



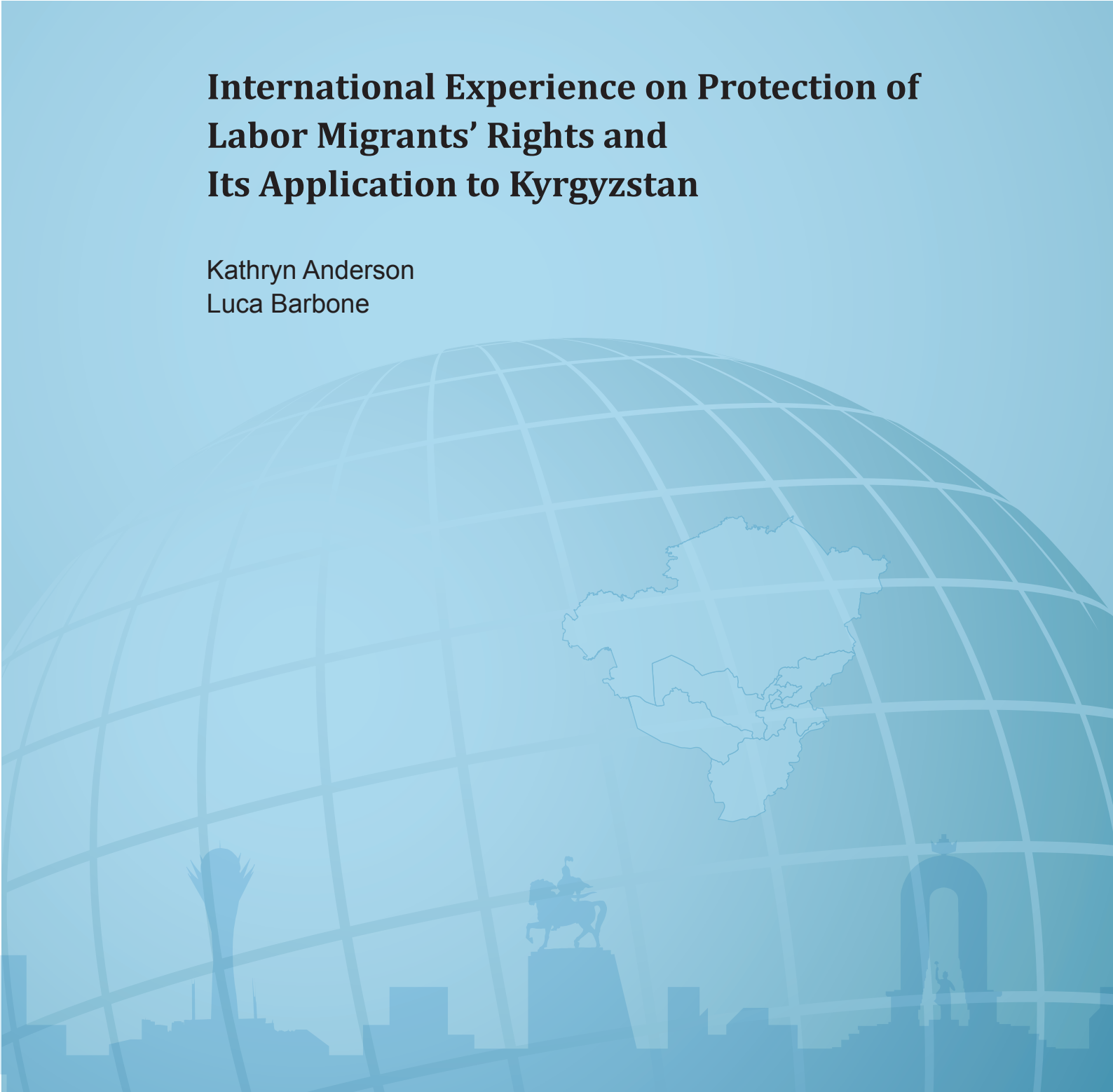
UNIVERSITY
OF CENTRAL ASIA

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Institute of Public Policy and Administration

International Experience on Protection of Labor Migrants' Rights and Its Application to Kyrgyzstan

Kathryn Anderson
Luca Barbone



WORKING PAPER №22, 2013



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Abstract

This paper analyses international experience with regard to protection of labour migrants' rights and the relevant lessons from this experience for Kyrgyzstan. We look at seven dimensions that help determine outcomes for migrants: how other migrant-sending countries organise migration policy management; institutions developed by other countries to support labour migrants; protection of migrants from abuse by recruiters and employers; accountability of law enforcement and policies to reduce discrimination and abuse of migrant workers; policies that facilitate pension portability for migrants and their access to health care and other social services; the ways other countries mobilise resources from the diaspora for local economic development; and the modes of international cooperation in the areas of migration and human rights. Based on lessons from these dimensions, we develop policy recommendations for Kyrgyzstan.

Keywords

Migration, human rights, migration policy, economic development, Central Asia, Kyrgyzstan

JEL Codes: J61, J68, J71, O15, O57

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Acronyms

ACPOIW	Agency of Coordination for Placement of Overseas Indonesian Workers
ASEAN	Association of Southeast Asian Nations
CARMP	Central Asia Regional Migration Program (IOM)
CONMIGRANTES	Consejo Nacional para la Protección y Desarrollo de la Persona Migrante y su Familia (National Council for the Protection of Migrants and their Families) – El Salvador
EaP	Eastern Partnership
EU	European Union
FIRCO	Fideicomiso de Riesgo Compartido (Shared Risk Trust), Mexico
FSU	Former Soviet Union
IME	Instituto de los Mexicanos en el Exterior - Institute for Mexicans Abroad, Mexico
INM	Instituto Nacional de Migracion - National Migration Institute, Mexico
ILO	International Labour Organization
IOM	International Organization for Migration
MFEPW	Ministry of Foreign Employment Promotion and Welfare, Sri Lanka
MIRPAL	Migration and Remittances Peer-Assisted Learning
MOIA	Ministry of Overseas Indian Affairs (India)
NCPD	National Commission for Population and Development (Moldova)
NORKA	Department of Non-Resident Keralites' Affairs, India (Kerala)
OLAMWA	Office of the Legal Assistance for Migrant Workers' Affairs (Philippines)
ODEPC	Overseas Development and Employment Promotion Consultants, India (Kerala)
POEA	Philippine Overseas Employment Administration
POLO	Philippine Overseas Labour Offices
SAGARPA	Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (Mexico)
SLBFE	Sri Lanka Bureau of Foreign Employment
SLFEA	Sri Lanka Foreign Employment Agency
UN	United Nations

Executive Summary

This report analyses international experience with regard to the protection of labour migrants' rights and the relevant lessons from this experience for Kyrgyzstan. We draw from the experience of a variety of countries that have seen migration as an important socio-economic phenomenon over the past decades and that have developed strategies with commonalities and differences. We look at seven important dimensions that help determine outcomes for migrants:

- How other migration-sending countries organise themselves with respect to migration policies.
- The institutions and approaches developed by countries that have actively sought to support their labour migrants, with an emphasis on accountability and institutional lessons drawn from international experience.
- How countries strive to protect the human rights of migrants, including from abuse by recruiters and employers, such as trafficking of workers and on-the-job exploitation.
- How countries improved the accountability of law enforcement and reduced discrimination and abuse of migrant workers.
- Policies that facilitate pension portability and savings, and migrants' access to healthcare.
- The ways in which countries mobilise resources from their diaspora for local economic development, to facilitate brain gain and to assist later migrants adjust to new environments.
- The modes of international cooperation practiced in the area of migration and human rights.

Based on the lessons from each of these dimensions, we conclude with a set of recommendations for the Kyrgyz Republic.

1. How other migration-sending countries organise themselves with respect to migration policies

We assess the institutional practices of countries of the former Soviet Union (FSU), which are relevant to the Kyrgyz Republic given its geopolitical and historical background, and from other migration-sending countries. We highlight the uneven progress in the FSU in the establishment of a satisfactory set of institutional arrangements for the management of labour migration and the protection of migrants. The Ukraine experience shows that years can be spent debating a migration law that in the end fails to address the needs of the millions of citizens who sought employment abroad. A clear focus on the problem of labour protection is needed. The Moldova example shows that progress can be very slow, but strong signals from the top can nudge policy in the right direction. It should be noted that the European

Union (EU) provided a strong set of incentives (and some resources) for Moldova to adopt a more rational organisation of state institutions dealing with labour migration issues.

We also consider the experience of some of the most successful and interesting examples among migrant-sending countries: the Philippines, Sri Lanka, Indonesia, Kerala State in India, Mexico, El Salvador and the Pacific Islands. We conclude that these countries organise themselves to address migration and attempt to ensure the protection of their labour migrants based on a variety of models. Some chose to institute autonomous agencies with often strong regulatory powers (Philippines, Indonesia); others (Sri Lanka) followed a ministerial model, ensuring most stakeholders a seat at the policy table. In some countries (Mexico, El Salvador), strong emphasis has been on the inclusion and participation of migrants and their families.

2. The institutions and approaches developed by countries that have actively sought to support their labour migrants

We discuss the regulation of labour migration by sending countries. Of particular interest for the Kyrgyz Republic are not only the arrangements that countries developed over time, but also the process that led to them. No institution or arrangement materialised as the result of a single decision - a lesson which should be kept in mind when reforms in this area are contemplated.

Many migrant-sending countries adopted mechanisms and institutions to help improve the match of migrants to available jobs abroad. Most formal schemes were designed for the protection of “legal” migrants and do little to help those who do not fall into that category. Several schemes rely on the existence and regulation of private-sector recruiting firms. Many of these arrangements have been in operation for considerable periods of time, and there is sufficient evidence on their effectiveness. These long-running experiments offer useful lessons for the Kyrgyz Republic as it formulates policies to assist migrants and their families before and after their departure and upon their return home.

We provide specific country examples that illustrate the matching process for inter-regional and international migrants and the types of government programmes that can work to facilitate matching. For each country, we describe the evolution of policy and the ways the policies help or hinder the job match process. We also show how countries address the constraints that affect migrant sorting.

3. How countries strive to protect the human rights of migrants, including abuse by recruiters and employers

We describe several approaches to reducing human rights abuses of migrants by recruiters and employers. Our study also focuses on specific programmes to protect workers, including Pre-Departure Orientation Seminars (PDOS) and vocational training programmes.

Pre-Departure Orientation Programmes (PDOPs) are increasingly part of the toolkit of many migrant-sending countries. The Philippines, Indonesia and Sri Lanka instituted a series of

requirements for pre-departure orientation for potential migrants and systems of certification for potential providers of orientation services. India plans required orientations.

Programmes are designed, organised and delivered by a variety of actors, ranging from the International Organization for Migration (IOM), which has extensive experience in this area, to public or private (licensed) providers. Programme syllabi span issues such as culture, basic financial education, language and workers' rights. Information on consular services and whom to contact in an emergency are also included.

Several countries in our sample also engage in migrant-targeted training programmes aimed at providing the necessary skills for migrants involved in specific bilateral initiatives. These programmes often involve public-private partnerships and generally require financial participation from potential migrants. A common concern, which is relevant to the Kyrgyz Republic, is the recognition of educational standards and qualifications between countries.

4. How countries improved the accountability of law enforcement or reduced discrimination and abuse of migrant workers

Review of experience shows that in most countries, laws and regulations exist to guarantee human rights for migrants. However, unless police and immigration officials are held accountable in both sending and destination countries to uphold the law, laws to protect migrants can be passed but will have no impact on abuse. Since migrant abuse continues to be perceived as a problem, concentrating on legislation (whether to punish traffickers or prevent trafficking) cannot be the main strategy for sending countries such as the Kyrgyz Republic. Collaboration with receiving countries is critical in this area, and ambivalent views towards protection of migrants as they prevail at times in the Russian Federation, for example, do not help reduce abuse.

There are practical ways for sending countries to increase the effectiveness of their laws. An important way to prevent abuse is through information. Policies that work best include pre-departure orientation sessions and information campaigns on trafficking and human rights. Some countries do not allow migrants to work in countries with extensive migrant abuse. This reduces abuse in those countries but does not eliminate the abuse of workers trafficked there. International trafficking is a serious problem but is less widespread than in-country discrimination and violation of employment laws.

5. Policies that facilitate pension portability and savings and migrants' access to healthcare.

We review issues and practices related to the portability of pensions and the access to health care by migrants. Pension portability involves the ability of migrant workers to preserve, maintain and transfer acquired social security rights regardless of country of residence. Portability generally applies to migrants who enjoy full legal status, excluding a large group of labour migrants from coverage. Portability may be complete, partial or unavailable.

Fully portable arrangements guarantee the actuarial value of accrued pension rights when migrants change jobs. Partial portability means that only part of the accrued pension benefits are maintained when migrants change jobs. Due to the complexities surrounding the establishment of good portability arrangements, it is important for countries of origin to carefully negotiate bilateral social security arrangements with major destinations where migrant workers accumulate such rights.

Health care portability is less common than pension portability. Exceptions are the bilateral agreements between Turkey and some EU countries and the agreement between Morocco and Germany. In most other cases, health care outside the home country is regulated by national law. Usually, returning migrants have access to health care benefits at home, and these benefits are not age dependent.

6. Unleashing the potential of diasporas

Diasporas are established communities of migrants in a host country who retain an interest in developments in their country of origin. The role of diaspora communities in the development outcomes of migration has been amply documented in the literature, and a recent publication provides a comprehensive analysis of arrangements in place around the world. Diasporas provide invaluable social capital and information for potential migrants. They can also be active vehicles for investment and knowledge transfers, and can become actors in the political life of the mother country.

