

Section 3 - Policy and Migration in South Asia

Information on Migration Policies

The original hypotheses of the project were:

Government policy, which aims to control migration flows, generally has the effect of making migration more hazardous for individual migrants.

Policy-making is usually reactive, responding to changes and crises, rather than anticipating them.

The focus of this research has been on emigration and immigration policy, the assumption being that it is this policy that most directly affects those involved in international migration. In all of the countries of South Asia there are, in fact, few restrictions on who can migrate. In most cases, however, it is difficult to find any clear statement of specific country policy on migration.

One possible source of information on emigration policy is government institutions concerned with migration, such as the Sri Lanka Bureau of Foreign Employment and the Overseas Pakistani Foundation. In many cases these institutions provide general statements of intent rather than specifics. Far more useful are the various recent analyses of policy, such as Mahmood (1998) on Bangladesh, Nair (1998) on India, Seddon et al (2000) on Nepal, Addleton (1992) on Pakistan, and Gunatilleke (1998a) and Gamburd (2000) on Sri Lanka. Appleyard (1998) provides an overview of these analyses, which vary considerably in approach and in the level of detail provided.

There are a large range of sources and analyses of immigration policy for receiving countries, which are often more clearly stated because of their importance. In this report I have chosen to look in some detail at examples for each of the main receiving regions for South Asian migrants. For the Middle East, Kuwait is presented, looking at the formulation of policy (Russell 1987) and its implementation (Longva 1997). For South East Asia, I look at Malaysia, examining the ethnic origins of policy (Ong 1999) and at the ambivalence over illegal immigration (Brownlee and Mitchell 1997). Finally as an example from the North, I look at analyses of policy in the EU, at attempts to limit further entry (Morrison and Crossland 2001) and at recent policy changes (OECD 2001).

With regard to the conditions of migration, there are relatively few general assessments for specific receiving countries or regions. In general what is available are reports on specific issues in particular contexts, such as the trafficking of women and children and cases of abuse of domestic workers. There are a range of organisations which focus on such issues, including the Minority Rights Groups which produced a report of Migrant Workers in the Gulf (Owen 1985), Human Rights Watch which has reported on the trafficking of women from Nepal to India (Human Rights Watch 1995), and the Migrant Forum in Asia which has produced short reports on aspects of conditions for migrants in South East Asian countries (Migrant Forum in Asia website). In addition, some analysts such as Weiner (1995) and Abella (1992) have looked at the effects of immigration policies in the Gulf states. The only detailed examination of the effects of such policies on the work and lives of migrants has been carried out in Kuwait by Longva (1997).

The presentation of the data consists of two parts, the first on sending country policies and the second on receiving country policies. In looking at sending country policies, I first take a general view of the development of emigration policy in the region and at recent developments (Appleyard 1998). The policies in each of the countries of South Asia are then presented with an attempt to link policy with changes in migration flows and impacts as set out in Sections One and Two. In order to look in more detail the links between policy and migration flows I then carry out a regional comparison, focusing on the issue of gender and migration.

In order to better understand how wider policy issues affect migration flows, the second part of the section turns on receiving country policies. The three examples are presented, Kuwait for the Middle East, Malaysia for South East Asia and the EU for the developed countries, with some general background on each of the regions. Finally I use an international comparison of the issues around migrants and rights, comparing specific cases in the main destination countries with the rights set out in the UN Convention on Migrant Workers.

Policies in Sending Countries

The colonial authorities first introduced the importance of knowing and understanding specific geographic territories to South Asia (see for example Perera 1998). Spencer has drawn attention to the fact that these authorities considered some types of movement within these territories as requiring encouragement, such as agricultural settlement, while others were to be discouraged, for example, shifting agriculture (Spencer 2001). A range of movements and migration were encouraged in the subcontinent in the colonial era, including recruitment for the army, police and administration, the development of canal colonies, and particularly the system of indentured labour. In addition the period provided a range of opportunities for the adventurous, as historians such as Kessinger (1974) have pointed out.

Tinker records that the enlistment of Punjabis, Sikhs and Nepalis as indentured labour was forbidden (Tinker 1974: 59). All of these were important groups for the recruitment of what were seen as trustworthy and reliable soldiers and policemen. Various studies have touched on the importance of this colonial recruitment for later migration, including: Seddon on Gurkha recruitment in Nepal (Seddon 1995); Tatla (1999) on Sikh recruitment, and; Addleton on Punjabi and Pathan recruits (Addleton 1992: 31).

Perhaps the largest movement in the period was of huge numbers of indentured labourers from India to work on agricultural estates in many other parts of the empire. The movement of indentured labourers was a subject of considerable political debate throughout the period of recruitment. Acts were brought in 1837 to regulate emigration from Calcutta, Madras and Bombay, covering terms of contract, means of transport and the need to return migrants at the end of service (Tinker 1974: 64). At various times official reports on the appalling conditions for many migrants resulted in the prohibition of further emigration. Demand from the colonies and estates soon put pressure on the government to allow migration to specific destinations again. At the height of emigration, from the 1860s to 1880s the government appointed Emigration Agents to regulate the ports of departure and Protectors of Immigrants for the ports of arrival (ibid: 74-5).

With the end of the indenture system in 1920, the government of India lacked an emigration policy (ibid: 367). The result was the Indian Emigration Act of 1922 which was brought in to control the emigration of unskilled workers and prohibit the emigration of skilled workers (ibid: 369). The act also allowed the government to make exceptions for specific countries and gave the power to control or prohibit the emigration of skilled workers as well (ibid: 369).

The act remained in force in the independent states of South Asia until the late 1970s, early 1980s (Addleton 1992: 100). As Addleton has highlighted the policy remained unchanged until the massive emigration of labour to the Gulf states in the late 1970s (Addleton 1992: 100). Pakistan was the first to replace the Emigration Act of 1922 in 1979, followed by Sri Lanka in 1981, Bangladesh in 1982 and India in 1983 (ibid: 100). In the main, these new policies were a reaction to the often chaotic and uncontrolled movement of workers to the Gulf states. The new legislation sought to regulate private recruitment agencies through a licensing system and established public sector recruiting

agencies (Appleyard 1988: 114). The other important aspects of the new legislation were the promotion of labour migration and the protection of migrants (Appleyard 1998: 9) through institutions such as the Overseas Pakistani Foundation and the Sri Lanka Bureau of Foreign Employment. In some cases this promotion and protection has been active, as in the case of Sri Lanka, in others, such as Pakistan, it has been more passive (Appleyard 1998: 9). Nepal, until very recently (see Seddon et al 2000), had little or no policy with regard to migration, despite its long-standing importance to households and to the economy as a whole.

Overall the countries of South Asia saw this migration to the Middle East as an opportunity and sought to remove restrictions on those who wished to leave the country. The main exception to this has been the restrictions brought in to restrict and control the migration of female workers from South Asia (see Ghosh 1998: 2-3), discussed in more detail in the section on Gender and Migration below. Since the 1980s there have been few significant changes in legislation in South Asia, though several countries, such as Sri Lanka and Bangladesh, have sought to further encourage more widespread migration.

