers in line with international labour and human rights standards in the context of the South Asian Association for Regional Cooperation (SAARC), which has so far mainly focused on a visa exemption sticker scheme and combatting trafficking.

The EURA-NET research could contribute towards an evidence-based dialogue on cross-border mobility between the regions. This is particularly relevant in light of the European Commission plans to explore within the scope of the Global Approach to Migration and Mobility (GAMM) the possibilities to further EU-Asia dialogue on migration (European Commission, COM(2011) 743, 18.11.2011; European Commission, COM(2014) 96, 21.2.2014), and conclude Common Agendas for Migration and Mobility (CAMM) with some Asian countries like China, India and Indonesia (European Commission, COM(2014) 96, Annex).

## Concluding Remarks

A selective and utilitarian rationale (needs-based assessment) by the state at times of defining migratory regimes as 'temporary' has been identified in a number of country reports such as Finland, Germany or the Netherlands. In all country cases, including those in Asia, the migration policy has been characterised as a policy of 'national interests' and 'national security'. Short-termism predominates in rationale behind these migration policies – with 'national security' constituting a key driving factor. A majority of the country systems under analysis are not prepared at times of facing migratory phenomena falling outside 'permanent migration', such as issues related to the rights of short-term migrants, family matters and socio-economic integration questions.

The logic of temporariness is gradually expanding or even contaminating larger groups of 'migrant categories' which extend beyond the so-called 'low skilled'. The situation described in some of the European and Asian country reports is exemplary at times of illustrating a move by which even those migrants qualified as 'highly skilled' are increasingly subject to temporary migratory regimes. This is often the case when the role of the state in regulation of migration is more limited, such as in situations where corporations or business actors have a more prominent role. This is for instance the case in what concerns 'intra-corporate transferees' and 'trade in services'. Here also it is important to interrogate the consequences of these schemes for migrant workers and their socio-economic inclusion including labour standards and rights.

The regulation of human mobility as temporary migration, and in particular the one for employment purposes, shows a direct relationship with irregularity of entry and stay (often negatively labelled as 'illegal immigration') of those whose socio-economic characteristics do not perfectly match with the state framings or criteria of 'temporariness'. For most countries in Asia, temporary labour migration (particularly for those in 'less-skilled' occupations) is no pathway for permanent residence, but is rather subject to constant contract renewal. Moreover, as described in the country report on China (Chapter 4.1), the temporary migration requirements are often so high that very few people qualify

for regular temporary entry and stay. When these people do no longer meet the temporariness legal criteria they fall into irregularity, exclusion and are subject to expulsion and return policies.

The EURA-NET research shows that there is a huge gap between the law/policy and the practices/needs on the ground. There is also a mismatch between socio-economic characteristics and labour market situations and the way in which the state norms/law frame these phenomena. Finally, the research has revealed a number of European, international and Asian standards covering mobility as temporary migration. Some of these standards limit the discretion enjoyed by nation states at times of framing certain kinds of cross-border movements as temporary migration and limit protection, security of residence, family life, labour standards and inclusion of individuals. For instance, ILO instruments are clear in outlining labour standards as not dependent on time-bound definitions of migration. A key challenge identified in the EURA-NET research remains the effective implementation, accountability and enforcement of these supranational standards of protection.

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## Annex 1

### Comparing ‘temporariness’ in European and international standards

#### SECTION 1: EU legal and policy framework (Source: Author’s Elaboration)

The following table provides an overview of the EU migration law that contain references to ‘temporary’ or ‘permanent’ migration.

| Legal Instrument                                                                                                                                                                                                              | Indications regarding Temporariness                                                                                                                                                                                                                                                                                                            | Definitions of Temporary Migration (by analogy and in comparison to Permanent Migration)                                                                                                                                                                                                                                                                                                                | Legal Base           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement |                                                                                                                                                                                                                                                                                                                                                | <p>1. Third-country nationals who require a visa: <u>a short-stay Schengen visa</u> issued by one of the Schengen States <u>entitles its holder to travel throughout the 26 Schengen States for up to three months</u> within a six-month period</p> <p>2. Third-country nationals who are exempted from a visa requirement: allowed stay in the Schengen area for no more than three months in all</p> | Article 1, Article 2 |
| Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)                |                                                                                                                                                                                                                                                                                                                                                | <p><u>For stays not exceeding three months per six-month period</u>, the entry conditions for third-country nationals shall be the following [...]</p>                                                                                                                                                                                                                                                  | Article 5(1)         |
| Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification                                                                                                                                        | <p><u>The Family Reunification Directive applies where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence</u>, if the members of his or her family are third country nationals of whatever status.</p> |                                                                                                                                                                                                                                                                                                                                                                                                         | Article 3(1)         |