The international experience we review shows that governments, national and international non-governmental organisations (NGOs), and other international organisations can all work towards a more effective relationship between diasporas and their countries. Among FSU countries, Georgia and Armenia established ministerial agencies with a mandate to develop and encourage diaspora relations. The experience with these institutional arrangements is relatively new and it is too early to evaluate their impact. However, these dedicated institutions have the potential to facilitate economic, technological and cultural exchanges. Other countries reviewed in this study have adopted non-ministerial approaches which can be equally effective. Adherence to the rule of law and a friendly business environment are possibly the two most important conditions for the effective integration of the knowledge and resources of the diaspora into local development. Some countries have been able to establish programmes that increase incentives for the diaspora to invest without discriminating among classes of investors. Kyrgyzstan can learn from these approaches.

7. Modes of international cooperation

Cooperation between sending and receiving countries is paramount to the success of programmes that manage labour migration and protect migrants' rights. Several fora currently exist in major migration corridors, which vary in intensity with respect to the degree of cooperation among participants and the format chosen to achieve common objectives. We highlight the features, advantages and disadvantages of three international

processes relevant to the Kyrgyz Republic: (i) the Colombo Process among a number of Asian sending countries and their receiving partners; (ii) the Eastern Partnership (EaP) process currently under way between the EU and six FSU countries (Ukraine, Belarus, Moldova, Armenia, Azerbaijan and Georgia); and (iii) the informal Migration and Remittances Peer-Assisted Learning (MIRPAL) discussion forum among FSU countries in the Russian Federation/Kazakhstan corridor.

These three examples offer some useful lessons for the Kyrgyz Republic. First, an international collaborative context is useful for migration-sending countries, particularly small ones such as the Kyrgyz Republic. The Colombo Process attained a number of successes, but it is also characterised by a high degree of formalisation, which may not be optimal for all aspects of international discussions, particularly in the FSU region. The EU-EaP experience is driven by the EU agenda, and lacks the multilateralism in decision-making and consensus-building that might be desirable for the Kyrgyz Republic. Strengthening of the MIRPAL experience, perhaps through graduation from its World Bank sponsorship, and a more ambitious agenda could benefit its members, particularly the Kyrgyz Republic. The type of collaboration would be less formal than the Colombo Process but less of a discussion club than in its present structure, and would require agreement and collaboration of all current members.

Lessons and Recommendations

The review suggests several lessons that could be of relevance to the Kyrgyz Republic.

One Size Does Not Fit All, Need for a Vision

The review of international experience demonstrates that there is no single model that works with respect to migration policies. The complex nature of migration issues means that many institutional actors, both government and non-government, are stakeholders to a certain degree and claim a seat at the table on migration policy matters.

The review also shows that many countries have only recently attempted to establish better organisational models for migration management, and in many cases the jury is still out with respect to what works best and under which conditions. Conversely, available evidence shows that lack of action is also counterproductive. Pitfalls to be avoided include: continuing to address migration as a border security issue, for countries that are large importers of migrants; assigning migration matters to departments within ministries without sufficient clout; and at the other extreme the appointment of high-level commissions that are largely ceremonial and equally ineffective.

Some of the more interesting examples point to the advantage of a single-mandate agency to help coordinate government policies and provide a focalised access point for action to help migrants in their destination countries. The Kyrgyz Republic, with the support of the Central Asia Regional Migration Programme (CARMP) of the IOM, is currently experimenting with the establishment of the pilot Centre for Employment Abroad in the Ministry of Youth, Labour, and Employment. While the principle of piloting a new institution is to be commended, a bolder

long-term vision could benefit Kyrgyz migrants. Possible innovations include establishing an agency with a high degree of autonomy and a clearly defined mandate to protect labour migrants during all stages of the migration process. The agency could be called the Labour Migration Protection Agency (LMPA). Its responsibilities would include: oversight of the activities of employment intermediaries and screening their selection; coordination of pre-departure education, including language, culture, financial, and legal training; support for diaspora organisations to help with job placement, safe housing and transport, and reinvestment at home; and an active presence in Kyrgyz consular sections in destination countries, with honest helpful staff to assist with legal, medical and immigration problems.

The Kyrgyz Republic would be well advised to recognise and mitigate the weak state of its institutions and the ever-present potential for abuse by bureaucrats. It is important to ensure that, within the governance system of the LMPA, adequate representation and accountability is provided for stakeholders outside government through direct representation of migrants and their families on an advisory policy-review board within the agency, as with Mexico's Institute for Mexicans Abroad (IME) or El Salvador's National Council for the Protection of Migrants and their Families (CONMIGRANTES). The agency and board should be held to the most exacting standards of transparency through periodic reporting and ease of access to information. It should establish mechanisms such as an ombudsman for redress by affected parties. These measures would discourage arbitrary or corrupt behavior by agency officials. A reasonable objective would be to establish the LMPA within five years, with the active support of the international community.

need for a "Migration Lens"

The proposed LMPA cannot be burdened with an excessive mandate or it could lose its focus and dilute its mission. This begs the question of how to incorporate migration-related considerations in other policy areas likely to affect the developmental outcomes of migration. One possibility could be the establishment of the Office of the Migration Advocate (OMA) as a small unit attached to the office of the Prime Minister. The OMA should have a clear mandate to review major policy initiatives in the areas of education; financial market reforms; and social protection, with a migration lens to evaluate the likely effects of proposed policies on migration outcomes. The OMA would remind sectoral agencies of the need to evaluate the likely effects of new policies on migrants and their families and on migration and remittance transfers. The OMA could assess proposed reforms in the education sector, and, if necessary, point to missing or inadequate provisions for the education of potential migrants and their children and propose improvements.

The OMA should not be constructed as a massive bureaucracy. The small secretariat could leverage the wealth of international experience provided by international partners already collaborating with the Kyrgyz Republic. Its mission would not be to write laws and regulations but to advocate for migrants. While a similar body has not been implemented as an autonomous office in any of the countries that we reviewed, its functions are present in different capacities within a number of agencies. It would be worthwhile for Kyrgyzstan to experiment with such an innovation.

Leadership is Key

A crucial element emerging from the review of international experience is the need for effective leadership. No agency will be effective or sustainable without substantial support from the top. It is imperative that the highest authorities of the country send a clear signal about the importance of migration as a national priority. Should the Kyrgyz Republic establish the LMPA or OMA, the leadership of these agencies should be selected based on criteria of professionalism, integrity and passion for the rights of migrants.

International Cooperation is Essential

The Colombo Process shows the benefits of engaging in a cooperative forum among sending and receiving countries. Most Kyrgyz migrants in the near future will continue to choose the Russian Federation and Kazakhstan as their preferred destinations. Existing regional collaboration should be strengthened which would benefit all countries concerned. The MIRPAL network provides a blueprint that could be expanded. Technical discussions could be supplemented by more open consultations on future policy developments.¹

Information and Evaluation

None of our recommendations can be effective without accurate information. The Ministry responsible for labour migration must develop a database on all legal and returned migrants, and should conduct regular surveys of potential migrants, migrants in the destination countries, and returned migrants and their families. Periodic community surveys are also needed to assess the impact of migration and related policy on communities. Without accurate and updated data, it will be impossible to assess the economic and social impact of labour migration and the effectiveness of laws and regulations on labour mobility and human rights. However, good data collection is only the first step in assessment; the government needs to develop the capacity to analyse the data it collects. This may involve training government employees or local academics and consultants, as well as improving local education and reducing corruption at academic institutions. This investment in information and human capital will have long term benefits, leading to the effective development and implementation of migration policies in the Kyrgyz Republic.

Social Welfare

A concern of labour migrants returning to the Kyrgyz Republic is the impact of their migration on their pension and security. A migrant in Russia does not contribute to the Social Fund in the Kyrgyz Republic; his wages abroad are not documented in his Labour Book. This means that his pension will likely not reflect many years of work and will be considerably lower than if he had not migrated. There are two solutions to this problem. The first is to allow emigrants to contribute to a pension fund while overseas. The Non-Resident Keralite Welfare Act of 2008 mandates that the Kerala government provide a pension scheme to migrants.

¹ Annex A compares our recommendations to those of the Strategy report commissioned by the Department of External Migration of the Ministry of Foreign Affairs of the Kyrgyz Republic, in close consultation with international experts.

The participant pays into the fund for at least five years, and payment can come from abroad. The participant then receives a pension after the age of 60.² A second solution is to lower the cost of saving for migrants. The cost of saving and remitting money home is low for Mexican and Salvadoran immigrants to the US and Canada. The Mexican government has no programme to provide pension benefits for return migrants, but it does offer subsidised mortgage loans for migrants and encourages money transfer organisations to contribute to community welfare programmes.³

Health and safety are concerns, and several of the reviewed countries have adopted programmes in this area. Bilateral agreements that are enforced work best. A bilateral agreement between Korea and the Philippines guarantees Korean social services to legal migrants. US law requires employers to abide by safety regulations, and hospitals generally provide emergency health care to migrants and their families in the US.

We recommend that the Kyrgyz Republic adopt a more pro-active approach to the support of migrants and their families. Transparent financial institutions promote savings. Mobile banking makes money transfers easier and cheaper. Bilateral agreements on social security, health and safety can work if mechanisms are in place to monitor and enforce the agreements. Without the institutional capacity to enforce regulations, it will be difficult to make progress on the social security and welfare of returned migrants and their families. Without protections, migrants will have less incentive to return to the Kyrgyz Republic.

² Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu. (Quezon City, The Philippines: MFA, 2012).

³ Abdul-Ghaffar Mughal, Migration, Remittances, and Living Standards in Tajikistan: A Report Based on the Khatlon Remittances and Living Standards Measurement Survey (Dushanbe, Tajikistan: International Organization for Migration (IOM), 2007); and Javier Díaz de Leon, "Migration, Cooperation and Development: The Role of the Mexican Government," Presentation at the Center for Strategic and International Studies. (Washington, DC, January 11, 2011).

Introduction and Background

In an increasingly interdependent world, all countries experience different forms of labour migration. The United Nations (UN) population division estimated that total migrants in the world in 2010 amounted to approximately 215 million people. While this is a relatively small share of the world population, it is unevenly distributed, so that for some countries the number of migrants relative to the total population and to the labour force is very high.

Among the countries of the former Soviet Union (FSU), many of which are now members of the Confederation of Independent States (CIS), migration saw three broad stages in the aftermath of the dissolution of the USSR. The first stage, shortly after the declaration of independence of the constituent republics of the FSU, saw large movements of people across borders along ethnic lines, in some cases leading to ethnic conflicts. In the second stage, starting from the mid-1990s, traders began to cross borders towards both the Russian Federation and the European Union (EU) and the candidate countries of the EU, in a form of low-level circular migration. Over time, as formal and informal networks established or re-established themselves, the third stage, characterised by more organised and sustained labour migration, was observed across many countries. Within the FSU, the main destination for migrants (facilitated by the visa-free regime applying to citizens of the CIS) has remained the Russian Federation, with Kazakhstan and lately Azerbaijan also supplementing their labour forces with substantial numbers of migrants.

The Kyrgyz Republic has been profoundly affected, in its social and economic spheres, by migration since its independence, and it is now well into the third stage of FSU migration. Overall and mostly seasonal migration is estimated at about 800 thousand people out of a population of 5.5 million and a labour force of 2.4 million. The large majority of labour migrants work in the Russian Federation, although a significant contingent (estimated at 55 thousand for 2011) works in neighbouring Kazakhstan.

A national debate is ongoing with regard to the reform of the ways and institutions through which the Kyrgyz Republic can protect and empower its migrants and their families and help increase the development potential of migration. This paper addresses a number of issues concerning protection of the rights of labour migrants and discusses how Kyrgyzstan could best approach them, taking into account current institutional, legal and economic limitations.

Sources and Comparison Countries

This paper is based on a review of published sources and concentrates on the experience and lessons from a number of countries for which migration issues are of great importance. These include comparators in the FSU area (Moldova, Armenia, Georgia, Ukraine, Azerbaijan), countries in the East-Asia/Pacific corridor (Philippines, Sri Lanka, Indonesia, India), countries in the North American corridor (Mexico, El Salvador) and relevant experiences from the South Pacific corridor. Basic indicators for the countries selected for this study are given in Table 1.

Table 1. Migrant sending countries, basic data.

	Population (millions)	Rural Pop. %	GNI per capita	Corruption Perceptions Barometer ^a	Est. Migrants (millions)	Percent of population	Remittances/GDP (%)
Armenia	3.1	36	3,100	34	0.87	28.2	9.3
El Salvador	6.2	35	3,370	38	1.2	20.5	17.1
Georgia	4.3	47	2,530	52	1.1	25.1	8.2
India	1,155	69	1,212	36	11.4	1.0	2.8
Indonesia	230	49	2,230	32	2.5	1.1	1.4
Kyrgyz Republic	5.3	65	870	24	0.8	15.2	22.7
Mexico	107.4	22	8,900	34	11.9	10.7	2.6
Moldova	3.6	52	1,590	36	0.77	21.5	22.4
Philippines	92	51	1,790	34	4.2	4.6	13.1
Sri Lanka	20.3	85	1,990	40	1.8	9.1	8.8
Tonga	0.1	77	3,260	NA	0.047	45.4	33.0
Ukraine	46	31	2,800	25	6.5	14.4	4.7

Source: World Development Indicators Database 2013; Transparency International, "Corruption Perceptions Barometer," 2013; Migration and Remittances Factbook 2011, 2012.