The two countries which stand out in the region as having positive policies with regard to labour migration are Sri Lanka and Bangladesh. Sri Lanka has put in place a range of policies and institutions that encourage and actively support migrants leaving to look for work. The successful implementation of these policies has led to rapid growth in the number of migrants, and particularly female migrants and a growth in the importance of remittances to the economy. On paper Bangladesh would seem to have similarly supportive policies in place. However, there are large numbers of people who are choosing to or are forced to migrate illegally, a situation which has resulted in tensions between Bangladesh and its neighbours. India and Pakistan are best characterised as having 'laissez faire' policies with regard to migration; that is policies which have removed restrictions to emigration but which do relatively little to support and protect migrants once they leave the country.

In terms of conditions for migrants once they have left the country, it would seem from the limited information available that most migrants work and live in reasonable conditions and that there are support structures available for those who encounter problems. In cases where the Government of Sri Lanka has tried to further improve conditions, such as through attempting to negotiate standard work contracts, there has been relatively little success limited ability of sending countries to influence and improve conditions of overseas workers though some basic protection is provided. For illegal migrants there are very mixed conditions depending on who they are working for. The main problems that they face are uncertainty of conditions and instability. There is no protection offered by sending countries

Sri Lanka

Labour migration has been encouraged by the Government of Sri Lanka "on the grounds that it would mitigate problems which have had adverse effects on Sri Lanka's economy: high levels of unemployment and the recurrent problem of adverse balance of payments on current account" (Gunatilleke 1998a: 130). Sri Lanka's positive policies towards labour migration are best illustrated by the website of the Sri Lanka Bureau of Foreign Employment (SLBFE), with the ironic title, For all your Man Power Needs. The mission statement is clear: to promote and organize the supply of competent, trained, Sri Lankan manpower abroad, and to regulate the industry to achieve a competitive edge in the region, whilst ensuring adequate welfare facilities to migrants and their families in Sri Lanka. Sri Lanka has some restrictions on the migration of women, stating that women must be 20 years old to work as domestic workers and banning the recruitment of entertainers (Ghosh 1998: 3).

Active efforts have been made by the government, through the Ministry of Labour and the SLBFE to look for new markets for labour in the Middle East and in new destinations such as Singapore, South Korea and Cyprus (Gunatilleke 1998a: 130). Recruitment of migrants is carried out in the main by foreign employment agencies (69% of the total outflow), while the SLBFE regulates these agencies and provides them with information and training facilities (ibid: 131).

More importantly for migrants a range of supportive and protective measures have been introduced as labour migration from the country has grown (Gamburd 2000: 20). In the early days of migration to the Middle East, 1979-81, Sri Lanka expanded the network of embassies and consular sections to include the UAE, Saudi Arabia, Kuwait, Jordan and Lebanon, to provide better protection for the growing numbers of migrants working in these countries. The SLBFE was established by Act of Parliament in 1985 and further strengthened in 1994. The roles of the Bureau include regulation of the private recruiting agencies, support to migrants before leaving and monitoring of the scale and composition of the migration flows from the country (Gamburd 2000: 50-2).

The role of the Bureau has developed over time, as the numbers of migrants have grown. In 1995 compulsory registration of migrants was introduced, along with the close monitoring of departing migrants, resulting in a rapid increase in the numbers of those who registered. With the revenue from the fees paid by recruitment agencies, the SLBFE has been able to provide insurance to all migrants and has given training to women going to work as housemaids. On a less successful note, attempts by the Bureau to negotiate standard contracts with receiving countries have had mixed success (Gamburd 2000: 50-6). Overall there is general agreement that the Government of Sri Lanka has been successful in achieving its overall objectives (see for example Gunatilleke 1998a; Appleyard 1998: 9).

The figures, discussed in detail in Section One, demonstrate the success of the policies pursued by the Government of Sri Lanka. After some fluctuations in the annual numbers of migrants in the 1980s, in the 1990s the numbers have grown dramatically throughout the 1990s. At the same time the proportion of women migrants has grown from 50% in

1980 to 75% in 1997 (see also Gunatilleke 1998a: 113; Gamburd 2000: 35). Further, as Gunatilleke points out, the exploration by the SLBFE of new labour markets has paid off with increasing recruitment from a wider range of destinations (Gunatilleke 1998a: 130-1). In terms of the intentions of the policy, migration has had a significant economic impact, as discussed in Section Two, helping to reduce unemployment and contributing to economic growth (Gunatilleke 1998a: 113, 143-4; Dunham and Jayasuriya 1998: 3153-4). These increases are, in the main, due to increased demand, though a great deal of credit must go to the support that the government provides.

Bangladesh

The policy in Bangladesh is to encourage migration, though as Mahmood suggests, this interest has been "more in response to various markets dynamics than a planned effort to tap market opportunities" (Mahmood 1998: 201). Initially policy was developed in response to the employment opportunities in the Middle East. Such an attitude is illustrated in recent quote from the Bangladeshi Prime Minister Sheikh Hassina that the solution to the country's problems of poverty lay in migration - "We'll send them to America. (Laughter). Globalization will take that problem away, as you free up all factors of production, also labour. There'll be free movement, country to country. Globalization in its purest form should not have any boundaries, so small countries with big populations should be able to send population to countries with big boundaries and small populations. Already, we have nearly two million working abroad." (Migration News June 2001). As Mahmood points out, despite problems with large scale illegal migration from the country, "A clear government policy.... is yet to follow" (Mahmood 1998: 201).

It has been argued by some, such as Mahmood (1998) and Shah (1998a), that Bangladesh has introduced a similar set of policies to those of Sri Lanka to encourage and support labour emigration. The Emigration Ordinance was introduced in 1982 to ease the restrictions of the 1922 Act (Mahmood 1998: 201). A series of institutions were established to assist and regulate the process of migration, including the Bangladesh Bureau of Manpower and Training charged with the promotion of migration, the Overseas Employment Promotion Council which monitors the numbers of migrants, and the Bangladesh Association of International Recruiting Agencies which regulates recruitment (ibid: 202). In addition there are Labour Attaches in the main labour importing countries to offer protection to migrant workers. Like Sri Lanka, Bangladesh aims to restrict the migration of some categories of women, stating that women must be 21 years old to work as domestic workers and banning the recruitment of entertainers (Ghosh 1998: 3).

Mahmood, however, identifies one of the main problems in Bangladesh as being governance or corruption at the local level (ibid: 203). Those who wish to migrate are forced to pay bribes at every stage of the migration process. 'Extra payments' are required to obtain a passport, to get a visa and even to buy an air ticket. At each stage various individuals need to be paid bribes, including government officials, those in travel and manpower agencies, bank staff, embassy staff and airline staff (ibid: 203). The costs add considerably to the actual costs of migrating and mean that the overall amounts are prohibitive for most ordinary Bangladeshis. One of the results is that large number of people resort to migrating illegally, that is without the necessary travel papers. Of even greater concern are the women and children who become the victims of traffickers (ibid: 202).