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| <p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents</p>                                                                | <p><u>The Long-Term Residents' Directive does NOT apply to third-country nationals who reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited.</u></p>  | <p><u>Long-term resident status shall be granted to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.</u></p> | <p>Article 3(2)(e), Article 4(1)</p>   |
| <p>Council Directive 2004/114/EC of 14 December 2004 on the conditions of admission of non-EU nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service</p> | <p><u>Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country [...]</u></p>                                                                                                                                                                                                      |                                                                                                                                                                                                                                    | <p>Recital 7</p>                       |
| <p>Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research</p>                                         | <p><u>The hosting agreement specifies the purpose and the duration of the research</u></p>                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                    | <p>Article 6(1) and (2); Article 8</p> |
| <p>Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment</p>                               | <p>Ethical recruitment policies and principles [...] should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and <u>temporary migration</u>, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries [...].</p> |                                                                                                                                                                                                                                    | <p>Recital 22</p>                      |
|                                                                                                                                                                                                      | <p><u>This Directive does NOT apply to third-country nationals who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons</u></p>                                                                                                              |                                                                                                                                                                                                                                    | <p>Article 3(2)(g)</p>                 |

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|                                                                                                                                                                                                                                                                                                                           | <u>Member States shall set a standard period of validity of the EU Blue Card, which shall be comprised between one and four years</u>                                                                                                                                                                                                                                    |  | Article 7(2)                   |
|                                                                                                                                                                                                                                                                                                                           | If the EU Blue Card issued by the first Member State expires during the procedure, <u>Member States may issue, if required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.</u> |  | Article 18(5)                  |
|                                                                                                                                                                                                                                                                                                                           | By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, <u>family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.</u>                                                                         |  | Article 15(2)                  |
| Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State | Third-country nationals who have been admitted to the territory of a Member State <u>to work on a seasonal basis should not be covered by this Directive given their temporary status.</u>                                                                                                                                                                               |  | Recital 9, see Article 3(2)(e) |
| Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection                                                                                                                                 | The Directive provides for the extension of long-term resident status to beneficiaries of international protection                                                                                                                                                                                                                                                       |  | Article 1                      |

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| <p>Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof</p> | <p><u>‘temporary protection’ means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons</u> from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;</p> |  | <p>Article 2(a)</p> |
|                                                                                                                                                                                                                                                                                                 | <p>Without prejudice to Article 6, <u>the duration of temporary protection shall be one year.</u> Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.</p>                                                                                                                                                                                                                                                                                                  |  | <p>Article 4(1)</p> |
|                                                                                                                                                                                                                                                                                                 | <p>Temporary protection shall come to an end:<br/> (a) when the maximum duration has been reached; or<br/> (b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.</p>                                                                                                                                                                                                                         |  | <p>Article 6(1)</p> |

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| <p>Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers</p> | <p>This Directive should contribute to the effective management of migration flows <u>for the specific category of seasonal temporary migration and to ensuring decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent.</u> In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the Council will contribute to avoiding such temporary stay turning into unauthorised stay.</p> |  | <p>Recital 7</p>  |
|                                                                                                                                                                                                                | <p>Taking into account <u>certain aspects of circular migration</u> as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive.</p>                                                             |  | <p>Recital 34</p> |



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|  | <p><u>Considering the specially vulnerable situation of third- country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of the rights of third-country national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same work- place, by applying collec- tive agreements and other arrangements on working conditions which have been concluded at any level or for which there is statutory provision, in accordance with national law and prac- tice, under the same terms as to nationals of the host Member State.</u></p> |  | <p>Recital 43</p>                |
|  | <p><u>Due to the temporary nature of the stay of sea- sonal workers and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council, Member States should be able to exclude family benefits and unem- ployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the appli- cation of equal treatment in relation to education and vocational training, as well as tax benefits.</u></p>                                                                                                                                                                                                                                                                                                                                                 |  | <p>Recital 46, 2nd paragraph</p> |