^a 100 = least corrupt, 0 = most corrupt; 2012 data; NA = not available

The Kyrgyz Republic is the poorest country in the set in Table 1 and one of the smallest in land size and population. It is land-locked like Armenia. It is agricultural as are Sri Lanka, Moldova, Tonga, and most of India. Like all of the countries in this set, corruption is a major problem; the Kyrgyz Republic and Ukraine have the worst scores in this set of countries. The Kyrgyz Republic is migrant dependent. Eleven percent of its population is migrant (legal migration), which is significantly lower than Armenia, El Salvador, Georgia, Moldova and Tonga. It is, however, one of the most remittance dependent countries in the world. Tonga is the only country in Table 1 with greater dependence on remittances. Poverty and unemployment motivated migration from the Kyrgyz Republic since the middle 1990s. Remittances have important positive effects on well-being of migrant households, primarily in rural areas, but the costs of this migration and dependence have not been trivial. Our analysis focuses on policies throughout the world that have tried to mitigate these personal and social costs of migration.

Roadmap

The paper is organized into two major Parts:

- **Part one** presents the model and best practices available from other sending countries that the Kyrgyz Republic should consider in designing its migration policy. We divide this Part into seven sections.
- In the **First Section**, we review the ways in which other migrant-sending countries have organised themselves with respect to the handling of migration policies. We show that

there are a variety of arrangements currently in place within government structures, and these arrangements coordinate the concerns of stakeholders in the migration process in many different ways.

- In the **Second Section**, we review the institutions and the approaches in place by countries that sought actively to support their labour migrants. Our emphasis is on the accountability and institutional lessons that can be drawn from the international experience and would benefit the discussion in the Kyrgyz Republic.
- In the **Third Section**, we discuss the attempts by countries to prevent human rights abuses towards migrants by job recruiters and employers; this includes trafficking of workers and on-the-job exploitation. We argue that, given the ineffectiveness of formal laws in an international context, other means should be added to the toolkits of migration sending countries, starting from international cooperation, to increased information and education and the empowerment of communities of migrants.
- In the **Fourth Section** we discuss ways in which countries have improved the accountability of law enforcement or reduced discrimination and abuse of migrant workers.
- In the **Fifth Section**, we describe policies that facilitate pension portability and savings, migrants' access to healthcare, and migrant access to other basic services. We include a discussion of mechanisms for the easy and low cost transfer of remittances because remittances can be a good substitute for non-portable pensions and a way to develop capital for the care of those left behind and for return migrants.
- In the **Sixth Section**, we briefly discuss ways that countries mobilise resources from their diaspora for local economic development, to facilitate brain gain, and to help later migrants adjust to new environments.
- Finally, in the **Seventh Section**, we review the modes of international cooperation practiced in this complex area of migration and human rights, and offer reflections on what would best suit Kyrgyzstan's needs and objectives.

Part two summarises our major conclusions on best practice. We describe the assignment of responsibility among national agencies and touch on recent experiences in international cooperation on migration matters. Our recommendations for the Kyrgyz Republic conclude the paper.

Part 1. Models and Best Practices from Sending Countries that the Kyrgyz Republic Should Consider in Designing Migration Policy

Section 1. How Countries Organize Migration Policies and Management

The Draft Migration Strategy for Kyrgyzstan recognises the importance of streamlining institutional responsibilities in the field of migration in general and labour migration in particular. There are at present overlapping responsibilities among ministries and agencies and a general lack of leadership on matters of protection of labour migrants.

Unfortunately, this situation is not unique in the world. Our review of international and regional experience shows that sending countries, even those in which a large proportion of citizens migrate, have not adopted effective models of governance in this area. There are two main obstacles. The most important is the lack of government capacity, which affects policy-making and service delivery in the area of migration. The second is the result of the multi-sectoral, multi-thematic nature of migration. Many different ministries and agencies have a stake in decisions that affect migration policies and interagency rivalry is bound to develop in the absence of clear leadership. Corruption within key agencies and lack of transparency in government operations intensify the coordination problems of implementing new policies.

A related concern is the lack of coordination among the activities of public sector agencies and civic society organisations which are active in several areas of protection of migrants' rights. This is the case within both sending countries and destinations where diaspora associations often play an important role in employment matching, migrant protection and home country development.

We review a number of relevant arrangements in existence in the FSU and in other relevant areas of the world, including the Philippines, Sri Lanka, India, Mexico and Central America, and the South Pacific.

organizational Strategies in the FSU

The experience of FSU countries with regard to migration management is highly relevant to the Kyrgyz Republic, due to the common origin of many of the institutions that exist today. Table 2 displays current arrangements in FSU countries with the largest proportion of migrants in their labour force or in absolute numbers: Ukraine, Moldova, Armenia, Georgia. We also include Azerbaijan, which is in the process of transitioning to the status of net recipient of migrants. The table displays the current situation with respect to the legal foundations for an integrated migration strategy, as well as the institutional models chosen with regard to responsibility for policy-making and coordination.

Table 2. Legal and institutional Arrangements for Migration in Selected FSU Countries

Country	Official Strategy for Labor Migration	Intra-Government Coordinating Mechanism	Diaspora Policies and Institutions
Armenia	Law on the Organisation of Overseas Employment (2010); "2012-2016 Action Plan for Implementation of the State Policy on Migration Regulation in the RA" (2011)	No policy body in place; State Migration Agency (a department of the Ministry of Territorial Administration) is tasked with implementation of migration-related projects.	Ministry for Diaspora Affairs
Azerbaijan	State Migration Programme (expired 2008)	State Migration Service within the Ministry of Internal Affairs (not a policy-making or coordinating agency)	State Committee on Work with the Diaspora
Georgia	Migration Strategy being drafted under the leadership of the State Commission on Migration	State Commission on Migration Issues set up in 2011. Main goal: strengthen the coordination among agencies working on migration issues.	State Ministry on Diaspora Issues (est. 2008)
Moldova	National Strategy on Migration and Asylum (2011-2020)	National Commission for Population and Development	No dedicated government institution
Ukraine	Concept of State Migration Policy (2011).	State Migration Service (created Dec. 2010)	Very active Diasporas, no dedicated government institution

Source: Authors' Reviews

All of the surveyed countries have adopted migration laws although implementation may be uneven. Not all countries have fully internalised the need for an integrated approach to labour migration. In Ukraine and Azerbaijan, the attention of migration policymakers appears to focus on immigration and refugees rather than labour migration of their own citizens. Only Moldova and Armenia have had some success with a holistic approach to labour emigration management aimed at maximising the benefits for migrants and the country at large.

Armenia sends a very high proportion of emigrants to the Russian Federation and stands out for its attempts to facilitate the use of its diaspora as a powerful tool for development. It has had a Ministry for Diaspora Affairs since 2008, and several other public and private organisations have been active in the area of diaspora development. However, in other areas of migration management and strategy, Armenia has not developed a clear institutional framework with assignment of responsibilities for the many issues concerned. This reflects the continuing lack of an overall migration strategy as a national priority with the institutional capacity to affect migration policy decisions.

In Azerbaijan, institutional and legal arrangements increasingly reflect the status of the country as a net importer of labour and the growing preoccupation to regulate inflows of foreign workers. A State Migration Service within the Ministry of Internal Affairs was set up in March 2007 to implement the state migration policy, develop a migration management system and coordinate the activities of relevant government bodies. Azerbaijan is a participant of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and has joined the Palermo Protocols related to the trafficking and smuggling

of migrants. Azerbaijan has also signed bilateral agreements on the social security of migrants with Kyrgyzstan, Kazakhstan, Georgia, Ukraine, Italy, Russia, Moldova and Belarus, covering social protection of circular migration between countries and a number of bilateral agreements on cooperation in migration issues with the Russian Federation and Moldova. However, there is no established state policy targeted at promoting circular migration, including the mobility of skilled workers. State policies mainly regulate immigration and combat illegal migration.

In **Georgia**, immigration policies have been rather liberal. However, progress on emigration policies, priorities and objectives is relatively recent. Until 2011, the coordination mechanism among government entities and ministries with regard to migration issues was very weak. In 2011, a State Commission on Migration Issues was set up to strengthen coordination among agencies working on migration issues.⁴ The Commission is working on a migration strategy, and an action plan should have been ready by the end of 2012. The Commission also intends to improve the legal framework for migration. The main points in the draft migration strategy document are the promotion of legal emigration, the prevention of illegal migration, asylum system development and the promotion of dignified return and reintegration. The document also defines the responsibilities of the different entities involved.

In **Moldova**, ten Ministries or Departments deal with different migration issues. A policy-oriented consultative committee that is closely tied to the Prime Minister of Moldova, the National Commission for Population and Development (NCPD), provides policy coordination and has a mandate to identify mechanisms to collect and exchange disaggregated data on key demographic indicators, including migration. The basic NCPD tasks are to coordinate the process of elaborating population policies including those directly related to international migration. The Action Plan (2011-2015) for the Implementation of the National Strategy on Migration and Asylum (2011-2020) provides the legal and operational framework for the NCPD. It should be noted that the EU provided a strong set of incentives (and some resources) for Moldova to adopt a more rational organisation of state institutions dealing with labour migration issues.

Finally, **Ukraine**, given its sheer size, contributes the largest amount of labour migrants in the region, roughly evenly split between the Russian Federation and the EU. However, the Concept of State Migration Policy, its main strategic document on migration issues, was adopted only in the middle of 2011, after over fifteen years of discussion in Parliament and other state bodies. Ukraine never really considered migration policy a priority. Instead, it tried to control immigration while doing little for Ukrainians working abroad. For example, the State Migration Service has a “Plan of Integration of [Im]migrants into Ukrainian Society for 2011-2015” but nothing for emigrants. More importantly, the State Migration Service lacks oversight or even advisory functions with regard to decisions that other government

⁴ The following ministries and government entities are represented on the Commission: the Ministry of Foreign Affairs, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the Ministry of Finance, the Civil Registry and Migration Department under the Ministry of Justice, the Ministry of Education and Science (actively facilitates returning migrants’ professional development and reintegration), the Ministry of Economy and Sustainable Development, the National Statistics Office of Georgia, the Georgian Parliament, the European Integration Ministry and the Ministry of Diaspora (all actively involved). Meetings are held at least once a month.

bodies may take to affect migration outcomes. To date, the country in the region with the largest number of its citizens working abroad, in areas of the world that have very different requirements, is unable to express a consolidated strategy to support its labour migrants.

Institutional Arrangements in Large Migration-Sending Countries

Some non-FSU, large migration-sending countries provide better and differentiated examples of the institutional organisation of labour migration management and protection. In this section, we review the salient features of the Philippines, Mexico and Sri Lanka, focusing on the organic structure of relevant agencies, the degree of independence/influence that such agencies have with respect to their mission and to migration-related policy formulation, and the system of governance, particularly, stakeholder participation (see Table 3. for summary).

The Philippines

The government of the Philippines played a limited role in overseas employment until the 1970s. In the early 1900s, private agencies were more important in matching Filipino workers to jobs overseas. The major destination for these workers was the United States until the 1960s. The economic boom in the Middle East in the 1970s increased the demand for temporary labour from the Philippines to work in the oil fields. This led to the 1974 creation of the first major government emigration policy, the Labour Code of the Philippines. The policy institutionalised labour migration from the Philippines and incorporated an employment strategy for emigrants. At the time, private agencies were accused of increasing or not monitoring abuse of Filipino workers overseas, and one goal of the Labour Code was to reduce the influence of these agencies or improve their effectiveness in the matching process.⁵

Table 3. Institutional Arrangements in the Philippines, Mexico, and Sri Lanka

	Philippines	Mexico	Sri Lanka
Domestic Institutions	Philippines Overseas Employment Administration (POEA)	Instituto Nacional de Migracion (INM)	Ministerial model: Ministry of Foreign Employment and Welfare (MFEPW)
Overseas Institutions	Philippines Overseas Labor Offices (POLO) in consulates	Institute for Mexicans Abroad (IME)	MFEPW
Task: Employment/ agency regulation	POEA	INM: migration law enforcement, policy development	MFEPW; drafted recent Labor Migration Policy
Task: Monitoring	POLO	INM: employment and border monitoring	MFEPW

⁵ Dovelyn Rannveig Agunias, *Managing Temporary Migration: Lessons from the Philippine Model* (Washington, DC: Migration Policy Institute, 2008).
https://secure.migrationpolicy.org/images/2008.10.7_Presentation.pdf

	Philippines	Mexico	Sri Lanka
Task: Migrant assistance	POEA and POLO	IME: emigrant standard of living	MFEPW
Task: Migrant welfare	Overseas Workers' Welfare Administration; insurance and assistance	IME	MFEPW
Ministerial oversight	Department of Labor	Ministry of Interior for INM; Ministry of Foreign Affairs for IME	None but collaborates with other agencies
Stakeholder involvement	POEA, including migrants	Input from Council for Mexican Communities Abroad; 11 ministries input	Other agencies provide input

The emphasis on the protection of Filipino workers overseas led to the establishment of three additional oversight boards: the Overseas Employment Development Board (OEDB), the National Seaman Board (NSB) and the Bureau of Employment Services (BES). The OEDB and the NSB were designed to develop job markets for migrant workers, to help recruit qualified labour to these jobs, and to secure good jobs for them. In 1982, these three organisations were merged into one institution: the Philippine Overseas Employment Administration (POEA). The larger organisation is more efficient and regulates overseas employment and the activities of private employment agencies. It is designed to assist temporary or circular migrants, not migrants who want to permanently leave the Philippines. POEA only has offices in the Philippines. Overseas monitoring is relegated to the Philippine Overseas Labour Offices (POLO) in the Philippine consulates.

