



International Labour Office

PRESENTATION
ESTABLISHING EFFECTIVE POLICIES IN DESTINATION COUNTRIES

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To the
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The challenges of establishing effective policies in destination countries can be summarized in four main categories:

- 1) establishing the legal foundation based on international standards
- 2) admissions and labour market considerations
- 3) labour and social policies
- 4) institutional structures and coordination

The first has been covered in complementary presentations at this workshop, and is elaborated in Chapter 1 of the OSCE-IOM-ILO Handbook on Effective Labour Migration Policies.

The authoritative guidance in the ILO Multilateral Framework on Labour Migration provides particularly relevant guidelines for policy formulation for destination countries, according to the these themes:

Expanding avenues for regular migration

Expanding avenues for regular labour migration addresses admissions, taking into account labour market needs and demographic trends. It identifies key policy lines, namely:

1. Establishing systems and structures for periodic, objective labour market analyses that take into account gender issues and that include:
 - sectoral, occupational and regional dimensions of labour shortages and their causes, and relevant issues of labour supply;
 - shortages of skilled workers in both origin and destination countries, including in the public, health and education sectors;
 - long-term impact of demographic trends, especially ageing and population growth, on the demand for and supply of labour;
2. Establishing transparent policies for the admission, employment and residence of migrant workers based on clear criteria, including labour market needs;
3. Where appropriate, establishing policies and procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements;

4. Promoting labour mobility within regional integration schemes;
5. Ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy human and labor rights.

Employment, labour market and social policy

A considerable number of guidelines in the Multilateral Framework address the complex employment and social dimensions. Among these are:

1. Adopting measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers, including domestic workers and other vulnerable groups, in particular in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work, in accordance with relevant International Labour Standards;
2. Extending labour inspection to all workplaces where migrant workers are employed, in order to effectively monitor their working conditions and supervise compliance with employment contracts; and, ensuring that the competent authorities have the necessary resources and that labour inspection staff is adequately trained in addressing migrant workers' rights and in the different needs of men and women migrant workers;
3. Intensifying measures aimed at detecting and identifying abusive practices against migrant workers, including physical or sexual harassment or violence, restriction of movement, debt bondage, forced labour, withholding, underpayment or delayed payment of wages and benefits, retention of passports or identity or travel documents and threat of denunciation to authorities, particularly in those sectors that are outside the usual avenues of regulation and protection, such as domestic work.
4. Promoting social integration and inclusion, respecting cultural diversity, preventing discrimination, and taking measures to combat racism and xenophobia.
5. Adopting measures to ensure that migrant workers and accompanying members of their families are provided with access to health care and, at a minimum, with access to emergency medical care, and that regular migrant workers and family members receive the same treatment as nationals with regard to the provision of medical care;
6. Entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation.

Stakeholder Consultation

A particularly relevant section advises on ensuring that national policies are coherent, effective and fair by involving the key stakeholders in policy elaboration and implementation. These policy lines call for:

1. providing labour ministries with a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account;
2. establishing a mechanism to ensure coordination and consultation among all ministries, authorities and bodies involved with labour migration;

3. ensuring that specific structures and mechanisms within these ministries have the necessary competencies and capacities to develop, formulate and implement labour migration policies, including, where possible, a special unit for issues involving migrant workers;
4. ensuring that the relevant ministries have adequate financial and other resources to carry out labour migration policies;
5. establishing tripartite procedures to ensure that employers' and workers' organisations are consulted on labour migration issues and their views taken into account.
6. ensuring that labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process;

The OSCE-IOM-ILO Handbook

Three chapters in the Handbook provide the essentials for destination countries:

- Chapter VI on Admissions Policies
- Chapter VII on Post Admissions Policies
- Chapter V on Administration of Labour Migration

Chapter VI on Admissions Policies

provides specific detailed guidance on setting up a viable admissions and recruitment regime directly tied to assessment of existing and emerging labour market and skills needs.

A key aspect is identifying and improving methodologies for assessing labour needs, and mechanisms to gauge to what extent such needs should be filled by foreign labour and how this labour should be channelled into the employment sector or region in question.