As the figures in Section One show, there has been a rapid rise in the number of legal migrants to an increasing range of destinations from Bangladesh, particularly in the last ten years. At the same time there have been increasing concerns about the number of illegal migrants from Bangladesh. Relations between Bangladesh and India and Pakistan have been put under strain by the large numbers of illegal migrants. Concerns have also

been expressed about illegal migrants in Burma, Malaysia, Singapore, Thailand and Japan (Mahmood 1998: 178; Migration News, various). Despite these concerns, the Government of Bangladesh has no policy on illegal migration (Mahmood 1998: 202).

Stalker suggests that the migrant population from Bangladesh, including illegal migrants, was around 2 million, about 4% of the total economically active population (Stalker 2000: 76). Given the scale of unemployment (around 2%), but particularly underemployment (around 23%), in Bangladesh, even large scale migration from the country seems likely to make much of a contribution to solving these problems (Stalker 2000: 76). Remittances have, however, been growing steadily and have offset recent economic problems such as the trade deficit (IMF 2000: 29). The IMF have also noted that as aid inflows have fallen to below 3.5% of GDP in 1998-9, worker remittances have grown in importance to 4% of GDP (IMF 2000: 27).

Pakistan

As Addleton has pointed out, Pakistan was the first country in the region to bring in new legislation to replace the 1922 Emigration Act in order to be better able to deal with the large outflows of labour migrants to the Gulf States from the mid-1970s on (Addleton 1992: 100). The new Emigration Ordinance of 1979 sought to regulate the private recruitment agencies and to generally regularise the situation (ibid: 100). Various institutions were brought into being to help and support potential and existing migrants, including the Overseas Employment Corporation for government to government contracting arrangements, regional Protectorates of Emigrants to regulate the private recruitment agencies, and the Overseas Pakistanis Foundation to ensure the welfare of migrants and their families (ibid: 101-4). Pakistan has some of the most restrictive policies with regard to women migrants, prohibiting women of less than 35 years old from working as domestic workers and banning the recruitment of nurses (Ghosh 1998: 3).

Addleton has indicated that in most cases, the role of the Government of Pakistan has been that of "an interested bystander rather than an active participant" (Addleton 1992: 6) and that in most cases "Official policy positions on migration usually followed rather than preceded change" (ibid: 4). In terms of promoting the interests of Pakistani migrants overseas, he has argued that, relatively little has been done and that, where possible, the government has chosen not to get involved. For example, Community Welfare Attaches were posted abroad in countries such as Saudi Arabia and the UAE, but did little to help migrants when they got into difficulties (ibid: 104). Similarly the Bureau of Emigration and Overseas Employment was given the remit in the mid-1970s to sign bilateral agreements with major labour importing countries. As Addleton points out, "By 1983, only one such agreement had been signed with a Middle Eastern country (Jordan), and that too where the number of Pakistanis present was quite small" (ibid: 104). Overall, it would seem that the government does little that may potentially interfere with good relations with major importers of Pakistani labour.

To a certain extent the laissez-faire policy of the Government of Pakistan has been successful with large numbers of migrants leaving annually, particularly to the Gulf states. At the same time, this continued dependence on a single labour market has meant that the numbers have fluctuated considerably, first in the mid-1980s as demands for labour fell off, and then again in the late 1990s as demands have changed. No efforts have been made to explore new labour markets and as a result only relatively small numbers of Pakistanis have taken advantage of new opportunities in destinations such as Malaysia.

Remittances have been of primary importance to the Pakistan economy since the late 1970s and levels remained high, through the 1980s. Since the start of the 1990s the levels of remittances have declined steadily, though there are no figures beyond 1995. Addleton noted the importance of remittances to the Pakistan economy in the 1980s (Addleton 1992: 113-6) and it can be assumed that the decline in the levels has had an impact on the economy as a whole.

India

Policy towards migration in India can be characterised, like that of Pakistan, as *laissez-faire*. The general attitude has been to downplay the importance of migration, illustrated in a statement from Premi that: "The Indian government has no clear policy of checking immigration or encouraging emigration, probably because emigration at the national level is so small that it cannot solve the unemployment or under-employment problems, and in view of immigration restrictions imposed by different countries, emigration cannot be the solution to these problems" (Premi 1998: 223). This attitude is despite the increasingly large numbers of people leaving the country and the scale of remittances. While there are some states, such as Kerala, that encourage migration, there is no comprehensive policy for the country as a whole (Nair 1998: 286).

With the replacement of the Emigration Act of 1922 in 1983, the government of India took away any major restrictions on migrants wishing to leave the country. Throughout the 1970s, much migration from India to the Gulf took place in what has been described as a 'policy void', so that "private unlicensed recruiting agencies mushroomed. Several thousand people migrated without valid passports, employment contracts or emigration clearance. Exploitation of Indian workers by recruiting and travel agents and employers abroad became rampant" (Nair 1998: 273). The Emigration Act of 1983 was a response to this chaos and sought to regulate recruiting agencies and allowed for the setting of minimum standards for foreign work contracts. Seven field Protectorates of Emigrants in six states and Union Territories were set up to implement new regulatory procedures of the Act (Samaddar 1999: 38). The main restrictions on those wishing to leave are that women must be at least 30 years old to work as domestic workers in Western Asia or Northern Africa (Ghosh 1998: 3).

In states such as Kerala, where the majority of Indian emigrants going to the Gulf states come from, migration and its impacts are of clearer importance. At the same time as Nair points out, "The government of Kerala does not have any policy in respect of migration.... In short, emigration from Kerala has taken place in a total policy void as has also been the case with other migrant-sending states in India" (Nair 1998: 286). Nair characterises the states' attitude and policies towards migration as "a series of unfulfilled promises and pronouncements" (Nair 1998: 285). Some of the results of this policy void are that migrants have little in the way of protection, are often open to exploitation by recruiting and travel agents in India as well as by employers abroad, and are reluctant to remit money through official channels.

For long-term emigrants from Indian, there are a range of obstacles to those wishing to maintain linkages with their country of origin or to return. The main obstacle is the inability of Non Resident Indians (NRIs) to maintain Indian citizenship jointly with the citizenship of another country and other restrictions on bringing money and goods back into the country. The complexity of the rules and regulations facing NRIs is attested to by the wide range of websites offering information and advice. However, in 1999 the government responded to lobbying by Indians abroad and brought in the Persons of Indian Origin (PIO) card, giving holders semi-citizenship rights in the country.

Despite the lack of support and protection for migrants, the numbers have grown rapidly since the mid-1980s, as shown in Section One. Large numbers of Indians continue to migrate to the Gulf states, though increasing numbers of skilled and highly skilled workers are responding to new opportunities in North America and western Europe. As is discussed in Section Two, the scale of remittances has grown dramatically in the 1990s and these inflows of resources have been of particular importance to the main sending states, such as Kerala. Nair also notes that the Government of India has "realised the importance of the contribution which migrants have made in helping the country tide over its balance of payments crises during the past two decades" (Nair 1998: 287).

Nepal

Despite the ongoing importance of migration and particularly of remittances to the economy, there has been little or no policy which refers to, let alone supports, migrants from the country (Seddon et al 2000). Seddon et al suggest that there is a "hegemony of agriculture in development policy" (ibid: 10); that is an overstatement of the importance of agriculture to the national economy and a downplaying of the significance of migration and remittances to many rural households and to the economy as a whole. In sum Seddon et al suggest that "the scale and significance of the phenomenon appear not to have been adequately appreciated by national policy makers or politicians" (ibid: 10). It was only in 1998 in the Ninth Development Plan that the importance of migration to employment and household income was recognised (Seddon et al 2000: 10-9).