The POEA Governing Board, which sets policies and oversees the functioning of the agency, has a structure that allows for the participation of stakeholders. The Secretary of Labour and Employment heads the Governing Board and the POEA Administrator acts as vice-chair with three representatives from the private, women, sea-based and land-based sectors serving as members. The POEA Administrator also oversees the daily operations of the agency and is supported by three deputy administrators.

In 1980, the government created the Welfare Fund Administration (WFA), renamed the Overseas Workers Welfare Administration (OWWA), which is independent and focuses on the welfare of migrant labour and offers insurance and loans to migrants.⁶

In sum, the Philippines have developed, over the course of over 25 years, a multi-pronged system of support to labour migrants, based on a functional division of tasks. The various agencies enjoy *de facto* autonomous status but report to the Department of Labour. The POEA holds a first-among-peers status because of its long history and broad mandate, its reach, and the appointment of experienced and influential administrators to the highest posts in the organization.

⁶ Dovelyn Rannveig Agunias, *Managing Temporary Migration: Lessons from the Philippine Model* (Washington, DC: Migration Policy Institute, 2008).
https://secure.migrationpolicy.org/images/2008.10.7_Presentation.pdf

Mexico

Mexico is both a major sending country and a transit country for Central American migrants (both to the United States (US)). As a result, its policies and institutional arrangements are subject to contrasting priorities that have evolved over time, with the protection of Mexicans abroad intertwined with attempts to curb illegal transit migration. All this has been compounded by well-documented problems linked to organised crime and corruption in the security forces, which often target migrants for extortion and other crimes.

Until recently, Mexico's main law governing immigration was the sweeping 1974 General Population Law, which focused on family unification and was framed as a response to the challenges of the era: a rapidly growing population and large-scale emigration from Mexico. However, since the 1980s, there have been calls, particularly from Mexican civil society, for Mexico to reform its migration laws to improve policy coherence and implementation, as well as to improve protections for migrants in Mexico who are notoriously vulnerable to abuse. These calls for reform resulted in the adoption, in April 2011, of a new Migration Law (*Ley de Migración*). The law aims to develop a comprehensive migration policy that respects the human rights of migrants, facilitates the international movement of people, meets the country's labour needs, ensures equality between Mexican natives and immigrants to Mexico, recognises the acquired rights of long-term immigrants, promotes family unity and socio-cultural integration, and facilitates the return and reintegration of Mexican emigrants.⁷

As in the Philippines, Mexico has adopted a multi-agency system with a great degree of operational and political independence from ministries. The most important state organisation dealing with immigration is the Instituto Nacional de Migración (INM), which over the years has combined migration law enforcement and policy-making. In recent years, though nominally an agency of the Ministry of the Interior, the INM has gained prominence as concerns of national security heightened after 11 September 2001. It has its own police force, and aggressively pursues border enforcement and deportations. It has been criticised in the past for its involvement (active or passive) in gross human rights abuses, particularly of transit migrants. The management and leadership structure of the INM does not include external oversight or participation by stakeholders.

While the INM is mainly concerned with immigration, the principal institution currently charged with the protection of Mexicans abroad is the Institute for Mexicans Abroad (IME), which has the status of an independent agency within the Ministry of Foreign Affairs. The objective of the IME⁸ is to promote strategies, integrate programmes, and collect proposals and recommendations from Mexican communities abroad to help raise the standard of living of Mexican communities abroad and implement guidelines issued by the National Council for Mexican Communities Abroad.

⁷ International Labour Organization (ILO), *Ley Especial Para La Protección y Desarrollo de la Persona Migrante Salvadoreña y su Familia y su Reglamento de Ejecución* (ILO, Natlex, 2013b).
<https://www.ilo.org/dyn/natlex/>.

⁸ See http://www.ime.gob.mx/index.php?option=com_content&view=article&id=7&Itemid=353&lang=es

The IME is governed by the National Council for Mexican Communities Abroad (Consejo Nacional) and the Advisory Council (Consejo Consultivo). Consejo Nacional includes representatives from 11 ministries that are involved with migration issues in Mexico, and the Consejo Consultivo includes 156 representatives from Mexican communities abroad. The Advisory Council is divided into six commissions (education, health, political affairs, legal affairs, border issues, economic and business affairs and communications and outreach); these commissions can request assistance from their respective branches of government. The Consejo Consultivo meets twice a year.

One of the most noticeable features of the IME is the dedicated network of representatives based in consular offices in the US and in Canada. The IME has been portrayed by the International Labour Organization (ILO) as a Good Practice institution because of its effectiveness in reaching out to involved communities, the range of services that it provides, and the cooperation it has fostered with receiving countries on a range of issues of importance to migrants.⁹

Sri Lanka

In recent years, Sri Lanka has moved towards a ministerial model for its agencies dealing with labour migration issues, with the Ministry of Foreign Employment Promotion and Welfare (MFEPW) at its center. Sri Lanka is the only country in our sample to have concentrated all policy primacy and practical implementation in a single institution at the ministerial level. It is however recognised that the ministry has to collaborate with other ministries in matters that do not pertain exclusively to migration.

The ILO has particular praise for the consultative process that led to the current institutional setup. “Following consultations between the ILO and the MFEPW, a road map was developed on the formulation of the Policy. The road map focused on three key areas: good governance of labour migration, protection and empowerment of migrant workers and their families, and linking migration and development processes. A four-pronged process was then adopted: establishment of three thematic working groups based on the key focus areas and inclusive of tripartite stakeholders; setting up of a National Tripartite Steering Committee, chaired by the Minister of the MFEPW and comprising relevant government ministries and agencies; development of a draft National Labour Migration Policy with the guidance of the Working Groups, Steering Committee and National Advisors (selected from national academic institutions); and presenting the draft Policy to national stakeholders for approval. The Policy was officially launched by the MFEPW on 24 February 2009, and adopted by the Sri Lankan Cabinet on 30 April 2009.”¹⁰

The establishment of the MFEPW is relatively recent, and it is difficult to compare it to other models we have reviewed. Possible strengths include the greater bureaucratic clout of the ministry with regard to budgetary allocations and other cabinet-level decision-making, and

⁹ International Labour Organization (ILO). Institute for Mexicans Abroad. (Geneva, Switzerland: ILO, 2013a). http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=34

¹⁰ International Labour Organization (ILO), National Labour Migration Policy, Sri Lanka (ILO, 2013d). http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=27.

the role of advocacy for migration in the context of strategic or operational discussions on policies that may affect migration outcomes. Possible weaknesses include the proliferation of bureaucratic procedures; the use of ministerial jobs as a source of patronage, particularly in a country such as Sri Lanka that has seen deep divisions within its population; and, most importantly, the ineffective control over the activities of the agencies within its purview, which might be tempted to run an agenda of their own.

Lessons for the Kyrgyz Republic

This review of the lessons from institutional practices in FSU countries and other migration-sending countries highlights some important lessons. We note the very uneven progress in the FSU in the establishment of a satisfactory set of institutional arrangements for the management of labour migration and the protection of migrants. The Ukraine experience, for instance, shows that years can be spent debating a migration law that in the end fails to address the needs of millions of citizens who seek employment abroad. A clear focus on labour protection is needed. The Moldova example shows that progress can be slow, but strong signals from the top can nudge policy in the right direction. Some of the most successful and most interesting examples of migrant-sending countries - the Philippines, Sri Lanka, Indonesia, Kerala State in India, Mexico, El Salvador and the Pacific Islands - provide more encouraging models to consider. These countries organised themselves to deal with migration issues and ensure protection of their labour migrants using a variety of models. Some chose to institute autonomous agencies with often strong regulatory powers (the Philippines, Indonesia); others followed a ministerial model, ensuring most stakeholders a seat at the table of important policy decisions (Sri Lanka). In some countries, strong emphasis has been on the inclusion and participation of migrants and their families (Mexico, El Salvador). The Kyrgyz Republic will be well advised to carefully match possible desirable features with its own institutional capacity.

Section 2. Institutional Approaches to Support Labor Migration and Regulate Employment

We now turn to the issue of regulation of labour migration by sending countries. Of particular interest for the Kyrgyz Republic are not only the actual types of arrangements that countries have developed over time but also the process that has led to them. As the discussion will make clear, no institution or arrangement materialised as the result of a single decision, a lesson that should be borne in mind when reforms in this area are contemplated.

Many migrant-sending countries have adopted various mechanisms and institutions to help improve the match of migrants to available jobs abroad and reduce the associated dangers. Most of the formal schemes are designed for the protection of “legal” migrants and do little to help those who do not fall into that category. Several of these schemes rely on the existence and regulation of private-sector recruiting firms. Many arrangements have been in operation for relatively long periods of time, and there is sufficient evidence of their effectiveness. These long-running experiments offer useful lessons for the Kyrgyz Republic as it formulates policies to assist migrants and their families before and after their departure and upon their return home.

We provide specific country examples that illustrate the matching process for inter-regional and international migrants and the types of government programmes that can facilitate matching. We describe the evolution of each country’s policy, the ways these policies help or hinder the job match process, and how these countries address the constraints that affect migrant sorting (see summary in Table 4). Reflections on what these examples imply for the Kyrgyz Republic are discussed at the end of the section.

The Philippines

The Philippines is often viewed as the gold standard in emigration policy. Its policy has evolved over more than 30 years, and its role in matching and protecting its emigrants has been extensively studied.¹¹ Among all migrant-sending nations, the Philippines have developed perhaps the most highly regulated system of labor migration.

The Philippine Overseas Employment Administration (POEA, described in Section 1) is the centerpiece of the labor migration regulation system. The agency is selective in the employers with whom it works overseas and the local workers it assists. Its goal is to find reliable, good employers who match well with motivated, qualified local labor. The firms it recommends must meet minimum employment standards, and there are specific regulations concerning worker recruitment. On the firm side of the match, the agency helps foreign employers select and register Filipino workers, and it facilitates the transport of labor to the other country. It imposes strict conditions on private recruiters¹² (Aquinas 2008), which receive licenses that must be renewed periodically, subject to proof of appropriate conditions of ownership and financial standing, and proof of viability of their foreign partnerships.

¹¹ For instance, the POEA website has registered over 59 million hits since 2005.

¹² Dovelyn Rannveig Agunias (2008).

POEA imposes conditions on foreign employers. These include the approval of employer documents including employment contracts by the POLO in country or directly by the POEA and the requirement to have a representative agency in the Philippines, which requires valid proof of business or project documents and working visas. Special provisions are in place for employers who want to hire domestic workers among only low-skilled Filipinos. The POEA also sets high and formidably detailed standards for admissible employment contracts.¹³ Finally, POEA imposes conditions on Filipino workers who apply for work abroad, including verification of skills that match the prospective jobs and providing for trust funds (established by foreign governments) that cover legitimate worker monetary claims.¹⁴

This package of policies and institutions affects the information asymmetries between potential migrants and employers abroad. The policies provide employers with more information on the actual skill of the potential employees. Philippine law ensures that Filipino migrants are healthy and technically qualified for the jobs they are seeking. POEA's role is to ensure that all workers possess a certain level of technical qualification and physical and mental health to perform the tasks required. There are special requirements for workers in the seafaring industry. Potential migrants have good information on what jobs are available and what skills are needed for these jobs. This reduces their search among jobs for which they do not qualify.

Table 4. Institutions to support labor migrants in five countries.

	Philippines	Sri Lanka	Indonesia	India: Kerala	Mexico
Agencies	POEA	MFEPW; Sri Lanka Bureau of Foreign Employment (SLBFE)	Agency of Coordination for Placement of Overseas Indonesian Workers (ACPOIW)	Ministry of Overseas Indian Affairs (MOIA); NORKA;Norka- Roots	INM IME Bracero Program, 1942-64
Employer regulation	Standards; contracts; proof of business	SLBFE sets standards, approves contracts	ACPOIW, one stop shop	state agency needs overhaul	INM: border control; laissez-faire vis- à-vis employers

¹³ Only licensed agencies can recruit workers. Only a licensed agency, not an employer, can directly advertise job openings overseas. The employer must pay a service fee to the agency it uses to cover the costs of recruitment, documentation, and placement of workers in the jobs they take. The employer must cover the cost of airplane travel, the visa fee, the POEA processing fee, and the Overseas Workers Welfare Administration (OWWA) membership fee. The agency can charge the worker it places in a job a fee equal to one month's salary. Seafarers, domestic workers, and workers going to countries where the placement fee is not allowed are not charged the agency fee. The Overseas Employment Contract must specify the following minimum conditions: guaranteed wages for regular working hours; free transportation to and from the worksite or provision of other benefits that offset these additional costs to the worker; free food and accommodation or provision of offsetting benefits; fair, authorized reasons for dismissal from the job. The worker's salary cannot be lower than the minimum wage for a job of the same skill or occupation or the prevailing wage in the Philippines unless set through a bilateral or international agreement. In the case of the death of a worker overseas, the employer must pay the cost of returning the worker's body and possessions to the Philippines. Free emergency medical and dental services, including medications, must be provided to all workers overseas. Workers overseas are guaranteed one rest day per week. Finally, there must be a mechanism in the other country to settle any disputes between the worker and the employer.

¹⁴ Dovelyn Rannveig Agunias (2008). Governing Board Resolution No. 07, 2003.