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|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------|
|  | <u>For stays not exceeding 90 days</u> the Directive shall apply without prejudice to the Schengen acquis, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539/2001.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | Article 1(2)               |
|  | <u>For admission as a seasonal worker exceeding or not exceeding 90 days, the duration of employment has to be specified.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | Article 5(a), Article 6(a) |
|  | Where the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until the competent authorities have taken a decision on the application, provided that the application was submitted within the period of validity of that authorisation and that the time period referred to in Article 14(1) has not expired.<br><u>Where the second subparagraph applies, Member States may, inter alia, decide to:</u><br><u>(a) issue national temporary residence permits or equivalent authorisations until a decision is taken;</u> |  | Article 18(2)(a)           |

| <b>Policy Documents</b>                                 | <b>Definitions/Indications regarding Temporary Migration (by analogy and in comparison to Permanent Migration)</b>                      | <b>Legal Base/Reference</b> |
|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| European Council Conclusions of 14 and 15 December 2006 | The European Council Conclusions called for ways and means to be explored <u>to facilitate circular and temporary migration by 2007</u> | Paragraph 24(b.)            |

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| <p>European Commission Communication, Circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248, 16 May 2007</p>       | <p>“Circular migration can be defined as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries.”</p> <p>“The two main forms of circular migration which could be most relevant in the EU context are:</p> <ol style="list-style-type: none"> <li>(1) Circular migration of third-country nationals settled in the EU</li> <li>(2) Circular migration of persons residing in a third country”</li> <li>(3)</li> </ol> | <p>Pages 8-9</p> |
| <p>European Migration Network Report on <i>Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States</i></p> | <p>The EMN Report (referring to the EMN Glossary) defines “temporary migration” as “migration for a specific motivation and/or purpose with the intention that, afterwards, there will be a return to country of origin or onward movement.” The EMN Glossary also notes that, with regard to the development of EU policy, this may be seen in the context of inter alia circular migration and seasonal workers.</p>                                                                  | <p>p. 14</p>     |

| <p><b>PROPOSED Legal Instrument</b></p>                                                                                                                                                                                                         | <p><b>Definitions/Indications regarding Temporary Migration (by analogy and in comparison to Permanent Migration)</b></p>                                                                                                                                                                                                                                                                                                                                                                                                             | <p><b>Legal Base</b></p>              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| <p>European Commission, Proposal for a directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378, 13 July 2010</p> | <p>This proposed Directive deals with one form of temporary migration: “As intra-corporate transfers consist of temporary migration...”</p> <p>definition of ‘intra-corporate transfer’ means <u>the temporary secondment of a third-country national</u> from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;</p> | <p>Recital 13</p> <p>Article 3(b)</p> |
|                                                                                                                                                                                                                                                 | <p>By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, <u>family reunification in the first Member State shall not be made dependent on the requirement that the holder of the permit issued on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.</u></p>                                                                                                                                                           | <p>Article 15(2)</p>                  |

## Annex 2

### Comparing ‘temporariness’ in European and international standards

#### SECTION 2: International frameworks (Source: Author’s Elaboration)

The following table provides an overview of the international frameworks that contain references to ‘temporary’ or ‘permanent’ migration.