The institutional and policy structure for dealing with migration is not as well developed in Nepal as in the rest of South Asia. Information on the numbers of migrants and the scale of remittances is difficult to come by, and those figures that are available are often questionable. It is only in the last year that the Ministry of Population and Environment has made widely available rough estimates of the population of migrants, drawing on the census data for 1981 and 1991 (see website for MoPE). The Ministry of Labour is the main government institution responsible for migration. There is a list of countries to which Nepali workers can be recruited officially: Saudi Arabia, Qatar, the UAE, Bahrain, Oman, Kuwait, Iraq, Malaysia, Brunei, Hong Kong, Saipan and South Korea (Seddon et al 2000: 39). In addition there are limited restrictions on the migration of women, so that women must be at least 18 years old with a selective ban on employment according to the country of destination (Ghosh 1998: 3). The Ministry of Labour also registers and regulates 103 manpower agencies, all of which have to be in the Kathmandu Valley (Seddon et al 2000: 39). In addition Nepalis use manpower agencies in India.

In the case of regional migration, there is a bilateral agreement between India and Nepal. The treaty was signed between the two countries in 1950, and in the main aims to provide for free passage and trade across the border (Human Rights Watch 1995). Nepali migrants have, on the whole, benefited considerably from this freedom to move across the border to find work, as have Indian migrants to Nepal (Dahal 1997). At the same time, there are no accurate estimates of the numbers moving in either direction across the border and there have been concerns expressed about the conditions under which some people move and work (Human Rights Watch 1995). While the Government of Nepal has expressed dissatisfaction with the treaty, the Government of India only agreed to negotiate to amend it in 1995 (ibid). One of the main concerns has been about the trafficking of women and children from Nepal to take part in the sex industry in India - an issue that I take up in separate section on Gender and Migration.

Despite, or perhaps because of, the lack of policy on migration, there has been a steady growth in the numbers of Nepalis seeking opportunities outside the country, with the numbers living abroad increasing by 65% from 1981 to 1991 (see Section One). There is also evidence to show that more Nepalis are going to destinations such as the Gulf states and to East and South East Asia, and particularly for the latter that many of the migrants are illegal. As is discussed in Section Two, remittances have long played an important

role for household income in many parts of Nepal and are now make an increasingly important contribution to the country's economy.

Conclusions

Would appear that sending country policy has little impact on migration flows. Emigration policies for South Asia were formulated in response to large-scale migration flows to the Middle East. These policies generally sought to reduce restrictions on emigrants and to regulate the process of recruitment. There are variations in the implementation of these policies, with Sri Lanka and Bangladesh actively seeking to encourage migration, while Pakistan, India and Nepal take a more laissez-faire approach. All of these countries have experienced large-scale flows of migrants and have benefited to a greater or lesser degree from migration.

Sri Lanka stands out as an important example, with the most supportive and protective policies in the region. Such policies have encouraged and increased migration, particularly of women. More importantly the Government of Sri Lanka has sought to provide protection for Sri Lankans working abroad. In contrast, the other countries of South Asia, provide relatively little in the way of active protection for migrants. Some of the effects of this lack of protection will be examined in the section on Gender and Migration below.

Gender and Migration

There is a tendency in policy-making on migration to separate out 'types' of migration or issues and problems and not to look at them as a totality. This has certainly been the case for the migration of women from South Asia. There are very specific restrictions on the migration of women, though most seem to be seldom implemented. Large numbers of women do migrate within and from the region, though often in very different circumstances; as legal domestic workers in the Middle East and Southeast Asia, as workers in garment factories and Economic Processing Zones, as illegal migrants seeking work in the cities of India, and women who are trafficked for the sex industry. It is useful to consider these movements of women as a whole and try to understand the role of policy in affecting these movements. To do this I will consider the cases from across the region.

In response to the increased opportunities for migration to the Gulf, the countries of South Asia replaced the colonial legislation restricting emigration from the subcontinent with new legislation to remove these restrictions to migrants (Addleton 1993: 100). Initially women were recruited from Pakistan, India and Bangladesh as domestic servants. However, for religious reasons and because of concerns about cases of malpractice, the three countries formally prohibited the recruitment of housemaids (Eelens et al 1992: 5). The restrictions on the migration of women are very similar and concern the minimum age of migrants and the types of work that they can engage in (Ghosh 1998: 2-3). In addition all of the countries of South Asia are signatories to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The policy frameworks appear on paper to be very similar.

In most cases it is difficult to find information on the numbers of female migrants from South Asia, the most significant exception being Sri Lanka. Gamburd provides estimates for 1996 of numbers Asian women migrants and their proportion of the total number of migrants that year, drawing on a range of sources; for Sri Lanka 128,000, 79%, and Bangladesh 1,000, 0.5% (Gamburd 2000: 34). These figures for Sri Lanka are backed by reasonably reliable figures from the Scalabrini Migration Center, Migration Atlas which estimate that in 1996 there was a total stock of 530,000 Sri Lankans working abroad, of which 373,285 were women, around 70%. The figures for the annual outflows show a similarly high proportions; in 1995 of 172,462 Sri Lankans who migrated, 126,504 or 74% were women, in 1999 of 179,114 who migrated, 115,610 or 65% were women (Scalabrini Migration Center website).

In contrast for there are no figures available for the numbers of women migrating from any of the other countries of the region (Scalabrini Migration Center website). Gamburd, drawing on a range of sources suggests that the proportions of women in the migrant labour force are 0.5% for Bangladesh (1996), 1% for Pakistan (1996), and 10-7% for India (Gamburd 2000: 34). There are no estimates for the proportion of women participating in international migration from Nepal. The lack of availability of gender disaggregated figures says as much as any available figures might do. The general

assumption is that the numbers of migrants who are female are negligible and are, hence, not important.

The lack of officially available figures does not necessarily mean that there are no women migrating but it does mean that there is a need to look elsewhere. An examination of some of the studies of regional movements provides some rough estimates of the proportions of women among migrants from Nepal and Bangladesh. Seddon et al, for example, from the figures of the Nepal sample survey, is able to estimate that around 23% of Nepali migrants are female (Seddon et al 2000: 29). The figures provided by Samaddar for cross-border migration from Bangladesh to India would suggest that around half of the migrants are female (Samaddar 1999: 18).

There are, however, figures available in relation to concern about specific issues. For example, there are a number of studies on the trafficking of women and children from Nepal and Bangladesh. Human Rights Watch South Asia has produced a report detailing the trafficking of women and children from Nepal to work in Indian brothels (Human Rights Watch 1995). It is estimated in the report that there are more than 1 million women and children employed in India's brothels, with between 20-50,000 Nepalis in the brothels of Bombay alone. Seddon estimates that there are between 5-7,000 young Nepalese women trafficked to India each year (Seddon et al 2000: 61).