	Philippines	Sri Lanka	Indonesia	India: Kerala	Mexico
Worker regulation	Worker selection; minimum skill/health	Database of jobs and migrant information	National Agency for Placement and Protection of Overseas Indonesian Workers : health, skill certification	NORKA-Roots certifies skill; website for jobs; Domestic workers programs	IME: ID cards, no skill certification; no regulatory power
Agency regulation	Strict conditions, licensing	SLBFE licenses & monitors agencies; S.L. Foreign Employment Agency; still abuses	ACPOIW regulates agencies	MOIA licenses agencies NORKA: complaints NORKA-Roots: recommends agencies	US-Mexican agencies are not well regulated; IME cannot control recruiters

Bilateral and multilateral agreements with some countries have further improved the matching of workers and employers and reduced the incidence of human rights abuse. Domestic pressure in the Philippines led the government to develop these agreements for the protection of overseas workers, and the first bilateral agreement was with the US in 1968. It was believed that such agreements would force destination countries to pay more attention to the safety of Filipino workers.¹⁵

The best and most comprehensive bilateral agreement is with South Korea. It defines the roles of recruitment agencies in Korea and the Philippines, standardises employment contracts, guarantees protections for overseas workers, and provides services to migrants that are similar to the social services received by Korean citizens.¹⁶ The bilateral agreement with Taiwan established a special hiring facility that allows Taiwanese employers to choose whether they directly hire Filipino workers or use a recruitment agency. The agreement with Japan stipulates that candidate information sessions on jobs in Japan can be established in three locations in the Philippines, Mindanao, Cebu and Manila. There are also exceptions to the use of recruitment agencies for the provision of job information.¹⁷ Notably, there are no agreements with Saudi Arabia even though this is a top destination country for emigrant workers.

Bilateral agreements in general guarantee the legal status of overseas workers during their stay in the destination countries and upon their return to the Philippines. No guarantees are provided for undocumented immigrants in any of these agreements. Studies of these agreements suggest that monitoring and enforcement of the terms of the agreements are of concern and considered weak. No regulation mechanisms are embedded in any of these agreements.¹⁸

¹⁵ Dovelyn Rannveig Agunias and Neil G. Ruiz, "Protecting Overseas Workers: Lessons and Cautions from the Philippines," *Insight* (Washington DC: Migration Policy Institute, October 2007). <http://www.brookings.edu/research/articles/2007/09/global-labor-markets>

¹⁶ Nathan R. Blank, "Making Migration Policy: Reflections on the Philippines' Bilateral Labour Agreements," *Asian Politics and Policy*, 3,2 (2011): 185-205.

¹⁷ Stella P. Go, "Asian Labour Migration: The Role of Bilateral Labour and Similar Agreements," Paper presented at Regional Informal Workshop on Labour Migration in Southeast Asia, What Role for Parliaments, Manila, The Philippines (21-23 September, 2007).

¹⁸ *Ibid.*

Sri Lanka

Migration is important for Sri Lanka, and a particular feature is the high preponderance of female migrants directed to household duties in the Gulf States and, increasingly, European corridors. Sri Lanka's migration management practices have been hailed as best practice by the ILO. Its institutional set up (discussed in detail in Section 1) has evolved over the years to increase the focus and coordination of migrant management. The main body responsible for migration matters is now the Ministry of Foreign Employment Promotion and Welfare (MFEPW), which has two main agencies concerned with the regulation of labour intermediation. The Sri Lanka Bureau of Foreign Employment (SLBFE), established in 1985, has a mandate to promote and protect migrants and their families by setting standards and approving contracts provided by foreign employers to Sri Lankan migrants, licensing recruiting agents, and operating programmes. The Bureau also maintains a database of employment opportunities and migrants under contract, provides a number of services for the protection of migrants (see next section), and facilitates targeted pre-departure orientation courses.

Foreign employment agencies that want to operate in Sri Lanka have to obtain a license which has a number of financial, logistical and reputational requirements and must be renewed annually.¹⁹ The Bureau is then entitled to inspect the agencies. However, despite efforts by the SLBFE, the inability to hold unlicensed sub-agents accountable has led to continued abusive and exploitative practices. The lack of a proper monitoring mechanism for licensed agencies is a major challenge in minimising malpractice.²⁰

The second agency operating under the MFEPW is the Sri Lanka Foreign Employment Agency (SLFEA). Established in 1996, SLFEA operates as a state-owned manpower recruitment agency. This makes it unlike most agencies in the other countries surveyed, and puts it in direct competition with private firms regulated by the Bureau of Foreign Employment which could be construed as an apparent conflict of interest.

While the operation of migration labour regulation in Sri Lanka has several similarities to the Philippines, the hands-on role of SLFEA is unusual. It is unlikely to be easily emulated by the Kyrgyz Republic, which has had a long history of state-directed labour creation, from which it has sought to distance itself over the past twenty years.

Indonesia

Indonesia is less dependent on income from migrants than the Kyrgyz Republic or the Philippines. Emigration policy is of less importance in Indonesia than in the Philippines, but Indonesia has made some progress in preparing workers for employment overseas.²¹

¹⁹ See <http://www.slbfe.lk/article.php?article=44> for a detailed listing of the requirements.

²⁰ Ministry for Foreign Employment Promotion and Welfare (MFEPW), National Labour Migration Policy for Sri Lanka (Colombo, Sri Lanka: ILO, 2008.) www.ilo.org/public/english/protection/migrant/download/mpolicy_srilanka_en.pdf.

²¹ Dilip Ratha, Sanket Mohapatra and Ani Silwal, Migration and Remittances Factbook 2011 (Washington, DC: Migration and Remittances Unit, The World Bank, 2011)

Indonesian workers were first deployed overseas in 1890, when the colonial government in the Netherlands sent Indonesian workers (TKI) to Suriname to work on plantations. In 1947, the Indonesian government issued Government Regulation No. 3/1947 which created the Ministry of Manpower (MOM). Until the 1960s, migrant workers mainly sought work in Malaysia and Saudi Arabia, with the assistance of family members or relatives. These destinations were chosen because they were Islamic, and families felt more comfortable placing family members in religiously compatible destinations. Government Regulation No. 4/1970 was the beginning of government intervention in the recruitment and placement of migrant workers. After 1970, almost all legal placements were initiated by government and not family networks.

In 1999, Presidential Decree No. 29/1999 was issued. The main objective was to improve the quality of placement services and the protection of TKIs overseas. The Agency of Coordination for Placement of Overseas Indonesian Workers (ACPOIW) was established, and, by 2001 had become a one-stop operation for emigrant labour. This lowered the cost of placing workers in jobs overseas and reduced the length of job search.

The Indonesian government was increasingly concerned about the abuse of migrant labour in certain destinations, and in 2004, Law No. 39/2009 replaced the Presidential decree. The National Agency for the Placement and Protection of Overseas Indonesian Workers (NAPPOIW) was established. Legal emigration was allowed only to countries with which the government had a bilateral agreement or which had regulations protecting foreign workers. The most important bilateral agreement was with Malaysia. Relevant multilateral agreements included agreements with ASEAN (Association of Southeast Asian Nations), the Global Forum on Migration and Development, the Colombo Process, and the Abu Dhabi Dialog. (IOM 2010b)

The Presidential Instruction No. 06/2006 mandated several policy reforms in the placement system of Indonesian migrants. These included: (i) Elimination of the cost of visa processing and identification cards for prospective migrant workers; (ii) Improvement in the quality of workers through increased training standards, language skills, and mental preparation; (iii) The requirement that prospective workers must obtain a certificate from the Agency for Profession Certification as proof of a certain level of competency in specific fields; and (iv) The provision of legal assistance for Indonesian migrants. Presidential Regulation No. 64/2011 introduced additional worker protections by requiring prospective emigrants to undergo mental and health examinations before applying legally for overseas employment.²²

These emigration regulations evolved over time to reduce abuse of workers and improve the employer-worker match. The regulations affected placement agencies, foreign employers, and the Indonesian migrants. There were additional regulations imposed on employment contracts.

As in other countries, placement agencies in Indonesia are regulated and subject to various provisions, such as licensing and the requirement to provide advances on pre-departure costs

²² The complete description of these regulations is found in Erman Suparno, *Kebijakan Strategi Penempatan Tenaga Kerja Indonesia di LuarNegeri*. (Jakarta: State Secretary of the Republic of Indonesia, 2008). http://www.setneg.go.id/index2.php?option=com_content&do_pdf=1&id=1700.

through a loan, extend assistance to migrants in opening bank accounts and conduct pre-departure orientation training including information on how to send remittances to Indonesia.

Policies towards employers are less precise than policies towards agencies. There are no standard requirements for a foreign employer who wants to hire a migrant worker. In most cases, standards are set through inter-government agreements. In 2011, there was a change in employment policy with respect to Saudi Arabia due to a series of reported abuse and death penalty cases against Indonesian migrants. The Indonesian government issued a new regulation about hiring domestic workers from Indonesia for employers in Saudi Arabia. The details of this regulation, however, have been criticised for lack of transparency.²³

Policies affecting potential legal migrants now emphasise certification of skills. Potential migrants are required to obtain certification of skills from a licensed Agency for Profession Certification and to undergo mental and physical health examinations from an accredited agency. Migrants receive certificates as proof of competency and good health. In addition, all migrants get an identification card as official proof that they have legal status. Finally, migrants must be between the ages of 18 and 39. Applicants who want to work as domestic workers must be at least 21 years old.²⁴ Placement agencies conduct examinations on the interests and skills of prospective TKIs before they are deployed to destination countries and are supposed to match emigrants to jobs that utilise their skills.

Applicants for jobs in Japan and South Korea do not have to go through these licensed agencies. They can find detailed information about jobs on the internet and report their work interests to the National Agency for the Placement and Protection of Overseas Indonesian Workers.²⁵

The policies towards agencies, employers, and workers favour employers in the job match. Workers provide certification of skills and health, and agencies test workers to facilitate the match to potential employers. Migrant workers are not guaranteed the jobs they expect, and their working conditions are not regulated. Employers are not required to provide information on the safety and quality of the jobs they are trying to fill. Employers know more about the workers' productivity than workers know about potential employers. This informational gap is one reason abuse of migrant Indonesian workers remains a problem.

India: Kerala state

In India, we focus on one state - Kerala - which has benefitted from migration to the Middle East.²⁶ About 18 percent of Kerala households have at least one migrant, and remittances

²³ Agency for the Placement of Overseas Indonesian Workers (APOIW), (BNP2TKI), Arab Saudi Tolak Penuhi Perjanjian Kerja TKI (Jakarta: APOIW: 2011). <http://www.bnp2tki.go.id/berita-mainmenu-231/4125-arab-saudi-tolak-penuhi-perjanjian-kerja-tki.html>.

²⁴ Organisasi Internasional untuk Migrasi (OIM), Buku Saku Bekerjake Luar Negeri Secara Legal dan A Man (Jakarta, Indonesia: OIM, 2011).

²⁵ Ibid.

²⁶ Dilip Ratha, Sanket Mohapatra and A. Silwal, Migration and Remittances Factbook 2011 (Washington, DC: Migration and Remittances Unit, The World Bank, 2011)

accounted for 31 percent of net state domestic product in 2011. Remittances to Kerala comprised 15 percent of remittances to India in 2011.²⁷

Job scarcity in agriculture, a lack of productive enterprises, and relatively high educational achievement in Kerala combined with the high demand for workers in the Gulf countries triggered a massive wave of emigration from Kerala in the 1970s. About 90 percent of Kerala emigrants went to the Gulf region, with the United Arab Emirates and Saudi Arabia as the top destinations.²⁸

Emigration for all Indian citizens is governed by the Emigration Act of 1983. The main reason for this law was the high demand for foreign workers especially in the Gulf oil-producing countries in the mid-1970s. The 1983 Act replaced the Emigration Act of 1922. It governs the emigration of Indian overseas workers on a contractual basis and seeks to safeguard their interests and guarantee their welfare.²⁹

In 1977, the Overseas Development and Employment Promotion Consultants (ODEPC) was established by the Kerala government to act as the state recruitment agency (similar to the Sri Lankan SLFEA). The initial purpose was to eliminate middle men from recruitment and facilitate the deployment of workers overseas. The ODEPC failed to place workers in good jobs in the Gulf. In fact, placements fell after the ODEPC took control, a failure that was attributed to poor marketing and the ineffectiveness of placement programmes. The ODEPC only placed 6112 workers in jobs overseas after 1977.³⁰ (The Ministry of Labour for Kerala plans to overhaul the agency; however, the timeframe for these changes remains unspecified.³¹)

In 1996, the government of Kerala established the Department of Non-Resident Keralites' Affairs (NORKA) to provide services to migrant workers and help them handle problems that arose overseas. "NORKA handles complaints against illegal recruitment agencies, provides assistance to stranded Keralites, facilitates the repatriation of bodies, and runs an insurance programme for unemployed returned migrant workers, unskilled labourers, and domestic workers."³² In 2002, NORKA-Roots was established within NORKA. It obtained a license to serve as a recruitment agency in 2006 and began recruiting migrant workers for

²⁷ K.C. Zachariah and S.Irudaya Rajan, "Inflexion in Kerala's Gulf Connection: Report on Kerala Migration Survey 2011," Centre for Development Studies (CDS) Working Paper #450 (Trivandran, Kerala: CDS, 2012). <http://www.cds.edu/wp-content/uploads/2012/11/WP450.pdf>.

²⁸ K.S. Harikrishnan, "A Migration Story Comes Full Circle," IPS News (October 8, 2012). www.ipsnews.net/2012/10/a-migration-story-comes-full-circle.

²⁹ NamastheNRI.com, Emigration Clearance, 2013. <http://namasthenri.com/passport/emigrationclearance.html#1983>.

³⁰ Byju Aryad, "ODEPC, a Failure as a Recruiting Agency," *Ibnlive*, August 8, 2011. <http://ibnlive.in.com/news/odepc-a-failure-as-a-recruiting-agency/173989-60-116.html>.