| Legal Instrument & Policy Document                                                                                                       | Definition of Temporary Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Legal Base & Reference                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1998 UN Recommendations on Statistics of International Migration, Glossary, Statistical Papers Series M, No. 58, Rev. 1, New York</p> | <p>An international migrant is defined as “any person who changes his or her country of usual residence.” The change of country of usual residence necessary to become an international migrant must involve a period of stay in the country of destination of at least a year.</p>                                                                                                                                                                                                                                                          | <p>pp.17-18;<br/>pp. 93-96;</p> <p>On short-term international migration, see also: UN Statistical Commission and Eurostat: Is the measurement of international migration flows improving in Europe? Working Paper No.12, 16 May 2001, p. 3;</p> <p>On long-term immigrant, see also: 1976 UN Recommendations on Statistics of International Migration, United Nations (1980a). Recommendations on Statistics of International Migration. Statistical Papers, No. 58. Sales No. E.79.XVII.18, para. 32 (a) (I) and table 2)</p> |
|                                                                                                                                          | <p>A short-term migrant is defined as “a person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year, except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business or medical treatment. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.”</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|  | <p>A long-term migrant is defined as “a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from that of the country of arrival, the person will be a long-term immigrant.”</p>                                                   |  |
|  | <p>Migrants for settlement are defined as “foreigners granted the permission to stay for a lengthy or unlimited period, who are subject to virtually no limitations regarding the exercise of an economic activity.”</p>                                                                                                                                                                                                                                                                               |  |
|  | <p>Nomads are defined as “persons without a fixed place of usual residence who move from one site to another, usually according to well-established patterns of geographical mobility. When their trajectory involves crossing current international boundaries, they become part of the international flows of people. Some nomads may be stateless persons because, lacking a fixed place of residence, they may not be recognized as citizens by any of the countries through which they pass.”</p> |  |
|  | <p>Seasonal migrant workers are defined as “persons employed by a country other than their own for only part of a year because the work they perform depends on seasonal conditions. They are a subcategory of foreign migrant.”</p>                                                                                                                                                                                                                                                                   |  |
|  | <p>Contract migrant workers are defined as “persons working in a country other than their own under contractual agreements that set limits on the period of employment and on the specific job held by the migrant (that is to say contract migrant workers cannot change jobs without permission granted by the authorities of the receiving State.”</p>                                                                                                                                              |  |



|  |                                                                                                                                                                                                                                                                                                                                                                                       |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | Foreign migrant workers are defined as “foreigners admitted by the receiving State for the specific purpose of exercising an economic activity remunerated from within the receiving country. Their length of stay is usually restricted as is the type of employment they can hold.”                                                                                                 |  |
|  | Foreign students are defined as “persons admitted by a country other than their own, usually under special permits or visas, for the specific purpose of following a particular course of study in an accredited institution of the receiving country.”                                                                                                                               |  |
|  | Foreign tourists are defined as “foreign persons admitted under tourist visa (if required) for the purposes of leisure, recreation, holiday, visits to friends or relatives, health or medical treatment, or religious pilgrimage. They must spend at least a night in a collective or private accommodation in the receiving country and their duration must not surpass 12 months.” |  |
|  | Foreign trainees are defined as “persons admitted by a country other than their own to acquire particular skills through on-the-job training. Foreign trainees are therefore allowed to work only in the specific institution or establishment providing the training and their length of stay is usually restricted.”                                                                |  |
|  | Foreigners granted temporary protected status are defined as “foreigners who are allowed to stay for a temporary though possibly indefinite period because their life would be in danger if they were to return to their country of citizenship.”                                                                                                                                     |  |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| <p>UN 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990)</p> | <p>The 1990 UN Migrant Worker Convention does neither define temporary nor permanent migration but it does define “seasonal worker”, “project-tied worker” and “specific-employment worker” – thus categories that are all time-bound:</p> <p>“The term ‘seasonal worker’ refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.”</p> <p>“The term ‘project-tied worker’ refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer.”</p> <p>“The term ‘specified-employment worker’ refers to a migrant worker:</p> <p>(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or</p> <p>(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or</p> <p>(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;</p> <p>and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work.”</p> | <p>See Articles 2(2)(b),(f), and (g)</p> |
| <p>ILO Convention No. 97 (revised 1949) concerning Migration for Employment</p>                                                                                                                  | <p>This ILO convention speaks of “a migrant for employment who has been admitted on a permanent basis” while not defining what “permanent” means</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Article 8</p>                         |