A central question for policy is assessing the balance between what labour needs can be met by temporary labour migration schemes and what needs will require migration channels that provide longer term secure residence status or permanent settlement.

- While employers clearly benefit from a flexible workforce, particularly in lower-skilled sectors where temporary workers are preferred, it may also be to their advantage to retain good workers rather than bear the cost of re-training workers.
- The longer migrants stay in the host country, the case for granting a more secure residence status becomes stronger for humanitarian reasons, and particularly if they are accompanied by close family members.
- Affording migrant workers a more secure residence status facilitates their integration into the host community and assists in their social inclusion. Clearly, it is detrimental to social cohesion and stability in the destination country when workers are marginalized from mainstream society.
- An incremental improvement in the residence status of migrant workers is consistent with their establishment of economic and social ties in the host community.

Traditional countries of immigration, such as Australia, Canada and the United States, have determined that an element of permanent immigration is necessary to ensure economic growth and to sustain basic social welfare provision. The *Handbook* observes in Section 3.1 of Chapter VI that admission of permanent migrants in Canada is based on their employment prospects and their ability to integrate in the country. They are granted permanent residence status on arrival.

This *Handbook* focuses on temporary labour migration schemes, since these are common in many countries. Various forms of temporary labour migration, including concrete policy examples from individual countries, are described and analysed in Chapter VI, section 4.3.

The *Handbook* describes a number of policy angles that should be taken into account to ensure that operation of these programmes is linked to objectives, including managing “temporariness” as well as ensuring equitable treatment for migrant workers entering under such programmes. It also notes that consideration has to be given to the likelihood that some migrant workers arriving for temporary employment end up in irregular situations due to a variety of circumstances.

Policy-makers’ capacity to regulate both temporary and longer term migration is also dependent on the existence of bilateral labour arrangements with the countries of origin or of systems of regional integration, such as a free movement of workers regime or a free trade regime facilitating the movement of certain categories of persons. These aspects are discussed in Chapter VIII of the *Handbook* on International Cooperation.

Assessment of labour needs

For any admissions regime, examining labour market requirement, skills imbalances, and demographic trends by state of the art assessment and prediction tools is key.

The *Handbook* discusses establishment of quotas and labour markets tests as means to establishing labour market demand. In section 2 of Chapter VI, it notes that quotas are usually established annually, often at a high level of government, are based on a number of sources, such as economic forecasts, employer reports, or regional unemployment rates, and are reached in consultation with the social partners (employers and unions), regional governments and civil society. However, instruments of economic, labour and demographic forecasts; labour market indicators and trends; employment and unemployment rates by sector, industry, occupation and skills; and others are not elaborated in the handbook. The ILO has developed standards, guidelines, indicators and criteria for labour-related instruments, and maintains a number of relevant and regularly updated international databases, such as the Key Indicators of Labour Markets (KILM).

The *Handbook* does discuss labour market tests in section 2.2 of this chapter. It notes that most destination countries in Europe apply a labour market or resident worker test to applicants for a work permit for the first time and also to migrant workers seeking to change jobs if they have not met minimal time period requirements for free access to employment. These tests assess whether there are workers available for the work in question on the domestic labour market.

A number of data sources can be used to measure the contextual stock and flow of international migrants, including labour migrants:

- Population censuses and other household surveys
- Labour force surveys
- Administrative registers (such as population registers or registers of foreigners);
- Other administrative sources (such as residence permits, work permits, or asylum applications);
- Data derived from exit controls;
- Border collection data (visa types, at entry or exit from a country).

Migration data from different data sources are not comparable in all cases, due to differences in coverage, measurement, and the purpose behind each data source. More information is in Annex 5.

Section 5.2.1 highlights that the primary survey that can be and is used to collect stock data on international migrants is the population census. Depending on population coverage and definitions of usual residency, when combined with “place of birth” or “citizenship,” a good estimate of stock can be attained, especially if special attention is given to reach hard-to-enumerate populations, such as irregular migrants. If the census collects labour force data, these questions can be used to identify labour migrants. Previous residence questions can be used to estimate international migration in-flows.