³¹ Sajila Saseendran, "Kerala Plans Recruitment for Gulf through State Agency," *Khaleej Times*, May 11, 2012. http://www.khaleejtimes.com/kt-article-display-1.asp?xfile=data/nationgeneral/2012/May/nationgeneral_May163.xml§ion=nationgeneral.

³² Dovelyn Rannveig Agunias and Kathleen Newland, *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries* (Geneva, Switzerland: IOM and Migration Policy Institute, 2012), 83. www.gfmd.org/documents/pfp/diaspora-handbook/Diaspora_Handbook_for%20Web_17April2012.pdf.

jobs overseas in 2011.³³ NORKA-Roots posts job vacancies in print, government circulars and online. It established a website in 2010³⁴ for employers to search for the right workers and prospective emigrant workers to look for good jobs.³⁵ This portal has the potential to become an ideal place for emigrants to find information about potential destinations.

NORKA-Roots also provides skills certification for Keralite workers. School certificates are verified, and migrants can receive certification that they attended a NORKA-Roots programme to upgrade their skills. It also offers special programmes for domestic workers that focus on the risks and challenges related to domestic work overseas.³⁶

The Ministry of Overseas Indian Affairs (MOIA) plans to launch a pre-departure orientation programme for prospective migrant Indian workers. This orientation will include classes in the language, culture and law of the host country and should help migrants adjust to their new work environment. The Ministry plans to develop a helpline in India to provide information about overseas employment so that potential emigrants can make informed work decisions. These programmes are planned and have had no impact on job matching to date.³⁷

Private recruitment agencies are commonly used by potential emigrants in India to find jobs overseas; these agencies are now required to obtain a valid license from the MOIA. Those companies that want to register as valid recruitment agencies have to pay a US\$464 fee (in rupees). The applicant agency is also required to deposit a bank guarantee of at least US\$371,000. In addition to application documents, the agency has to submit an inspection report of its office and a police report on the character of the job applicants to the Protector of Emigrants, a division of the MOIA.³⁸

National and state policies have affected the information asymmetries between potential migrant workers and employers overseas. NORKA-Roots provides skills certification which has given potential employers more information about the skills of potential emigrants. Keralite workers also have more access to information on job availability overseas because of the new websites and marketing by NORKA-Roots. However, the government agencies that oversee external migration activities are not involved in monitoring working conditions or job standards. While information on jobs is more available today than in 2002, information on job quality is still difficult to obtain. MOIA is planning to implement pre-departure information sessions and a helpline to provide useful information to potential migrants and narrow the information gap between employers and migrant workers. Those programmes are still in the planning stage and have had no impact on job matching to date.

³³ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu. (Quezon City, The Philippines: MFA, 2012).

³⁴ www.jobsnorka.gov.in

³⁵ S.Irudaya Rajan, Assessment of NORKA-Roots (an Implementing Agency of the Department of NORKA – Non-Resident Kerlites Affairs of the Government of Kerala) and the Applicability of a Similar Organisation to Other States in India. (Manila, The Philippines: Migration Forum in Asia, 2012).

³⁶ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States (Quezon City, The Philippines: MFA, 2012).

³⁷ Ministry of Overseas Indian Affairs (MOIA). Webpage. (New Delhi: MOIA, 2013) <http://www.moia.gov.in/index.aspx?>

³⁸ Ibid.

Mexico

Mexico is the wealthiest migrant country that we examine, but it has some similarities with the Kyrgyz Republic. In 2010, about 11 percent of the population was emigrant, but remittances comprised only 3 percent of GDP.³⁹ Most Mexican emigrants work in the US or Canada. Recently Mexico became a host country for many migrants from Central America.

Mexico's outward labour migration policies are dominated by its relationship with the US, in a manner somewhat similar to the preponderance of the Russian Federation in Kyrgyz migration. Migration policies on both sides of the border have reflected changing and sometimes conflicting priorities over the years. World War II changed the US-Mexican migration relationship. The US draft led to a large decline in the agricultural workforce in the US; the US needed workers and Mexican wages were significantly lower than wages in the North. In 1942, Mexico and the US signed a formal bilateral immigration agreement that became known as the Bracero Program. Under the Bracero Program, Mexican workers were guaranteed a minimum wage in agriculture, which was not even guaranteed for US native farm workers.⁴⁰ The programme was successful in matching workers with the required skills to agricultural jobs in the US, and it minimised exploitation of migrant labour through enforced work contracts.⁴¹

The Bracero Program expired in 1964. In 1965, the US Immigration and Nationality Act changed the rules for receiving work visas, restricting the legal access of Mexicans. However, agricultural producers in the US still needed Mexican labour, so under the new rules more Mexican workers entered illegally. The increasing number of undocumented migrants led to lengthy debates in Congress, resulting in 1986 in the Immigration Reform and Control Act. This law granted amnesty to the 2.6 million undocumented workers in the US, but it was recognised that this amnesty would not continue and granted an expanded budget for control of borders and undocumented employment. The 1990 Immigration Act expanded border enforcement and authorised more legal visas, especially for high skilled labour. Tighter border control did not prevent illegal entry into the US but it did increase the risk and cost of entry.⁴²

Mexico's policy towards its own migrants in the US and migrants from Central America to Mexico was described as a "policy of no policy"; there was no effective policy in Mexico that helped migrants find employment or protected workers from abuse in the US or Mexico. The successful negotiation of the North American Free Trade Act (NAFTA) motivated authorities

³⁹ Dilip Ratha, Sanket Mohapatra and A. Silwal, *Migration and Remittances Factbook 2011* (Washington, DC: Migration and Remittances Unit, The World Bank, 2011); and World Bank, *World Development Indicators* (Washington, DC: World DataBank, The World Bank, 2013). <http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators>.

⁴⁰ Mexican Bracero workers also received other job benefits: transportation, housing and health care. Contracts were signed by US and Mexican government officials, and enforcement of the terms of these contracts was managed by consulates in the US. Mexican workers were banned from the Texas labour market because of strong hostility to Mexicans there, but legal Mexican workers had access to other agricultural markets where labour was in short supply.

⁴¹ Marc R. Rosenblum, "Mexico-U.S. Migration Policy: Historical Review and Contemporary Challenges," *The Oxford Handbook of Mexican Politics* (Oxford: Oxford Handbooks Online, Oxford University Press, 2012). www.oxfordhandbooks.com.

⁴² *Ibid*; and Nestor Rodriguez and Jacqueline Maria Hagan, "Fractured Families and Communities: Effects of Immigration Reform in Texas, Mexico, and El Salvador" *Latino Studies*, 2 (2004): 328-351.

on both sides of the border to seek bilateral negotiation on immigration for the protection of workers and employer rights, but after the terrorist attacks in the US of 11 September 2001, US Congressional discussion changed its focus almost exclusively to security. Mexico and the US cooperated in tracking smugglers and drug dealers, but no bilateral agreements on employment or migrant rights were adopted.⁴³

In 2006, the Mexican Congress adopted a resolution defining its views on migration. The resolution recognised that existing wage differentials between the two countries would lead to more emigration, and policy should focus more on the protection of human rights of legal and undocumented migrants.

The Mexican Congress also recognised a similar problem in reverse on the southern border. The 2008 Mexican Congress passed an important immigration law that decriminalised undocumented immigration into Mexico, developed procedures through which undocumented immigrants could gain legal status, and improved detention conditions for unauthorised workers and their families. The 2011 *Ley de Poblacion* codified many of these provisions. “The new law simplifies the visa system, provides broad legalisation provisions for unauthorised immigrants within Mexico, brings Mexican law into alignment with international standards for protecting immigrant rights and the rights of vulnerable immigrant groups, and clarifies the existing prohibition against unauthorised exits across the Mexico-US border.”⁴⁴ The policy priorities in the law are human rights, easier entry and exit procedures, family unification, job matching and cultural assimilation.⁴⁵

To reduce undocumented immigration and abuse of migrant workers, the new law requires prospective workers to get authorisation to work in Mexico. The National Migration Institute (INM) of Mexico which monitors borders has been highly criticised for abuse by its agents and their lack of professionalism and the failure to sanction abusers. “INM ranks low in public trust and credibility.”⁴⁶

Many other changes in Mexican immigration policy are occurring at the state level rather than at the national level. State ministries have developed local infrastructure to manage remittances and provide services to migrant households. State policies are not cohesive nationally but they do address local concerns. These state migration policy issues are usually non-partisan, in contrast to state policy development in the US.⁴⁷

Currently, matching of legal Mexican workers to US jobs is done primarily by US and Mexican recruitment agencies. These agencies are not as well-regulated as in the Philippines, for example. For temporary workers, US employers rely on other temporary Mexican workers for information. There is no organised, government monitored recruitment process between the US and Mexico. That could change with reform. The Mexican government also does not

⁴³ Ibid.

⁴⁴ Marc R. Rosenblum, “Mexico-U.S. Migration Policy” *The Oxford Handbook of Mexican Politics* (Oxford: Oxford Handbooks Online, Oxford University Press, 2012). www.oxfordhandbooks.com.

⁴⁵ Francisco Alba and Manuel Ángel Castillo, *New Approaches to Migration Management in Mexico and Central America* (Washington, DC: Migration Policy Institute, 2012), 14-15.

⁴⁶ Ibid, 7.

⁴⁷ Marc R. Rosenblum, 2012.

certify the skill level of prospective employees, and it does not have a policy to increase the potential destination countries for Mexican migrant workers.⁴⁸ The state of the US economy determines the extent of the flow. Net immigration to the US from Mexico is approximately zero today.⁴⁹

The two important institutions charged with the implementation of Mexico's migration policies (IME and INM) fulfill very different functions. The INM is mostly concerned with border security and has only recently begun a cultural transformation aimed at assigning greater priority to migrants' needs and rights. The IME's mission is to protect Mexicans abroad, but it has neither powers of regulation nor control over labour intermediaries or agencies. This is not to say that the IME is ineffective in its activities which are aimed at empowerment of migrants and communities living abroad. One IME programme aims to provide Mexicans living in the US, irrespective of status, a secure identity card (*matrícula consular*) that can be used to open bank accounts, and provide access to the formal financial market (Box 1).⁵⁰ However, the approach taken by the Mexican government is considerably more *lassaiz-faire* than those of the Asian examples reviewed earlier.

El Salvador

El Salvador is highly dependent on emigration and remittances for development. After the civil war ended in 1992, the US legally admitted many Salvadoran immigrants as permanent residents with a path for US citizenship.⁵¹ The 1996 Immigration Reform Act changed this policy and Salvadorans were subjected to the same entry rules as Mexican workers. This reduced the circular flow of migrants and increased the number of Salvadorans who stayed underground in the US. Human rights became a concern for policymakers in El Salvador. Deported migrants from the US experienced prejudice back home and had difficulty finding jobs.⁵²

⁴⁸ Franciso Alba and Manuel Ángel Castillo, *New Approaches to Migration Management in Mexico and Central America* (Washington, DC: Migration Policy Institute, 2012).

⁴⁹ Jeffrey Passel, D'Vera Cohn, and Ana Gonzalez-Barrera. *Net Migration from Mexico Falls to Zero – and Perhaps Less*. (Washington, DC: Pew Research Hispanic Center, 2012). www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less.

⁵⁰ “The *matrícula consular* is an identify card, with a photograph and other security features, that attests that the bearer of the card is a national of Mexico living abroad. The card costs about US\$ 29 and is valid for five years. In May 2003, the Treasury Department established regulations recognizing the cards as proof of identity for the purpose of opening a bank account. The cards are accepted for other community services as well.... It has been particularly useful for undocumented Mexican migrants in that it provides them with identification documents. In 2005, 118 banks in the United States accepted the *matrícula consular* as an alternative form of identification to open bank accounts. Increased access to banks has the additional benefit of reducing transfer costs of remittances to Mexico.” (International Labour Organization (ILO). *Matricular Consular With High Security Features for Mexicans Abroad* (Geneva, Switzerland: ILO, 2013c). http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=57.

⁵¹ Joseph Wiltberger, “Bringing Latin America into US Debates on Latino Immigration: Views from El Salvador,” *Development*, 52 no. 4 (2009): 519-524.

⁵² Nestor Rodriguez and Jacqueline Maria Hagan, “Fractured Families and Communities: Effects of Immigration Reform in Texas, Mexico, and El Salvador” *Latino Studies*, 2 (2004): 328-351.

Box 1. Fostering Access to Financial Services for Migrants

The Institute for Mexicans Abroad developed a **Financial Education Programme for Mexican Migrants** to help migrants better manage their financial resources and plan for the future should be unless this is a quotation. The programme is promoted by consulates in the US and Canada and receives cooperation from financial institutions such as banks and credit unions and from non-profit companies that offer financial education to Hispanics abroad. There are three parts to the financial education programme:

- **Information Sessions** that offer financial education for Mexicans in the US through cooperative arrangements with US, Canadian and Mexican financial institutions and community organizations;
- **Consulate Bank agreements**, in which representatives of North American banks that accept the matricula consular provide courses, workshops, and other information and promote the use of the matricula consular to facilitate financial transactions between Mexico and the US and Canada;
- Financial education programmes and resources offered by other organisations in the US, Canada and Mexico to help Mexicans abroad open a bank account, safely remit money to Mexico and obtain credit abroad.

Source: Institute for Mexicans Abroad. Accessed 16 July 2013. <http://www.ime.gob.mx/en/nuestros-programas/educacion-financiera>.