|                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <p>ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers</p> | <p>This ILO convention defines in Part II a “migrant worker” as “a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker” without specifying the time frame.</p> <p>However, a number of categories of migrants are excluded from the scope of application of Part II of the Convention, including “employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.”</p> | <p>Article 11(2)(e)</p> |
| <p>ILO Recommendation No. 86 (revised 1949) concerning Migration for Employment</p>                                                                            | <p>Annex contains model bilateral agreement distinguishing between permanent and temporary migration without, however, providing for definitions</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                         |
| <p>ILO Publication “In search of Decent Work – Migrants’ Workers Rights: a manual for trade unionists” 2008</p>                                                | <p>“Contract workers”: workers admitted on the expectation that they will work for a limited period and return to their country of origin. The temporary migrant programmes of the 1950s to 1960s were of this type. In the past, these workers could extend their contracts, stay longer and became settled [...]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>p. 42</p>            |
| <p>ILO International Labour Migration – Towards a Rights-Based Approach, 2010 publication, Geneva</p>                                                          | <p>Temporary migration, referring to admission of workers (sometimes referred to as “guest workers”) for a specified time period, either to fill year-round, seasonal or project-tied jobs, or as trainees and service providers under Mode 4 (Movement of Natural Persons) of the GATS</p> <p>Circular migration (in the same heading as return migration) is described as the phenomenon when migrant workers move regularly back and forth between two countries; “the concept is broad enough to take into account both temporary migration systems and diaspora movements between origin and destination countries.”</p>                                                                                                                                                                                        | <p>p. 24; p. 53</p>     |

|                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| <p>ILO Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (Guidelines on special protective measures for migrants in time-bound employment), 21-25 April 1997, Geneva</p> | <p>The term time-bound migrants is meant to cover “seasonal workers, project-tied workers, special purpose workers, cross-border service providers, students and trainees but no other categories.”</p> <p>The Guidelines (in Annex 1 of the report) specify that “special measures are needed to protect such persons since the time-bound nature of their move between countries incurs risks, deprivations and vulnerabilities.”</p>                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>p. 24; p. 53</p>   |
| <p>IOM Glossary on Migration (2nd edition) No. 35, 2011</p>                                                                                                                                                           | <p>Temporary (labour) migration is defined as “migration of workers who enter a foreign country for a specified limited period of time before returning to the country of origin.”</p> <p>A temporary migrant worker is defined as “skilled, semi-skilled or untrained workers who remain in the destination country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. Also called contract migrant workers.”</p> <p>Circular migration is defined as “the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination.”</p> <p>For the definition of short-term migrant IOM takes over the UN definition.</p> | <p>pp. 97, 91, 19</p> |

|                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>General Agreement on Trade in Service (GATS)</p>                                                                                              | <p>The term temporary is not defined by the GATS, nor by the Annex Movement of Natural Persons. Instead, it varies according to the commitments inscribed by members.</p> <p>From these commitments it becomes apparent that members tend to grant access to their territory for service providers for periods between three months and three years with exceptions to five years.</p> <p>While commitments should include the duration of stay, as stated in the Scheduling Guidelines, 48 schedules contain no such indication. Furthermore, several other schedules indicate the period of stay only for some of the mode 4 categories they include</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>WTO Council for Trade in Services Presence of Natural Persons (Mode 4), Background note by the Secretariat, 8 December 1998, S/C/W/75, par 3;</p> <p>WTO Council for Trade in Services Presence of Natural Persons (Mode 4), Background note by the Secretariat, 15 September 2009, S/C/W/301, par 97;</p> |
| <p>Council of Europe, European Committee on Migration – Report on “Temporary migration for employment and training purposes”(9 October 1996)</p> | <p>Because of problems of classification, the report categorises economic migrants by the substance and form of their move.</p> <p>It is pointed out that “a clear-cut distinction between temporary and permanent stay is often not possible because in the course of the migration and integration process a temporary work permit may be extended and a short-term stay may finally develop into a permanent one. Even migrants who originally intended to settle permanently may change their mind and leave.”</p> <p>“The major characteristic of temporary work is that it is limited in time and cannot be a preliminary step for a foreign worker to settle permanently in the host country. This implies:</p> <ul style="list-style-type: none"> <li>- a temporary worker must always have a fixed-term contract of employment, specifying the authorized occupation, the geographical area in which the activity may be carried out and the employer. This means that foreign temporary workers may not freely change their employer, activity or area;</li> <li>- temporary workers must leave the country on expiry of their contract;</li> <li>- the facilities for family reunion do not apply to them.”</li> </ul> | <p>pp. 11 and 13</p>                                                                                                                                                                                                                                                                                          |