Labour force surveys can obtain information on characteristics of labour migrants by asking questions on place of birth, citizenship, and previous residence, as well as other dimensions of international migration, such as reasons for moving. The ILO is currently testing a migration module for national labour force surveys. This module will help countries collect information about labour migrant stocks, labour migration processes, migrants’ occupations, motivations for moving, socio-demographic and economic characteristics of labour migrants, and migrant remittances.

As section 5.2.2 notes, a number of countries have comprehensive population registers, or registers of foreigners which account for legal residents within a country. These registers can be used to measure the total stock of international migrants in a country, as well as in-flows when new migrants enter, and out-flows when people leave the country. Other administrative sources, such as residence and work permit data, as well as visa-types, can be used to measure migration flows.

Chapter VII, Post Admissions Policies

Post-admission policies are concerned with a number of inter-related elements for regulating the labour market, ensuring protection of workers, and supporting community welfare. Important measures are generally required in five areas:

- labour market regulation, including access, mobility and recognition of qualifications;
- protection of migrant (and national) workers in the employment context, including monitoring of terms and conditions of employment, access to vocational training, language and integration courses, allowing for freedom of association, and protection against discrimination;
- facilitation of social cohesion, particularly through measures to prevent discrimination, promote family reunification, and assist integration;
- improvements in social welfare, including areas of access to health care, education, housing and community organizing;
- provisions on social security.

These measures are to ensure protection for migrant workers while in the destination country, to obtain functional labour markets, and ultimately to sustain social cohesion. The handbook highlights that they need to be based in the international rule of law framework of human rights and international labour standards in order to be effective.

The *Handbook* reiterates that protection of migrant workers is best secured by legislation of destination countries, whether by labour code, employment legislation, or other rules.

While States retain sovereignty over migration policies, international law has established three fundamental notions regarding migrants:

- Equality of treatment between regular migrant workers and nationals in the realm of employment and occupation.
- Core universal human rights apply to all migrants, regardless of status. This was established

implicitly and unrestrictedly in ILO Convention No. 143 and later delineated explicitly in the 1990 ICRMW. It is also a fundamental principle of international human rights law.

- The broad array of international labour standards providing for protection in treatment and conditions at work (including occupational safety and health, maximum hours of work, minimum remuneration, non-discrimination, freedom of association, and maternity leave) apply to all migrant workers.

Labour market regulation addresses access to employment and occupation in the destination country. Rules relating to recognition of diplomas and qualifications can also greatly affect the skill level of employment migrant workers are permitted to access.

Labour market regulation also entails upholding minimum “decent work” conditions in employment for all workers, generally in the context of implementation of International Labour Standards.

Provision of free access for migrant workers to the labour market is an important step that plays a vital role in both incorporating foreign workers in the labour market and promoting their eventual integration in the host society. Chapter VI of the *Handbook* deals extensively with legal guidelines and practical measures on these dimensions. The tension between establishing priorities in favour of national workers versus labour market equality is discussed.

The *Handbook* cautions that admission and immigration rules can also either overtly or covertly discriminate against female migrants because of the gender division of labour in both countries of origin and destination. Persistent occupational gender segregation implies that most jobs available to women migrants are “feminine jobs” related to their traditional roles.

The challenge of brain waste in destination countries is highlighted in section 4 of Chapter VI. In particular, the *Handbook* underscores need for measures for recognition of qualifications obtained abroad is thus the other main area in which significant changes to national policy and practice are necessary. (See textbox VII.2).

Section 2.2 of this Chapter takes up the critical policy area of labour inspection. Labour Inspection is a key means of monitoring and enforcing equality of treatment and decent work conditions for migrant workers. Labour inspection is a key supervisory tool for application of labour standards. Labour inspection, targeted at the sectors and the workplaces where migrant workers are concentrated, is the key to ensuring that (1) migrant workers indeed benefit from decent work conditions, (2) employers are encouraged to provide minimum protections, thus avoiding unfair competition based on inferior working conditions, and (3) the incentive is there to recruit and hire national workers and migrant workers in regular status rather than seeking unauthorized migrant workers because they cannot denounce substandard conditions and treatment.