The Directorate General of Attention for the Community Abroad (1999-2004), under the Salvadoran Ministry of Foreign Affairs provided consular services and assistance to migrants in the US. Its website provided useful information for Salvadorans abroad. It also provided legal assistance and information on non-governmental organisations (NGOs) and other groups that could assist immigrants, and it lobbied the US to expand the number of Salvadorans admitted as temporary protected status (TPS) workers receiving between 6 to 18 months of legal status.⁵³

The Government of El Salvador passed a new law in 2011, Decree No. 655, Special Law for the Protection and Development of the Migrant and his Family and Salvadoran Regulations Thereunder. The law promotes nondiscrimination and the protection of Salvadorans anywhere in the world and guarantees human rights for the most vulnerable, such as the elderly, children and the disabled. It created the National Council for the Protection of Migrants and their Families (CONMIGRANTES), under the Ministry of Foreign Affairs, to develop public policies to provide humanitarian assistance and protection to migrants and to work with other organisations to facilitate job placement and business investment and develop policies that facilitate migration and protect migrants. It will also work to facilitate reentry of deportees.

⁵³ Sarah Gammage, *El Salvador: Despite End to Civil War, Emigration Continues* (Washington, DC: Migration Policy Institute, 2007).

The law (and the new governance structure of the National Council) has not been in effect long enough to determine how it will set policy and measure its effectiveness.⁵⁴ However, the model is interesting for the Kyrgyz Republic because of the wide reach of its governance structure. Elections were held in September 2012 among Salvadoran migrant communities for representative positions on the National Council. This is perhaps one of the most courageous examples of formal reach to migrant communities - to involve them in their affairs and their own protection in the labour market and with respect to human rights.

new Zealand and the South Pacific

Small islands in the South Pacific are known for their high poverty levels and lack of economic opportunities for their citizens. Their geographic reality makes migration to most-favoured destinations (New Zealand and Australia) dependent on the collaboration of the destination countries, as undocumented migration is virtually impossible. The experience of one island, Tonga, has some lessons for the Kyrgyz Republic. Tonga is a small island country about midway between New Zealand and Hawaii. It has 100,000 inhabitants and 30,000 Tonga citizens live abroad: 39 percent in the US and 39 percent in New Zealand. In the 1960s and 1970s, temporary work permits were granted to immigrants from Tonga. After they arrived in New Zealand, many stayed illegally. These persons were granted amnesty in 1976 and became permanent residents.

New Zealand overhauled its system for immigrant selection in 1991. A major feature of the overhaul was the development of a point system for immigrant selection. Points were given for education, skill and business capital, and having a job offer in preferred occupations increased the score. The Skilled Migrant Category (SMC) of immigrant was created, and applicants to the SMC are assigned points if they have needed job skills. Their applications are accepted if the skilled immigrant is matched to an appropriate job offer. Few Tongans could be admitted under this system.

In 2002, the Pacific and Access Category (PAC) was added for immigrants aged 18-45. They had to have a minimal level of ability in English, be in good health and of good character, and have a job offer from a firm which provided “ongoing and sustainable employment”, provided full-time work with wage or salary income, and complied with employment regulations.⁵⁵ There were many applicants under the PAC programme, and a lottery was used to randomly select those who would be admitted with their families. Those admitted were granted permanent residency.

This programme in New Zealand focused on matching employers and employees. The SMC facilitated the matching of skilled workers to skilled jobs. The PAC guaranteed that new

⁵⁴ International Labour Organization (ILO), *Ley Especial Para La Protección y Desarrollo de la Persona Migrante Salvadoreña y su Familia y su Reglamento de Ejecución*. (Geneva, Switzerland: ILO, Natlex, 2013b). <https://www.ilo.org/dyn/natlex/>.

⁵⁵ John K. Gibson and David J. McKenzie, “The Impact of an Ex-Ante Job Offer Requirement on Labour Migration: The New Zealand-Tonga Experience” in *International Migration, Economic Development and Policy*, eds. C. Özden and M. Schiff, 215-233. (Washington, DC: The World Bank, 2007).

immigrants have the basic necessary cultural capital to fit into New Zealand life and enough skills to obtain a stable job. Tongan workers self-select into the lottery to gain admission; those with the most skill and cultural acumen are more likely to enter the PAC lottery. There are public/private partnerships to match immigrants who win the lottery to job vacancies, but family networks continue to dominate the job matching system and lead to more actual jobs in New Zealand.⁵⁶

Lessons for the Kyrgyz Republic about Job Matching

This review of international experience shows that many different programmes in both sending and receiving countries have been designed to facilitate the job matching process for international migrants. The Kyrgyz Republic can learn from the experiences of these countries.

Destination countries that have organised job matching procedures have been able to more easily integrate migrant workers into society and facilitate circular migration. These programmes include the Bracero Program for agricultural employment in the US in the 1940s and the point system in New Zealand. The better programmes keep families together and forgive long-term undocumented workers.

An important lesson for the Kyrgyz Republic, however, is that the more successful programmes reviewed in this section have taken a long time to develop, with many false starts and tries. An essential ingredient for successful programme implementation is the strength and accountability of domestic institutions that deal with migration matters. Job matching schemes, pre-departure programmes, and protection arrangements in destination countries are all subject to capture by special interests and corrupt behaviours. A Kyrgyz-appropriate strategy in this domain should therefore go *pari-passu* with the strengthening of its institutions and mechanisms for accountability. These themes are developed in Section 3.

In sum, the international experience points to several features that would be desirable for the Kyrgyz Republic to implement over time, as well as some cautionary warnings. Figure 1. provides a graphic illustration of the challenges facing the Kyrgyz Republic today. With its institutional weakness and low degree of formal regulation, the Kyrgyz Republic finds itself in a position such as D. Moving from D to A (an ideal system with the appropriate balance of regulation and protection of migrants' rights) must involve a careful strategy that takes into account the need to upgrade the quality and accountability of institutions, before increasing formal controls over labour practices. It would therefore be beneficial to move first in the direction of C, or in a direction that strengthens accountability of officials and involvement of migrants and their communities, before increasing the formal aspects of labour migration regulation, in the direction of A. The alternative path, from D to B, might well result in higher levels of capture and corruption and may not allow the country to ever move to the ideal system of A.

⁵⁶ Ibid.

Figure 1. Institutional Challenges in Regulation of Migration

		Quality and Accountability of Institutions	
		High	Low
Formal Regulation of Labor Migration	High	Ideal System A	Captured System B
	Low	Diaspora and Migrant-Based System C	Free-for-all D

Section 3. Employment Programs to Protect Human Rights of Migrants by Recruiters and Employers

There are several approaches to reducing human rights abuses of migrants by recruiters and employers. The institutional structures designed to regulate these practices were described in Section 1. In this section we focus on specific programmes to protect workers. These include Pre-Departure Orientation Seminars (PDOS) and vocational training programmes.

Pre-Departure Orientation Programs

Pre-Departure Orientation Programmes (PDOPs) are increasingly part of the toolkit of many migrant-sending countries. The Philippines, Indonesia and Sri Lanka have instituted a series of requirements for pre-departure orientation for would-be migrants and systems of certification for potential providers of orientation services. India is also planning required orientations. Table 5. summarises the characteristics of four pre-departure programmes around the world.

Programmes are designed, organised and delivered by a wide variety of actors, ranging from the International Organization for Migration (IOM), which has extensive experience in this

area, to public or private (licensed) providers.⁵⁷ Programme syllabi include issues such as culture, basic financial education, language and workers' rights. Information on consular and emergency services is also included.

Table 5. Pre-Departure Orientation Seminars (PDOS) in four countries.

	Philippines	Indonesia	Sri Lanka	India
Programs, beginning date, organization	PDOS, 1983; PEOS, 1997 OWWA organizes	Pre-departure briefing, 2003; BNP3TKI	PDOS, 1985; SLBFE organizes	PDOS, National Skill Upgrade, 2006;
Fees	PDOS: \$2.50, paid by employer or agency; PEOS: free	free	free except for meals	fee 400 rupees
Required	PDOS is required.	yes	women only; family included for one day	planned requirement; children 13-19 to receive counseling to help them adjust to the move; country specific
Duration	General: 6 hours (usually 4.5)	8 hours	12 days Middle East; 21 days other; plus 1 day for family	
Content	Region specific; travel information, employment contracts, culture/laws/values, health, remittances, reintegration, crisis information	Employment contracts; worker rights; culture/laws/regulations; arrival/departure process; health; finance (banks, remittances); diplomatic missions; how to come home	Language, culture, financial issues, health; legal issues; employment issues	Country specific: culture, customs, laws; work security; social security; travel regulations; procedures

⁵⁷ The International Organization for Migration states that "Over the 2001-2010 period, some 352,000 migrants directly benefitted from the IOM's migrant training. Approximately 86 per cent of the participants during this period were resettlement-related. Training activities for refugees and humanitarian entrants focus largely on pre-departure orientation, which may include cultural orientation, language or literacy training, pre-embarkation training, or a combination of these activities. Pre-embarkation or pre-departure briefings are mainly arranged for first-time air travelers and address what to expect at the airport, while in transit, in flight and upon arrival in the country of destination, including customs and immigration formalities. The remaining 14 per cent of training participants consist of skilled and unskilled labour migrants, asylum seekers, marriage migrants, immigrant visa applicants, and family members of trafficked persons. Many attended either a pre-departure, pre-employment or financial literacy course or a country-of-destination briefing designed to prepare them for their relocation, whether for work, study, or extended living purposes. IOM migrant training activities have been implemented in over 50 countries, with significant activity in Africa, Asia, and the Middle East/North Africa. As resettlement quotas increase and integration policies become a higher priority for states, especially within the European Union, IOM migrant training activities are expected to increase." International Organization for Migration (IOM). Migrant Training. (Geneva, Switzerland: IOM, 2013c). <http://iom.int/cms/en/sites/iom/home/what-we-do-migrant-training.html>.

	Philippines	Indonesia	Sri Lanka	India
Information	PEOS; Media (radio, TV, print); face-to-face; posters; website	Jobs Info website; media	Media: Post Office, radio, TV, grassroots programs; website	MOIA website; state specific programs; media
Trainer qualifications	Recruiting agencies, NGOS train	Government personnel or retirees	O level, fluent in language, experience in country	
Curriculum	PDOT modules from special council (many stakeholders); special categories of workers get different information	BNP2TKI developed curriculum	Standard: national education institution	Country specific manuals for 8 countries (6 Gulf countries)
Vocational training; post-arrival orientation	POEA skill certification; Korea program, skill and language Post-arrival orientation seminar	BNP2TKI training (govt contracts); MOM (others)	SLBFE: by skill, occupation; required for female domestics; Vocational Training Authority (VTA) for men	MOIA NORKA-Roots (Kerala)

The Philippines requires that migrants participate in a PDOS shortly before their departure. The OWWA organises the seminars, which are delivered by the OWWA, POEA, various NGOs, recruitment agencies and industry associations. There is a small charge for participation which is usually covered by the agency or employer. The seminar is six hours and focuses on “migration realities” and “travel procedures and tips”.⁵⁸ Employment issues, financial literacy, remittances, health (HIV/AIDS and sexually transmitted diseases), and safety issues are examined. The seminar also includes a discussion of potential problems and life and family concerns. The unique feature of the orientation programme, however, is the Pre-Employment Orientation Seminar. This is available at no charge to any person considering migration abroad. The purpose of the seminar is to help potential migrants make better decisions. The seminar explains how jobs are obtained overseas, explores the risks and benefits of migration for the migrant and their family, and helps migrants avoid illegal recruitment and trafficking. The result is that fewer bad migration decisions are made, and migrant workers are less likely to be abused or exploited. Finally, there is a post-arrival orientation seminar for migrants in the destination country, to help them adjust and inform them how to get assistance in-country.

⁵⁸ Maruja M.B. Asis and Dovelyn Rannveig Agunias, “Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal, and the Philippines,” Issue in Brief, 5 (Washington, DC: Migration Policy Institute, 2012).

Box 2. The South Korea-Kyrgyzstan Language Orientation Programme

In the Kyrgyz Republic, a Korean language programme targeted to potential migrants, sponsored by the South Korean embassy, has been in operation since 2007. If successfully completed, and upon clearing a medical examination, an applicant is entitled to access a database for employment opportunities in South Korea. If a job match is found, a labour visa can then be issued, for permits of up to one year; the visa can be extended for a maximum of three years. While the programme started slowly, some 1,500 labour permits were issued in 2011, and some 1050 workers departed.

Source: Nurdin Tynaev. "Kyrgyz Republic." Chapter 2 in Institutional and Infrastructural Environment for the Management of Migration Flows Based on Public-Private Partnership. [Translated from the Russian: Создание Институциональной И Инфраструктурной Среды Для Управления Миграционными Потоками На Основе Частно-Государственного Партнерства, Глава 2: Кыргызская Республика Автор: Н. Тынаев] (Moscow, Russia: MIRPAL, 2012)
http://mirpal.org/files/files/sbornik_blok_avgyst1.pdf.

The Sri Lankan PDOS is unique in several ways. First, it is required for women and designed to help protect domestic workers from abuse primarily in the Middle East. The seminar is lengthy and includes a crash course in language as well as culture, human rights and the law. Safety is stressed, and procedures for exiting a bad job or social situation are explained. Second, the seminar ends with a one day session for families. Since most migrants from Sri Lanka are women, there are concerns about the care of children left behind. This seminar helps families adjust to the loss of a family member and explains where they can go for assistance if problems arise.⁵⁹

The Indonesian seminar is a free, one day, required programme. Training is provided by BNP2TKI or BNP3TKI. The curriculum is standard but includes a discussion of psychological and "self-confidence" issues. There is also discussion of banking and how to safely send remittances home.⁶⁰

Finally, India plans to require attendance at a PDOS; there are seminars now, but they are not required nationwide. The seminar is organised by the Ministry of Overseas Indian Affairs (MOIA) and includes separate counseling for adolescents to help them adjust to the move. There are also separate programmes for different destinations. Eight training manuals have been developed to-date.⁶¹

⁵⁹ Ministry for Foreign Employment Promotion and Welfare (MFEPW), National Labour Migration Policy For Sri Lanka (Colombo, Sri Lanka: International Labour Organization, 2008). www.ilo.org/public/english/protection/migrant/download/mpolicy_srilanka_en.pdf.