|                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Council of Europe, Parliamentary Assembly, Resolution 1534 (2007) on “The situation of migrant workers in temporary employment agencies” | This Resolution calls for better protection of (temporary) migrant workers in relation to temporary employment agencies without specifying, however, what “temporary” means.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                   |
| OECD Online Glossary of Statistical Terms                                                                                                | The OECD Glossary of Statistical Terms uses the UN definitions of short- and long-term migrants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <a href="http://stats.oecd.org/glossary/detail.asp?ID=1562">http://stats.oecd.org/glossary/detail.asp?ID=1562</a> |
| OECD, International Migration Outlook 2008 on temporary migration                                                                        | This 2008 Outlook identifies certain categories of migrants as temporary migrants, including international students, service providers, and seasonal workers, without specifying time frames. It is stated that data on temporary migration is almost exclusively derived from permits and that the number of categories tends to vary considerably across countries.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | p. 47                                                                                                             |
| OECD – Trends in international migration, Continuous Reporting System on Migration – annual report (1998)                                | <p>This OECD Report emphasises that the main distinction between temporary and permanent employment is that temporary work is not normally considered a preliminary step for foreign workers to settle permanently in the host country. The comparative report is based on eight case studies (Australia, Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States).</p> <p>“The amount of time these [temporary] workers are allowed to stay, for example, varies considerably depending on the category and country concerned. It generally ranges from three months to four years, and in some cases may be renewable. However, when workers are allowed to stay longer than several years, it is legitimate to ask whether the term ‘temporary’ is really appropriate to describe the situation. Some workers are also entitled to change their status.”</p> | p. 185; p. 198                                                                                                    |

## Annex 3

### Immigrants in the Netherlands (Source: Eurostat)

Countries participating in the EURA-NET project are highlighted.

| Country of citizenship | Number of immigrants in the Netherlands in 2012 |
|------------------------|-------------------------------------------------|
| Turkey                 | 84,830                                          |
| Morocco                | 56,595                                          |
| China                  | 23,900                                          |
| United States          | 15,348                                          |
| Indonesia              | 11,766                                          |
| India                  | 10,776                                          |
| Suriname               | 6,438                                           |
| Thailand               | 5,887                                           |
| Brazil                 | 5,750                                           |
| Russia                 | 5,609                                           |
| Iraq                   | 5,530                                           |
| Ghana                  | 5,458                                           |
| Japan                  | 5,322                                           |
| Philippines            | 4,013                                           |
| Iran                   | 3,969                                           |
| Canada                 | 3,676                                           |
| Afghanistan            | 3,399                                           |
| Nigeria                | 3,227                                           |
| Pakistan               | 3,080                                           |
| Australia              | 3,009                                           |
| Ukraine                | 2,911                                           |
| South Africa           | 2,785                                           |
| Egypt                  | 2,550                                           |
| South Korea            | 2,482                                           |
| Vietnam                | 2,460                                           |
| Bosnia & Herzegovina   | 2,351                                           |
| Colombia               | 2,210                                           |
| Mexico                 | 1,680                                           |
| Taiwan                 | 1,485                                           |
| Malaysia               | 1,418                                           |
| Israel                 | 1,385                                           |
| Cape Verde             | 1,374                                           |
| Sri Lanka              | 1,368                                           |
| Ethiopia               | 1,255                                           |
| Dominican Republic     | 1,169                                           |
| Peru                   | 1,117                                           |
| Tunisia                | 1,110                                           |
| Singapore              | 974                                             |
| Chile                  | 899                                             |