As section 2.3 of this chapter highlights, the principle of equality for regular migrant workers and nationals clearly extends to access to vocational training and retraining.

Section VII 2.4 notes that one of the most effective ways of preventing migrant workers from being exploited is to allow them to exercise their right to join a trade union without hindrance. Trade union rights comprise freedom of association and collective bargaining, and are recognized universally in the core international human rights instruments.

The *Handbook* outlines the major contributions that trade unions in destination countries can make to elaboration of policy, administration, and to protection of migrant workers.

- lobby for legislation on equal treatment and non-discrimination in respect of employment conditions, social security, etc.;
- organize training on the rights of migrant workers;
- call for the repeal of provisions discouraging migrants from joining trade unions;
- include migrants in collective bargaining agreements;
- cooperate in identifying abusive employment agencies;
- help identify those involved in trafficking;
- establish migrant workers rights' committees;
- lobby for the inclusion of a social clause in bilateral/international treaties.

Social cohesion in destination countries will be facilitated considerably if discrimination against migrant workers and their families can be addressed and eliminated. Moreover, appropriate measures assisting the integration of migrants in society (see also Section VII.2.3 above) and providing possibilities for family reunification also play an important role in preventing the marginalization of migrants and promoting social cohesion.

Section 3.1 addresses discrimination. Discrimination produces differential treatment in labour markets, preventing equal opportunity, provoking conflict within the working population and undermining social cohesion. Discrimination prevents integration. The consequences of past policies that neither anticipated nor prevented discrimination can be seen in ethnic ghettos, high unemployment, low school attainment, higher violence and crime rates in numerous countries.

Tolerance of inequalities in treatment between national and foreign workers will encourage exploitation of foreign workers and facilitate substitution of national workers by less protected non-national workers, thus contributing to expanding dual labour markets and informal employment, lowering of wages and conditions of work generally, and ultimately provoking conflict between national and foreign workers and their respective communities. As noted in the Handbook, ILO research in Western Europe and North America has shown significant, consistent and disturbing levels of discrimination in access to employment in all countries surveyed. Similar situations may exist in other countries, such as in this region.

Discrimination has a double impact on women. The *Handbook* notes that existence of occupational segregation by gender in labour markets contributes to the increase of multiple discrimination in countries of destination, resulting in high levels of abuse and exploitation of women migrant workers.

Section 3.2 notes that the concept of integration of migrants in the host country is evolving. It has all too often been confused with assimilation. The very useful definition of integration by the European Commission is included:

Integration should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals [foreigners] and the host society which provides for full participation of the immigrant. This implies on the one hand that it is the responsibility of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civil life and on the other, that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.

Section 3.3 takes up the issues of family reunification. Although there is no unequivocal right to family reunification in international human rights law, relevant international instruments urge that family reunion be facilitated. The *Handbook* discusses application of the notion of family reunion, and offers some guidance based on existing practices.

Section 4 addresses the social welfare of migrant workers and their families in destination countries by proper access to health care, housing and education on equal terms to those afforded nationals.

International human rights law provides for the right to health care without any distinction based on nationality or legal status. The *Handbook* notes that preventative as well as curative health care is critical because it underlines that the right to health is a holistic concept, which goes beyond the provision of mere medical treatment. It cites examples from this as well as other regions: “in countries such as Croatia and the Netherlands, migrants have equal access to health care services with nationals.”

The *Handbook* notes that in practice, the availability of adequate housing or accommodation for migrant workers can be a particular problem in a number of countries and regions, where accommodation is generally scarce and especially in large cities, where there is a shortage of public housing or where private accommodation is unaffordable for many migrant workers, including those with their families.