Samaddar suggests that a similar situation exists for Bangladesh with large numbers of women and children being trafficked to Pakistan where they are sold and trapped in the slave trade (Samaddar 1999: 193). In many cases the girls involved do not realise what is happening to them, believing themselves to be migrating for work or for marriage (ibid: 193). USAID in Bangladesh has made estimates that between 10-20,000 women and children are trafficked from the country to India, Pakistan and the Middle East each year to work in the sex trade, as domestic labour or as camel jockeys and beggars (USAID/ Bangladesh website).

The main explanation for differences between the availability of figures and concerns about female migrants between Sri Lanka on the one hand and Nepal and Bangladesh on the other, can, I believe, be put down to differences in policy on migrants and its implementation. The availability of figures for female migrants from Sri Lanka, reflects the supportive and protective policy towards migrants of the Sri Lankan government which has been discussed above. The lack of figures for female migrants from Nepal and Bangladesh and the concerns raised about the trafficking of women and children from both of these countries reflect something else.

As is pointed out in the Human Rights Watch report, India and Nepal have ratified CEDAW and the Convention on the Rights of the Child, as well as having domestic laws which prohibit trafficking and abuses. The main problems in both countries are corruption and the lack of political will among senior officers which mean that laws go unenforced. In most cases trafficking of women and children across the border is tolerated and in many cases government officials participate, patronising brothels and

taking payments and bribes to protect them from prosecution (Human Rights Watch 1995).

Bangladesh has also ratified both conventions. Samaddar suggests that it is a lack of opportunities and alternatives, in the main due to poverty, that force many young women to migrate. In many cases "Women among the poorer communities are offered better jobs and marriage and thereby allured to go 'voluntarily' with the agents of the trafficking network" (Samaddar 1999: 193). It is argued then, that poor governance and corruption mean that many female Bangladeshis who wish to migrate end up in the hands of traffickers (Samaddar 1999: 192-5).

To conclude:

- There is considerable demand for female labour within the region and internationally and demand has been increasing over the last decade.
- Policies that aim to restrict the migration of women exist across South Asia but are seldom implemented. Protective policies that aim to eliminate trafficking and the worst forms of labour exist but are seldom implemented for Nepal and Bangladesh. In contrast Sri Lanka has a range of supportive and protective policies that are actively implemented.
- Increasing numbers of women are responding to the demands for their labour and the opportunities for migration. In the case of Sri Lanka most women are able to take up legal opportunities for migration. In the cases of Nepal and Bangladesh these opportunities do not exist, due to the lack of policy and its implementation. The result, I would argue, is large numbers of illegal female migrants and severe problems with the trafficking of vulnerable women and children.

Policies in Receiving Countries

I have argued above that demand for labour is perhaps the most important factor in determining migration flows. It is, therefore, necessary to examine the policies of receiving countries with regard to immigration and labour. It can be generally stated for the main receiving countries of South Asian labour that:

- demand for this labour, particularly in the last decade, continues to grow, but;
- increasingly restrictive immigration policies are being put in place.

The industrialised countries of the Atlantic were the first to seek to control international migration at the start of the nineteenth century. In the boom years of the 1950s and 1960s many countries in the west encouraged immigration, particularly from former colonies. However, as the numbers of immigrants increased and the economic boom slowed down, more restrictive policies to control further immigration were brought in.

In the 1970s and 1980s, as these sources of demand dried up, the Gulf States began to recruit for large numbers of skilled and unskilled labourers to bring about the rapid development funded by oil money. From the start these states put in place restrictions to ensure that incoming workers remained 'guests' in their country and that their numbers and origin could be controlled.

There are considerable and growing demands for labour in a range of sectors in the states of South East Asia. However, many of these states have unclear policies on immigration, reflected in the relatively low numbers of legal migrants and the significant problems with illegal migration.

In an increasingly globalised international economy, there has been a growing recognition in many countries of the need for immigrant workers, both skilled and unskilled. It is most commonly the case, however, that demand for labour is well ahead of the development of policy that recognises that demand.

I will look first at examples of immigration policy in the Middle East and the development of policy in some of the states of South East Asia, as these are the main destinations for South Asian labour migrants at present. This will be followed by an examination of recent changes in immigration policies in Europe and North America.

Middle East

In general the immigration and labour policies in the Middle East region have been characterised as 'guest worker' type approaches (Weiner 1995), that is highly restrictive policies operating on the basis of short contracts for workers entering the countries to encourage the rapid circulation of labour. The aim of such policies is to seek to control as many aspects of the foreign workforce as is possible (Russell 1987: 40). Kuwait will be used an example of how such policies work.

Weiner highlights a range of policies in the Gulf states, which he argues, create a sense of insecurity and impermanence among migrants, including: migrant workers cannot become citizens and cannot own a business, a house or purchase land; workers receive work permits only for a specific job; their political rights are restricted and they have no access to social welfare benefits; only those who have a certain level of salary can bring their families (Weiner 1995: 80-1).

As Abella points out, bilateral agreements to cover the rights of migrant workers are "conspicuously absent" (Abella 1992: 263). He goes on to highlight the fact that, "Saudi Arabia, which employs 80% of the Asian migrant workforce in the Gulf, has turned down proposals to enter into government-to-government agreements.... on the grounds that it has a free-market policy, even though entry and employment of non-nationals are strictly controlled" (ibid: 263-4). Further, he argues that those agreements that have been negotiated with the smaller states in the region, Kuwait, Qatar and the UAE, do not "explicitly cover the rights of the migrant workers" (ibid: 264).

Russell (1987) focuses on the politics of migration policy formulation in Kuwait from 1959-85. She argues that from the 1950s, while some have characterised early migration policy as lax, "restrictive and permissive policies were applied differentially to different nationalities, not only in response to factors such as relative wage rates, but also in response to perceptions about the migrants' political desirability" (Russell 1987: 28). From an examination of the evolution of migration policy in Kuwait, she makes two propositions. First, that migration policies are concerned with more than the levels of entry and exit, but have "the objectives of regulating the rights and status of migrants relative to the national population" (ibid: 40). Second, that migration policies consider not only labour demand, but a whole range of other factors, such as domestic and regional political events, security and the perceived social costs and consequences of immigration (ibid: 40-1). Both of these have implications for migrants in countries such as Kuwait, affecting both their immediate living and working conditions and their long-term prospects.

The reality of implementation of such policies can, however, be somewhat different. Whilst it would appear that immigration and labour policies are highly restrictive, in fact in many cases they can be manipulated by both employers and employees to operate on a much more informal basis. In countries such as the UAE and Kuwait, for example, potential employees have to find a sponsor who will provide an entry visa and work once in the country. Most migrants who do not have a contact, a relative, friend or fellow villager, have to go through formal channels to obtain their first visa and job. However, many of these initial migrants, the pioneers, formed a relationship with their local

sponsors. Through this initial contact the migrants are able to obtain visas for family and relatives or to sell to others at home. The sponsors benefit from these informal arrangements by charging extra informal payments for those they sponsor and those they obtain additional visas for. These extra payments can be quite substantial and can be a lucrative source of extra money at no real expense to the sponsor. Recently there have been concerns about corruption in the sponsorship system, with reports from countries such as Kuwait (Migration News September 2001).