| <b>Country of citizenship</b>    | <b>Number of immigrants in the Netherlands in 2012</b> |
|----------------------------------|--------------------------------------------------------|
| FYROM                            | 843                                                    |
| New Zealand                      | 841                                                    |
| Democratic Republic of the Congo | 830                                                    |
| Somalia                          | 823                                                    |
| Belarus                          | 817                                                    |
| Armenia                          | 779                                                    |
| Nepal                            | 755                                                    |
| Algeria                          | 754                                                    |
| Venezuela                        | 754                                                    |
| Angola                           | 751                                                    |
| Cameroon                         | 740                                                    |
| Kenya                            | 721                                                    |
| Sierra Leone                     | 683                                                    |
| Sudan                            | 677                                                    |
| Ecuador                          | 677                                                    |
| Former Yugoslavia pre-1992       | 658                                                    |
| Syria                            | 641                                                    |
| Argentina                        | 569                                                    |
| Saudi Arabia                     | 554                                                    |
| Cuba                             | 532                                                    |
| Albania                          | 512                                                    |
| Georgia                          | 512                                                    |
| Bangladesh                       | 506                                                    |
| Congo                            | 477                                                    |
| Burundi                          | 421                                                    |
| Uganda                           | 413                                                    |
| Kazakhstan                       | 407                                                    |
| Lebanon                          | 382                                                    |
| Tanzania                         | 365                                                    |
| Zimbabwe                         | 354                                                    |
| Azerbaijan                       | 346                                                    |
| Guinea                           | 343                                                    |
| Moldova                          | 327                                                    |
| Liberia                          | 316                                                    |
| Eritrea                          | 309                                                    |
| Gambia                           | 302                                                    |
| Togo                             | 270                                                    |
| Côte d'Ivoire                    | 267                                                    |
| Bolivia                          | 244                                                    |
| Rwanda                           | 228                                                    |
| Senegal                          | 220                                                    |
| Jordan                           | 211                                                    |

| <b>Country of citizenship</b> | <b>Number of immigrants in the Netherlands in 2012</b> |
|-------------------------------|--------------------------------------------------------|
| Montenegro                    | 209                                                    |
| Uzbekistan                    | 202                                                    |
| Myanmar                       | 198                                                    |
| Costa Rica                    | 187                                                    |
| Zambia                        | 173                                                    |
| Jamaica                       | 163                                                    |
| Serbia                        | 141                                                    |
| Guyana                        | 135                                                    |
| Libya                         | 126                                                    |
| Guatemala                     | 115                                                    |
| Mongolia                      | 112                                                    |
| Burkina Faso                  | 111                                                    |
| Yemen                         | 110                                                    |
| Nicaragua                     | 102                                                    |
| Honduras                      | 95                                                     |
| Benin                         | 94                                                     |
| Kyrgyzstan                    | 90                                                     |
| El Salvador                   | 79                                                     |
| Trinidad and Tobago           | 79                                                     |
| Niger                         | 78                                                     |
| Uruguay                       | 75                                                     |
| Mozambique                    | 70                                                     |
| Cambodia                      | 68                                                     |
| Mauritius                     | 65                                                     |
| Panama                        | 60                                                     |
| Namibia                       | 58                                                     |
| Haiti                         | 57                                                     |
| Bhutan                        | 56                                                     |
| Paraguay                      | 49                                                     |
| Oman                          | 42                                                     |
| Laos                          | 35                                                     |
| Malawi                        | 34                                                     |
| Botswana                      | 34                                                     |
| Guinea-Bissau                 | 33                                                     |
| Mali                          | 30                                                     |
| Mauritania                    | 30                                                     |
| Turkmenistan                  | 29                                                     |
| Gabon                         | 27                                                     |
| Kuwait                        | 25                                                     |
| Tajikistan                    | 24                                                     |
| Madagascar                    | 20                                                     |
| Brunei                        | 20                                                     |
| Lesotho                       | 19                                                     |
| Djibouti                      | 17                                                     |