Universal human rights standards proclaim that everyone has the right to education and that, at a minimum, access to primary or elementary education should be free to all children without any distinction whatsoever. Providing this education is a particular challenge for policy, especially for children of irregular migrants, who often face legal, administrative and practical obstacles in accessing education in their country of residence. In view of this challenge, the *Handbook* provides considerable material regarding obstacles and remedies to ensuring provision of schooling. Obstacles noted include the refusal of school principals to enrol the children of irregular migrants in primary and secondary schools; the existence of obligations on official institutions, which are also applicable to teachers, to denounce or report irregular migrants; difficulties encountered with the recognition of the education of such children, both in the destination country and on their return to the country of origin under readmission agreements or otherwise; and the greater mobility of irregular migrants and the poorer conditions in which they frequently live, which may adversely impact on their children’s educational development. Some of these obstacles are also faced by children of lawfully resident migrant workers.

Section 5 of Chapter VI addresses social security in considerable detail. The world community, through widely accepted international human rights standards, recognizes the right to social security for everyone, including social insurance. Migrant workers are confronted with particular difficulties, as social security rights are usually related by regulations to periods of employment or contributions or residency. Migrant workers have specific interests in:

- obtaining equal access to coverage and entitlement to benefits as national workers;
- maintaining acquired rights when leaving the country (including the export of benefits);
- benefiting from the accumulation of rights acquired in different countries.

Section 5.1 discusses the particular difficulties with regard to social security coverage and entitlement to benefits. These difficulties are due to a number of factors, such as the principle of *territoriality*, which limits the scope of application of social security legislation to the territory of a country, with the consequence that its nationals working abroad are not covered by such legislation and therefore not entitled to benefits. Migrant workers’ rights can also be affected by the principle of *nationality*, the application of which may result in the exclusion of foreigners from coverage or entitlement to benefit.

A textbox 13 lists in detail the ILO standards regarding rights of migrant workers to social security.

- *The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*
- *The Equality of Treatment (Social Security) Convention, 1962 (No. 118)* providing for the right to equality of treatment with regard to all nine branches of social security.
- *The Maintenance of Social Security Rights Convention, 1982 (No. 157)*, and Recommendation (No. 167) instituting an international system for maintenance of acquired rights for workers transferring residence from one country to another, and to ensure effective provision of benefits abroad when they return home.

As section 5.4 points out, the best way to ensure migrant workers' social security protection is through the conclusion of multilateral or bilateral social security agreements. Multilateral agreements, in comparison to bilateral agreements, have the advantage of generating common standards and regulations and so avoiding discrimination among migrants from various countries of origin who otherwise might be granted differing rights and entitlements through different bilateral agreements. In addition, a multilateral approach also eases the bureaucratic procedures by setting common standards for administrative rules implementing the agreement.

A number of best practices are identified. EU Regulations related to the portability of social security benefits are probably the most comprehensive example, examples are also the European-Mediterranean agreements from the 1990s between the EU, its Member States, and the Maghreb countries of Algeria, Morocco and Tunisia which contain far-reaching provisions on the portability of social security benefits. Another comprehensive multilateral agreement cited is the Caribbean Community and Common Market (CARICOM) Agreement on Social Security with a view to harmonizing the social security legislation of its Member States.

Social security protection of migrant workers and their families can best be achieved through ratification of social security conventions and their implementation through the conclusion of social security agreements. In the absence of ratification of relevant conventions and agreements, some countries have developed unilateral measures for protection of migrants' social security rights, which comprise provision of:

- equality of treatment for national and migrant workers as regards coverage of and entitlement to social security benefits;
- a requirement (liability) on recruitment agencies to pay social security contributions to the national social security system for each worker recruited for employment abroad (e.g. the Philippines, Indonesia);
- voluntary coverage for nationals working abroad
- the possibility of payment of retroactive contributions for returning migrant workers;
- waiving long qualifying periods in favour of migrant workers;
- crediting periods of insurance completed in another country for the purpose of giving migrant workers immediate access to benefits;
- medical coverage for family members of migrant workers who are left behind.

Section 5.5.1 shows unilateral measures taken by destination countries, such as health care benefits for migrant workers who, upon retirement, return to their country of origin and do not qualify for a pension in the country of origin and are not covered by the statutory health care scheme there. In order to overcome this gap in protection, some destination countries in Europe reimburse retired migrant workers for their medical care expenses in their home countries, in a similar way to the reimbursement of their own nationals who temporarily travel or reside abroad.