Longva (1997) describes in detail the way in which the sponsorship (*kafala*) system operates in Kuwait. All foreigners in Kuwait have to be under the sponsorship of a private Kuwaiti citizen or a private or state institution, in order to work and, more importantly, in order to obtain a residence permit (Longva 1997: 78-9). The sponsor has the responsibility of registering the employment with the Ministry of Social Affairs and Labour, of notifying Immigration Department of any changes in contract and of covering the costs of repatriation at end of the contract. Through this system most migrant are bound to a private individual employer, which gives the sponsor considerable power over the expatriates, through practices such as keeping the employees passport and deportation (ibid: 93-100).

Longva makes the interesting point that through the sponsorship system, "the Kuwaiti State delegated to its citizens most of its power to decide about, and the daily administration of, matters related to the presence of aliens on its territory" (ibid: 100). This means that Kuwaiti civil society has taken on the responsibility of overseeing the movement of migrants in and out of the country and of their work and residence status. At the same time, many Kuwaiti sponsors saw the system as a burden on themselves, imposing a range of difficult responsibilities necessary for protecting themselves (ibid: 102-7). One important point is that the system relies upon the relationship between individual migrants and individual Kuwaiti citizens, a relationship which is based on the dominance of the latter, but a relationship nevertheless.

The governments of the Gulf states have used restrictive policies such as these highly effectively in keeping very large groups of foreign workers under control, and there have been few reported incidences of unrest. The figures that are available show that foreign workers form a sizeable part of the population in many parts of the Gulf, and form the majority of the working population; in Saudi Arabia of the 10 million workers, 7 million are foreigners, while in Bahrain of the 160,000 workforce, over 106,000 are foreigners (Migration News March and June 2001). Concerns about internal security have been raised at various times, in countries such as Kuwait in the late 1960s with influxes of Palestinians (Russell 1987: 34-5), and then throughout the Gulf in the early 1980s (Owen 1985: 15) and again in 1990-1 during the Gulf War.

The response to such concerns has been to more rigorously enforce existing restrictive regulations, deporting illegal immigrants and excluding unwanted groups and individuals from entering. The impacts of this tightened enforcement has been shifts in the composition of the foreign workforce, with workers from other Arab states being replaced by South Asian workers in the late 1970s, and South Asians being replaced by

East Asians in the early 1980s (Addleton 1992: 67-8). Changes in recruitment practices in the Gulf states have shown up in emigration flows from South Asia, which declined through the 1980s. However, demand has outstripped security concerns in the last decade and has grown again. Again, this growth in demand has been reflected the number of emigrants from South Asia, which have increased steadily.

Southeast and East Asia

The countries of South-east and East Asia provide an interesting contrast to the Gulf states, in terms of immigration policy and its implementation. Since the 1990s, increasing numbers of migrants from South Asia have been responding to the opportunities for work in countries such as Japan, Malaysia, Singapore and Hong Kong. In many cases rapid increases in demand for foreign labour have been a long way ahead of the development of policy on immigration. Japan and Malaysia will be used as examples.

Japan has operated a very restrictive immigration regime, especially of unskilled workers under the Immigration Control and Refugee Recognition Act of 1951 (Sellek 1994: 170). At the same time, migrants responding to the demand for workers in Japan found numerous loopholes which they were able to exploit. For example, until 1989, Japan had visa-exempt agreements with Pakistan and Bangladesh, which meant that migrants from these countries could enter Japan as tourists and then remain illegally to work (Sellek 1994: 174). While this situation was tolerated and the restrictive legislation was not fully enforced during the 1980s, this led to large increases in the number of illegal migrants in Japan. The Immigration Law was revised and implemented in 1989-90, "to respond to the growing need for foreign labour and to strengthen the measures to control illegal migrant workers" (ibid: 185). The overriding aim of this new legislation was control as reflected in the total number of illegal migrants caught, from 5,629 in 1985 to 32,908 in 1991 (ibid: 173). This is an ongoing issue in Japan, as reflected by regular reports on concerns about the numbers of illegal migrants in the country (see for example Migration News, July and August 2001). As Miller has pointed out illegal immigrants are the product of changes in politics or policies (Miller 1995: 537), so that what is tolerated and overlooked one day, can become illegal the next.

Other governments have taken an approach similar to that used by states in the Gulf. In Malaysia, for example, Ong (1999), describes six "zones of graduated sovereignty for the entire population: the low-wage manufacturing sector, the illegal labor market, the aboriginal periphery, the refugee camp, the cyber corridor, and the growth triangle" (ibid: 218). There is a strong reliance on immigrant labour, with almost one-third of the country's 8 million workers being immigrants, drawing workers from Indonesia, Bangladesh, the Philippines and Burma (ibid: 218). Immigrants have limited rights of employment, though the laws of employment, residence and termination are stringent (ibid: 218-9). In the recent economic crisis, there has been rising anti-immigrant feeling and specific groups have been targeted for expulsion, initially female domestic staff from the Philippines, followed by Indonesian workers (ibid: 219). Similar, ethnically based attitudes have affected the way in which the Malaysian government has considered claims for asylum (ibid: 220).

The government of Malaysia has categorised the population, distinguishing Malays from those of immigrant descent, the latter including 7.7% of ethnic Indians of a total population of 20 million (Brownlee and Mitchell 1997: 1). The New Economic Policy of 1970s led to massive population drift to urban areas resulting in acute labour shortages in rural and plantation sectors, which were dealt with through importation of labour from Indonesia and Thailand. These labour shortage expanded to the construction sector and

domestic services, and again there was increased recruitment of immigrants, many illegal and from a number of countries (ibid: 1).

Despite the scale of immigration to Malaysia, the government still have no comprehensive policies. Over the last twenty years a mixed sets of measures has been taken to deal with illegal immigrants. In the 1980s agreements were signed with Indonesia and the Philippines to regulate the inflow of migrants, and permission was given to employers to recruit labour from Bangladesh and Thailand. Illegal migration, however, continued and a regularisation programme was started in 1991, with an amnesty for workers specific sectors, and police measures to prevent further illegal entry. The programme had limited success, with few of those who registered applying for work permits, and illegal entries continuing to cause concern. The government has been forced to look at other measures to tackle illegal migration and, in 1995, began to crack down on those who abet illegal entry, such as informal recruiters and those who harbour and employ illegal immigrants (ibid:1-2).

Many employers prefer illegal migrants as they accept lower wages and put up with poor living and working conditions. The continued demand for labour and the confused policies with regard to immigration have an impact on the living and working conditions of migrants in the country. While employers for domestic workers and in the construction sector provide accommodation, most foreign workers prefer to have their own place and many live in squatter settlements in the urban areas. Conditions in these areas are often very poor and as a result immigrants are seen as cause of health and social problems. In addition, given the ethnic basis of categorisation of the population, immigrants are also seen as a threat to security, upsetting the ethnic balance (ibid: 3-4).