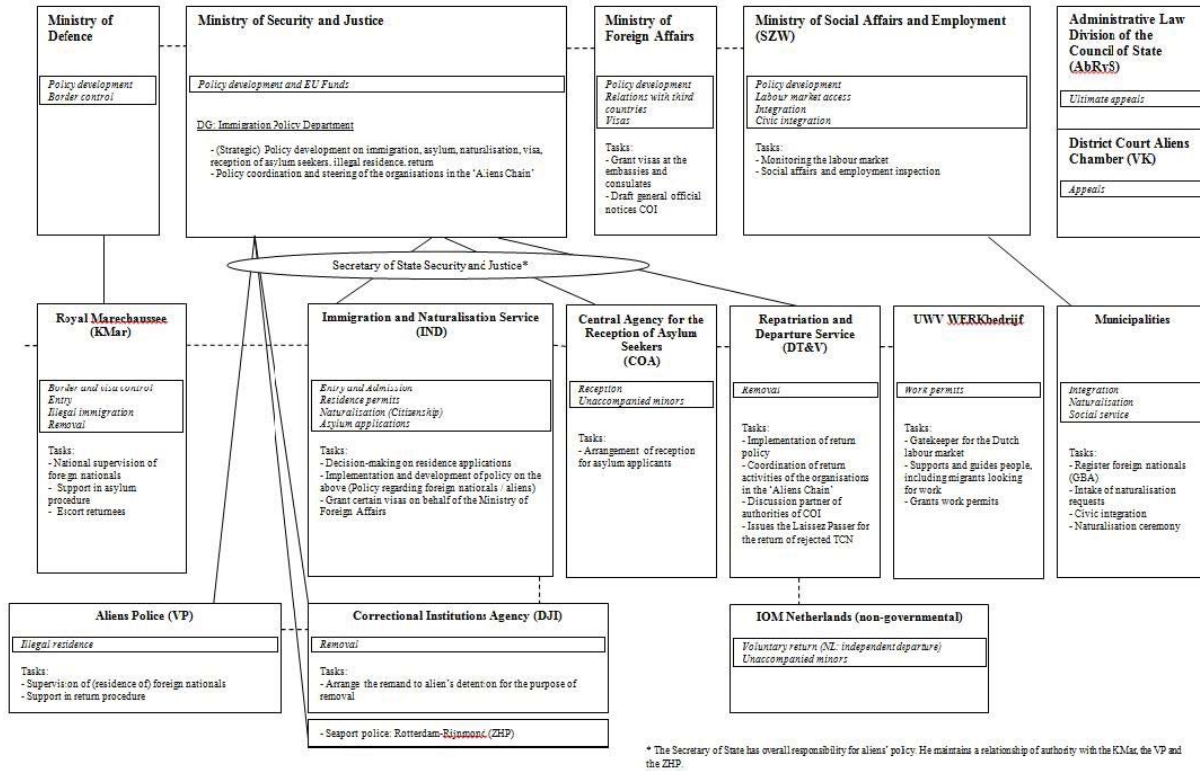
| <b>Country of citizenship</b>       | <b>Number of immigrants in the Netherlands in 2012</b> |
|-------------------------------------|--------------------------------------------------------|
| North Korea                         | 16                                                     |
| Melanesia                           | 16                                                     |
| Barbados                            | 11                                                     |
| Swaziland                           | 10                                                     |
| Saint Lucia                         | 9                                                      |
| Dominica                            | 8                                                      |
| Bahrain                             | 8                                                      |
| São Tomé and Príncipe               | 7                                                      |
| Saint Vincent and the Grenadines    | 7                                                      |
| Fiji                                | 7                                                      |
| Polynesia                           | 7                                                      |
| Samoa                               | 7                                                      |
| Seychelles                          | 6                                                      |
| Bahamas                             | 6                                                      |
| Maldives                            | 6                                                      |
| Monaco                              | 5                                                      |
| Chad                                | 5                                                      |
| Belize                              | 5                                                      |
| United Arab Emirates                | 5                                                      |
| Qatar                               | 5                                                      |
| Papua New Guinea                    | 5                                                      |
| Andorra                             | 4                                                      |
| Central African Republic            | 4                                                      |
| Equatorial Guinea                   | 4                                                      |
| Saint Kitts and Nevis               | 3                                                      |
| Comoros                             | 2                                                      |
| Solomon Islands                     | 2                                                      |
| Vanuatu                             | 2                                                      |
| San Marino                          | 1                                                      |
| Grenada                             | 1                                                      |
| Micronesia                          | 1                                                      |
| Nauru                               | 1                                                      |
| Stateless                           | 2,005                                                  |
| Total immigrants (non-EU 27)        | 336,894                                                |
| Total population of the Netherlands | 16,730,348                                             |



# Annex 4

## The organisation of migration and asylum policies in the Netherlands

THE NETHERLANDS - Institutional Chart for immigration and asylum policies (November 2012)



Source: European Migration Network, 2012b