Section 5.5.2 of Chapter VI describes unilateral measures taken by countries of origin to extend social security coverage to their nationals working abroad. In the absence of social security agreements, migrant workers are often excluded from the social security coverage of the country of

employment and even if they are covered by the statutory social security scheme of that country, they are often unable to receive their benefits when returning to their country of origin. Therefore, several countries have extended statutory social security coverage to their nationals working abroad, either through compulsory insurance or through voluntary insurance. A textbox provides more details of measures by a number of countries. (VII.15).

Chapter VI, Administration of Labour Migration

This Chapter of the Handbook covering administration, while ostensibly focused on origin countries, provides a wealth of perspective equally for destination and origin countries:

It stresses need for adequate institutional capacity and inter-ministerial coordination. This includes giving the management of labour migration due priority in overall policy and in the allocation of resources.

To meet policy objectives to optimise benefits of labour migration, it is essential that there is adequate institutional capacity and inter-ministerial coordination. This includes giving the management of labour migration due priority in overall policy and in the allocation of resources.

Administration of labour migration should usually be governed by a legislative Act or Decree. Implementation of the relevant legislation is usually the responsibility of the Ministry of Labour, but managing migration successfully requires close cooperation and coordination of almost the entire Ministerial Cabinet. An Inter-agency approach helps to focus diverse government resources on a rapid response to the needs of migrant workers, on the economy as a whole, and on overcoming loopholes.

We insist on a central role for the *Ministry of Labour*, since migration is primarily about labour, which goes together with employment. The *Foreign Affairs* ministry is responsible for providing diplomatic services and for the protection of migrant workers while they are in a foreign land. The *Ministries of Foreign Affairs, and Justice and/or the Interior* are other key players with their share of responsibilities, since migration policy must be embodied into legislation, deals by definition with foreign workers and their government, and government prosecutorial and security services are required for law enforcement.

It cannot be emphasized strongly enough that that the continued and active participation of all major stakeholders addressing migration and its domestic policy ramifications is critical for ensuring the successful administration of migration. This includes a wide range of ministries, agencies and units. For example *Health Ministries* have to be engaged to address public health and provision of health care and prevention to migrant populations. *Ministries of Education* will be involved in training issues and in developing language training, skill and diploma recognition, and schooling of migrant children. Ultimately, most branches of government cover concerns that have to be taken into account in effectively governing migration; the *Handbook* offers some considerations.

In sum, a national intra-governmental coordination structure is essential. And this needs to include consultation with the key national stakeholders on labour migration, notably the employers representing businesses the recruit and employ foreign as well as national workers, and the trade unions that generally incorporate and represent the interests of all workers, national and foreign.

Policy Evaluation

As Chapter V of the *Handbook* notes, policies and the administrative structures for their implementation need to be monitored and their performance assessed through the introduction of

parameters for monitoring and evaluation. Table V.3 offers an example of monitoring Key Research Areas in Performance in the labour migration process on the basis of key indicators.

Conclusion

This necessarily brief introduction unfortunately omits or gives inadequate introduction to many of these essential policy elements for countries of destination.

However, this text serves as a guide to the much more detailed ‘how to’ material in the full *Handbook*. This material will best serve in context of utilizing the three international Conventions on migrant workers and other relevant instruments to set the legal foundation for policy and implementation. The ILO Multilateral Framework provides in clear and straightforward terms the main policy lines for a comprehensive national approach, and guidelines putting in practice the principles and standards established in the Conventions.

With this introduction, we invite you to study the *Handbook*. It will soon be available in the languages of Western Balkan countries on the project website. National training seminars using the handbook are being scheduled in each country.

We are confident that these tools, particularly the OSCE-IOM-ILO Handbook on Establishing Effective Labour Migration Policies and the ILO the Multilateral Framework, provide the basis to truly establish effective national –and regional-- policies for labour migration.

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