South Korea and Thailand have, if anything, more confused policies than Malaysia. Both countries have small numbers of legal migrants, and growing numbers of illegal migrants, many entering using loopholes in existing legislation (Brownlee and Mitchell 1997). Other countries such as Singapore and Hong Kong operate more restrictive policies with regard to immigrants. While Singapore has an Employment of Foreign Workers Act, this legislation does not provide concrete guidelines for the protection of migrant workers. Proposals by countries such as the Philippines to negotiate over visas and work permits for would-be migrants have been turned down and the general message to sending countries is that Singapore will decide when foreign labour is required and from where (Migrant Forum in Asia report on Singapore 1998). In Hong Kong increasing numbers of South Asians are working as domestic helpers. Such migrant workers are covered by specific restrictive rules, that mean that they can only work in the job for which they entered and that their period of stay is dependent on their work contract. At the same time all foreign domestic workers have a standard contract issued by the Immigration Department, with a minimum salary and basic conditions for living conditions and medical treatment (Migrant Forum in Asia report on Hong Kong 1998).

Europe and North America

A great deal has been written about immigration to Europe, North America and Australia which have been important destinations for migrants from South Asia. Policies on immigration in Europe and North America have changed over time, from encouraging immigration in the 1950s and 1960s, to tightening controls on further migration from the 1970s on. Recent developments include continuing concerns with dealing with illegal migrants and the recruitment of qualified and highly qualified workers.

Across western Europe and North America immigration controls have been gradually tightened in the last three decades, focusing first on migrants and more recently on asylum seekers (OECD 2001: 76). As controls have been tightened so concerns about illegal immigrants and problems such as smuggling and trafficking have grown. Morrison and Crossland record the diverse range of networks and fora set up by the European States to look at these issues (Morrison and Crossland 2001: 10-4). At a higher level, a number of OECD countries formed the Intergovernmental Consultation on Asylum, Refugee and Migration Policies in the mid-1980s, as a response to their dissatisfaction with the efforts under the UN framework (Weiner 1995: 159). The aim of the Consultation was to develop more coherent approaches to a range of migration issues. The Consultation established working groups to carry out country assessments in cases where there have been large numbers of refugees, such as Sri Lanka (ibid: 160-1).

The High Level Working Group on Asylum and Migration of the European Union made similar efforts to develop a more comprehensive approach (Morrison and Crossland 2001: 67). The consensus is that such a comprehensive approach should include three types of action: measures against current irregular migration; measures to address the pressure for irregular migration its root causes; and measures to remove legal loopholes (Ghosh 1998). The Group developed Action Plans in 1999 for five states which were sources of large numbers of illegal immigrants and asylum seekers, including Afghanistan and Sri Lanka. The overall aim of the Plans was to work in tandem with stricter border controls in Europe with a strong emphasis on "the development of civil society and human rights in countries of origin in order to try and diminish the incidence of irregular migration in future years" and include details of bilateral aid and major trading programmes (Morrison and Crossland 2001: 73-4). The ongoing concerns about 'economic migrants' and 'false asylum seekers' is some measure of the success of these comprehensive approaches.

The most recent OECD report, Trends in International Migration, records a continued growth in immigration to the OECD countries, with immigrants coming from a wider range of countries of origin in Asia in particular and going to a wider range of destination countries (OECD 2001: 67). The report particularly focuses on the increase in the migration of qualified and highly qualified workers in 1999 and 2000 (ibid: 13). With economic expansion in many of the OECD and shortages of labour in sectors such as IT, a number of countries, such as the USA, Germany and UK, have introduced measures to encourage the temporary migration of skilled and highly skilled workers (ibid: 23-4). It is uncertain how long this trend will continue, given the downturn in the US economy (ibid: 23).

Migrants and Rights

The Universal Declaration of Human Rights, in Article 13 enshrines the rights of all people to freedom of movement within a country and the freedom to leave and return to a state. Article 14 covers the right to seek asylum from persecution. Other than this right there is no clear and universally accepted position on the rights of those who are resident outside of their own country. As Weiner points out, individual states have the right to regulate who enters their borders, though there are a range of international agreements which prohibit states from adopting discriminatory entry policies (Weiner 1995: 153-4). In some cases these rights are disputed or left deliberately unclear. Morrison and Crossland point highlight the fact that the EU Convention on Human Rights admits the right to claim, but not necessarily to gain, asylum (Morrison and Crossland 2001: 21-3). Weiner summarises the problem when he states that "emigration is widely regarded as a matter of human rights while immigration is regarded as a matter of national sovereignty.... But if people are free to leave, where are they to go?" (Weiner 1995: 171).

There are a range of international instruments aimed specifically at ensuring the rights of migrants, refugees and their families, including the ILO Conventions on Migration for Employment, and on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers and the UN Convention relating to the Status of Refugees. However, the main instrument is the UN Convention on the Protection of the Rights of all Migrants, Workers and Members of their Families which was introduced in 1990.

The Convention sets out a comprehensive set of rights for migrant workers and their families. Among the more significant of these rights are:

- The right to family reunification
- The right to stay after two years in the country
- Rights to a full range of social welfare benefits for workers
- Rights of movement and to choose work and place of residence, and
- Rights to freedom of expression and to take part in trade union activities

However, by March 2001 only 16 states had ratified the convention, with 20 needed before the convention can go into force (Migration News, June 2001). The majority of states which have ratified the convention are senders of migrants and include, from South Asia, Bangladesh and Sri Lanka. None of the countries that are major receivers of immigrants have yet ratified the convention. As a recent UN General Assembly report has shown there is, as yet, insufficient support for the idea of an international conference to promote ratification of the convention (UN General Assembly 1999: 7-8). Most governments that responded to the UN rather favoured regional or subregional approach to the consideration of issues of international migration and development (ibid: 7-8).

The rights of migrants and refugees vary around the world and can often be subject to arbitrary changes brought about by political shifts in a receiving country. South Asia and South Asian migrants present a number of interesting cases that highlight the reality for many migrants. In general the situation for most migrants, of whatever sort is as Papastergiadis describes: "Where migration is now regulated through contractual or

negotiated terms, the civil and work rights of migrants are severely limited. Where migration is permitted for temporary periods, policing is extremely draconian and the abuse of human rights is rife. An increasing number of migrants are taking employment and entry into countries on an illegal basis. The migrant in all these circumstances effectively lives in a police state - susceptible to exploitation and constantly in fear of punishment and deportation" (Papastergiadis 2000: 8).

Least Rights

In situations where policy on migrants is not clear or where migrants are considered illegal, they have least rights. As is argued above, in many cases illegal migrants are often tolerated while there are obvious shortages of labour. This tolerance can quickly disappear and, as Miller suggests "illegal immigrants are produced overnight by changes in politics and policies or by the complexities of maintaining legal residency" (Miller 1995: 537). Certainly in the case of Japan, as discussed above, growing concerns about the numbers of migrants can quickly lead to changes to close legislative loopholes.

Samaddar argues that in South Asia "Migrants and refugees always remain on the margins of the system - they are there to be ignored" (Samaddar 1999: 44). Often it is in the interests of states to be unclear on the status migrants, whether they be internal or foreign, for such a lack of clarity allows for more easy management, that is those who are defined as illegal are more easily removed. Even in the cases of internal migrants, as Rogaly et al (2001) have pointed out, they are not guaranteed access to social services, such as health care and education. It is often the poorest and most marginalised, who do not have the resources to migrate legally, and the uncertainty of how receiving countries will respond to these 'illegal' workers mean that it usually is the poorest and most marginalised who have the least access to rights.

Limited Rights

As discussed above, even in cases where workers are legal, their position can be uncertain and insecure. Weiner (1995) has argued that policies on immigrants in the Gulf states create a sense of insecurity and impermanence among migrants. The close policing of these temporary migrants, with frequent large-scale deportations of illegal migrants and amnesties to persuade those who are not caught to leave, compound this sense of insecurity. In addition the informal way in which the work permits and residence visas are issued in many of these states, further increases the sense of insecurity. Visas and permits, for states such as the UAE and Oman, are obtained from individual local sponsors, so that workers are often reliant on their personal relationship with this person to be able to stay in the country. All of this would fall far short of the rights set out in the Convention discussed above.

Further Limitations on Rights

The countries of Europe have tended to operate more liberal guest worker programmes which are closer to the rights contained in the Migrant Workers Convention. European countries have, on the whole, extended a full range of benefits to guest workers, have included the right to stay after a given period and continue to permit family reunification (Weiner 1995: 187). Indeed, according to the most recent OECD report, family-linked

migration continues to be the predominant form of immigration in most OECD countries (OECD 2001: 20). Those who gain entry have ready access to a full range of rights.

The main concerns in these state has been, then, with controlling entry and hence access to these rights. More recently in Europe and Australia fears about the trafficking and smuggling of illegal immigrants and asylum seekers have led to increasingly tight controls on entry. Morrison and Crossland, looking at this issue in Europe, conclude that there are no legal means for refugees to enter Europe and estimate that one to two thirds of those smuggled into Europe are refugees, including large numbers from Afghanistan and Sri Lanka (Morrison and Crossland 2001: 24, 16-7). Waley makes a similar case for Australia, suggesting that most Afghan refugees seeking asylum in the country have to resort to people smugglers (Maley 2001: 5-6). The NIC report confirms the fact that, despite the stricter controls, the proportions of migrants entering most developed countries illegally has grown from one fifth a decade ago, to one third to one half today (NIC 2001: 13). This is in a sense, then, a means of limiting the access to rights.

The Future of Migration Policy

A number of recent analyses have tried to explain the new patterns of migration that are emerging with globalisation. Skeldon proposes a model consisting of five development tiers between which migration takes place and argues that the bulk of migration continues to be regional (Skeldon 1997: 51-3, 194). Ultimately, however, the model becomes as complex as the patterns themselves, as Papastergiadis suggests, "A current map of global migration would have to be as complex as all the migrant biographies" (Papastergiadis 2000: 50). Papastergiadis advances the theory that migration flows are no longer explicable by any general theory, and that though "These movements may appear chaotic.... there is a logic and order within them.... The internal structures of migration have often gone unnoticed" (Papastergiadis 2000: 4-5). These internal structures consist of the local histories of migration (discussed above), the social networks that support and maintain local migration flows and the linkages that migrants maintain. In a similar vein, Skeldon suggests that, "migration has proved singularly intractable towards policy intervention. Once population movements emerge, they take on a momentum of their own that is virtually impossible to control" (Skeldon 1997: 202).

Nevertheless policy-oriented analysis tends to see things in more simple terms, looking at likely patterns of future migration and at predicting future needs for migrants, often with the overall aim of better control and management. A US National Intelligence Estimate of global migration suggests that this trend is likely to continue, with a greater international need for migration, partly to deal with pressures in sending countries and partly due to the demographic needs of receiving countries (NIC 2001: 11). The report goes further, suggesting that illegal migrants form one third to one half of the new entrants to most developed countries, and that "many receiving countries are tightening admissions requirements for legal migrants and asylum-seekers, while lacking the ability and, in some cases, the willingness to stop many, if not most, of those entering or staying on illegally (NIC 2001: 13). A recent Home Office research report similarly argues that illegal migration is a partly a result of unmet demand in the labour market and that control may not be sufficient to address this problem (Glover et al 2001: 51). There is a recognition, then, that policy is generally out of step with demands for labour.

There has been a range of recent analysis and debate on whether immigration is a potential solution to the ageing and declining populations in the OECD countries (see for example Coppel, Dumont and Visco 2001; Glover et al 2001). It has been suggested that these countries might use immigration as a means of modifying the population structure to maintain economic vitality and alleviating the effects of ageing by bringing in younger populations (OECD 2001: 52). Some of the concerns are that to achieve such a balance would require very large scale immigration and that migration policy has little effect on returns, thus affecting control (ibid: 52).

Missing from these debates is the position of the sending countries on which the OECD countries would have to rely. There is some recognition of the need to take account of these positions by the OECD when it is stated that: "It remains to be defined in a more precise manner how to adapt policies in order to increase co-operation between sending

and host countries in order to better manage migration flows and to develop human resources at both ends of the migration chain" (ibid: 13).

In times of economic growth and stability where there are demands for labour from outside the country, immigration, including illegal immigration, is tolerated and can even be encouraged. However, when there are concerns about internal security or about economic downturns, then this tolerance evaporates and the full force of these restrictive policies is brought to bear. As Sassen points out, "Commentators who speak of an immigrant 'influx' or 'invasion' treat the receiving country as passive....Absent is any awareness that the international activities of the governments or firms of countries receiving immigrants may have contributed to the formation of economic links with emigration countries, links that may invite the movement of people as well as capital" (Sassen 1996: 84). The missing element, then, is some balanced dialogue between the sending and receiving countries on the needs for and likely impacts of migration.

Conclusions and Recommendations

In response to the original hypotheses the following conclusions can be made:

State policies on emigration do have an impact on migration flow. Policies do not stop emigration, so that there seems to be little difference between policy which seeks to support emigration and laissez faire policy. Restrictive policies and the poor implementation of policies can, however, make migration more dangerous for individual migrants. In the case of women it can mean that they migrate in the worst circumstances. There are examples, such as Sri Lanka, of supportive and protective policy with regard to emigration which can encourage people to migrate safely.

The most important factor in determining migration flows into a country is demand for labour. Immigration policies do not have the effect of stopping migration flows. The implementation of policy which seeks to restrict immigration or the lack of policy on immigration usually has the effect of migrants resorting to illegal means to enter such countries. This in turn affects the conditions that migrants work and live under and has a severe impact on their rights. There have been attempts to negotiate bilateral agreements between sending and receiving countries as a means of improving the conditions of migrants.

It is recommended that:

Policy should move away from a narrow focus on specific 'problems', such as trafficking, to take a wider perspective on migration as a whole. A better understanding of the reasons for and impacts of migration, can help in developing policy that is effective in supporting and protecting all types of migrants. The policy on migration in Sri Lanka should be used as an example in South Asia of how safe, legal emigration can be encouraged. Such an approach would fit in with proposals for a dialogue between governments of South Asian sending countries on ways of protecting nationals working abroad (Appleyard 1998: 15).

The main framework for the rights of migrants already exists in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, few countries have ratified the convention and repeated calls from the UN for an international conference on migration have gone unheeded. One other possible way forward would be to develop examples of what works and what doesn't work, using the framework of the Convention. These examples could be used as a basis for negotiating bilateral agreements between major senders and receivers of migrants.

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