⁶⁰ Guy Morgan and Chris Nolan. Step Up: Improving Recruitment of Migrant Workers in Indonesia, Findings from a Research Visit to Semarang, Indonesia, May 3-7, 2011. (New York: BSR, BSR Migration Linkages, 2011). http://www.bsr.org/reports/Improving_Migrant_Worker_Recruitment_in_Indonesia.pdf.

⁶¹ Ministry of Overseas Indian Affairs (MOIA). Webpage. (New Delhi: MOIA, 2013). <http://www.moia.gov.in/index.aspx?>

While it would seem that PDOs are good tools in a comprehensive package for the protection of migrants, surprisingly little formal evaluation of their effectiveness is available; a number of studies are currently underway, and results should be available soon. Some sponsoring governments have conducted reviews of programmes they have financed.⁶² A recent review of PDOs in the Philippines, Nepal and Indonesia points to a number of general challenges that are relevant should the Kyrgyz Republic engage in PDOs, beyond the existing initiative with South Korea (see Box 2). These include the adequacy of curricula, lack of reach to potential migrants outside urban centers and lack of coordination among government levels and agencies.⁶³

Proposed solutions include greater coordination with receiving countries in programme design, more attention to the needs of potential rural beneficiaries, and some initial investment in understanding other countries' experiences and pitfalls. Language competency is essential for any of these programmes to be effective.

Programmes aiming at pre-departure support can in principle be established to allow for evaluation of their effectiveness. This could be done by following the experience of different groups of migrants that may or may not have benefitted from PDOs, and validating which aspects of the curricula may contribute to better outcomes. This feature should be considered by the Kyrgyz Republic and by agencies and states that might be interested in the future organisation of such programmes.

Training Programs

All of the countries in Table 5. have vocational training programmes for migrants. Most of these programmes are not required but are available at low cost.

In the Philippines, the vocational programme is regulated by the POEA. There are special certificate programmes for medical or technical employment. A special programme was also developed for migrants to South Korea where skill certification is required. Factory workers moving to Korea have to have a high school degree and pass a Korean language test, certified by POEA.⁶⁴

There is a similar programme for Sri Lankan emigrants to Korea. This programme varies by the skill of the worker. Unskilled workers spend 12 days learning basic Korean language, law and culture. The seminars also include information on access to banking and health services in Korea. Unskilled women migrants to the Middle East have to attend a 15-day seminar that

⁶² Maruja M.B. Asis and Dovelyn Rannveig Agunias, "Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal, and the Philippines," Issue in Brief, 5 (Washington, DC: Migration Policy Institute, 2012). www.migrationpolicy.org/pubs/predepartureorientation.org.

⁶³ Maruja M.B. Asis and Dovelyn Rannveig Agunias, "Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal, and the Philippines," Issue in Brief, 5 (Washington, DC: Migration Policy Institute, 2012). www.migrationpolicy.org/pubs/predepartureorientation.org.

⁶⁴ Memorandum of Understanding Between Department of Labor and Employment, Republic of the Philippines, and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers Under the Employment Permit System of Korea. (Manila, The Philippines and Seoul, Korea: 2011); and Dovelyn Rannveig Agunias, *Managing Temporary Migration: Lessons from the Philippine Model* (Washington, DC: Migration Policy Institute, 2008). https://secure.migrationpolicy.org/images/2008.10.7_Presentation.pdf

includes basic Arabic or English. Before the PDOS and language training, a special 18-day residential literacy course is provided for those migrants who cannot write in Sinhala or Tamil. The Vocational Training Authority provides skilled training for men (both migrants and non-migrants), including training in carpentry and masonry.⁶⁵

Indonesian migrants can receive skill certification provided by BNP2TKI if employed on a government to government contract. Other agencies provide vocational training to other migrants. Training differs by occupation and destination. All migrants can obtain training in language and culture.⁶⁶

In India, the MOIA provides specific technical training which is neither required nor free. There are training programmes at the state level as well. NORKA-Roots in Kerala verifies school certification and skill upgrades. One course provides 60 days or 300 hours of technical or English training and certification. The cost is 5000 rupees, but a government grant will cover most of the cost. There is little training for unskilled workers.⁶⁷

The training programmes help migrants with language and to obtain better jobs, helping to reduce the abuse of migrant workers. However, these programmes are not available to most migrants.

Lessons for the Kyrgyz Republic

Sending countries that have organised job matching procedures that work well focus on several needs from the worker's side: skill development, cultural capital including language, and developing a good reputation as a reliable worker and resident. Training programmes in the Philippines and Kerala, for example, help workers develop the skills they need to match to job demands in destination areas. In countries like the Philippines, the government helps screen potential employers. Other countries are less effective in employer screening. Screening mechanisms include bilateral agreements (such as the Philippines' agreement with South Korea, for example) and the development of responsible employment agencies with knowledge of international labour markets. These agreements and agencies, backed by the government, screen out the worst employers and help workers find the best fit. Requirements are placed on employers to provide adequate pay and working conditions, preventing some of exploitation, at least of legal and non-permanent labour migrants.

These types of programmes could be adopted or strengthened in the Kyrgyz Republic to help workers develop the skills they need in other labour markets, and would match Kyrgyz labour to reliable and safe employers.

⁶⁵ Ministry for Foreign Employment Promotion and Welfare (MFEPW), National Labour Migration Policy For Sri Lanka. (Colombo, Sri Lanka: International Labour Organization, 2008). www.ilo.org/public/english/protection/migrant/download/mpolicy_srilanka_en.pdf.

⁶⁶ Guy Morgan and Chris Nolan, Step Up: Improving Recruitment of Migrant Workers in Indonesia, Findings from a Research Visit to Semarang, Indonesia, May 3-7, 2011 (BSR Migration Linkages, 2011). http://www.bsr.org/reports/Improving_Migrant_Worker_Recruitment_in_Indonesia.pdf.

⁶⁷ S.Irudaya Rajan, Assessment of NORKA-Roots (an Implementing Agency of the Department of NORKA – Non-Resident Keralites Affairs of the Government of Kerala) and the Applicability of a Similar Organisation to Other States in India (Manila, The Philippines: Migration Forum in Asia, 2012).

Section 4. Protecting the Migrants Abroad

Domestic and international policy can mitigate some of the human rights abuses faced by migrants. This section examines several policies which have been implemented around the world, with mixed results. Policies to reduce abuse are summarised in Table 6.

The Philippines

Concern for the human rights abuse of Filipino emigrants was triggered by the execution of Flor Contemplacion, a Filipino worker in Singapore in 1995. “Flor Contemplacion, a Filipina domestic worker in Singapore, was charged with the murder of another domestic worker, Delia Maga, and the child of Maga’s employer. After being drugged and administered electric shocks, Contemplacion, who spoke little English, was reportedly coerced into a confession without a lawyer present. She was later put to death despite the Philippine president’s direct appeal to the government of Singapore.”⁶⁸ The execution led to the passage of several laws to monitor and prevent the abuse of Filipino emigrants.

The first new law was the Migrant Workers and Overseas Filipino Act of 1995, which formed the legal basis for worker protection. This Act established the Office of Legal Assistance for Migrant Workers’ Affairs (OLAMWA) which provides legal assistance services for overseas Filipino workers in distress.⁶⁹ In countries with a high concentration of overseas workers, a Filipino Worker’s Resource Center is set up by the government. It provides skills training, holds meetings on various issues of concern to Filipino migrants, and provides shelter.⁷⁰

The Philippine Overseas Employment Administration (POEA) also imposes conditions on employers to minimise worker abuse:

- Employers with a previous criminal record cannot hire Filipino workers.

Table 6. Policies to mitigate human rights abuses faced by migrants from five countries

	Philippines	Indonesia	India – Kerala	Mexico	El Salvador
Agencies	OLAMWA; Consulate	NAPPOIW	MOIA NORKA Overseas Workers Resource Centre	Institute for Mexicans Abroad in Ministry of Foreign Affairs	Council for Protection & Development of Migrants & Their Families

⁶⁸ Dovelyn Rannveig Agunias and Neil G. Ruiz, “Protecting Overseas Workers: Lessons and Cautions from the Philippines,” *Insight* (Washington DC: Migration Policy Institute, October 2007). <http://www.brookings.edu/research/articles/2007/09/global-labor-markets>.

⁶⁹ *Ibid.*

⁷⁰ Center for Migrant Advocacy. Webpage. (Quezon City, The Philippines: Center for Migrant Advocacy, 2013). <http://centerformigrantadvocacy.com>.

	Philippines	Indonesia	India – Kerala	Mexico	El Salvador
In country	Filipino Workers' Resource Agency	Embassy	Indian Missions in Embassy	Consular offices; migrant committees	Consular offices
Conditions on employers	yes: POEA	yes	yes: MOIA	yes	yes
Child labor laws	yes	yes	Yes	yes	yes
Regulation of women's employment	yes	yes	Yes		yes
Trafficking penalties	yes	yes, ineffective	Yes	yes; use of media	yes
Monitoring abuse	Commission	ineffective	Commission		Ministry of Foreign Affairs
Country agreements, regulations	Singapore; Saudi Arabia	Malaysia MOU; Saudi Arabia	MOUs	MOUs: US and Canada	MOUs: US, Guatemala

- Only licensed agencies from Singapore can hire domestic workers because of past abuse cases there. This regulation later extended to all agencies that help employ domestic workers.
- Employers must pass registration or accreditation procedures in order to hire Filipino workers.
- Employers must draft employment contracts that meet the POEA's minimum standards for number of workers, job characteristics and salary, and must provide valid proof of business.
- All employment contracts must be verified by the Philippine Overseas Labour Office (POLO) and meet the job requirements described in the previous section.
- Due to the significant abuse of domestic workers, special procedures are required, including employer interviews and pre-employment orientation at the local POLO, and employers must show that they have adequate income to pay for the worker's services.

The Philippines government passed two laws in 2004 that were designed to protect women and children from abuse, including domestic exploitation and trafficking. Republic Act No. 9231 addressed the abuse of children. The law disallowed work for children under the age of 15 unless the children were the sole responsibility of their parents and employed in family business. In those cases, employment had to be safe, children had to be kept in good health and moral standing ("normal development"), and children had to attend school. The law also mandated the maximum hours of work and the hours of the day during which children could work. No child could model for companies that sold alcohol or tobacco, and children were banned from pornography, gambling or violent work. Penalties on employers who violated this law included prison and fines. Republic Act No. 9262 provided strong

protective measures for women who were victims of domestic violence and their children. The law defined violence against women and outlined penalties for these offenses.⁷¹

In 2005, Executive Order 404 established procedures for monitoring violations of human rights and international human rights law. A commission was established to monitor abuse. The new commission worked with the United Nations Commission on Human Rights to monitor compliance with international treaties and to investigate violations of these treaties. The commission's work included coordination of activities with other human rights groups and the creation of local monitoring teams. The commission reported violations of human rights law to higher levels of government.⁷²

Abuse also occurs at home. There are cases where female Filipino workers were smuggled to Lebanon by Philippine immigration officers. Lebanon is not an approved destination for Filipino workers because it does not have laws that protect migrant workers. The POEA prosecutes employees and agencies involved in smuggling. If an agency is found guilty of facilitating smuggling, its license is revoked. It is unclear, however, what really happens to government officials involved in smuggling.⁷³ If officials who facilitate smuggling are not punished, POEA policies have no effect.

Filipino workers are less prone to abuse by immigration officials and police than other foreign workers because they are well-trained in the culture and language of their destination countries before they are deployed. However, if abuse occurs, the Overseas Workers Welfare Administration is supposed to handle these problems and assist the workers.⁷⁴ Training in financial literacy is given during the pre-departure orientation seminar, which reduces the financial exploitation of overseas workers.⁷⁵

⁷¹ International Organization for Migration (IOM-MLD), Migration Law Database (Geneva, Switzerland: IOM-MLD, 2013). www.imldb.iom.int/search.do?action=search.

⁷² Ibid.

⁷³ Andrew Wander, "Migrant Workers Being Smuggled to Lebanon from Philippines – Officials." *Dailystar* (2 December 2008). <http://www.dailystar.com.lb/News/Politics/Dec/02/Migrant-workers-being-smuggled-to-Lebanon-from-Philippines---officials.ashx#axzz2lwNlmRld>; Mayen Jaymalin, "New POEA Chief to Run After Personnel Involved in Illegal Smuggling," *Philstar* (20 January 2011). <http://www.philstar.com/breaking-news/649514/new-poea-chief-run-after-personnel-involved-illegal-smuggling>.

⁷⁴ Dovelyn Rannveig Agunias and Neil G. Ruiz, "Protecting Overseas Workers: Lessons and Cautions from the Philippines," *Insight* (Washington DC: Migration Policy Institute, October 2007). <http://www.brookings.edu/research/articles/2007/09/global-labor-markets>.

⁷⁵ Maruja M.B. Asis and Dovelyn Rannveig Agunias, "Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal, and the Philippines," *Issue in Brief*, 5 (Washington, DC: Migration Policy Institute, 2012). www.migrationpolicy.org/pubs/predepartureorientation.org.

Box 3. Kyrgyz Emigrant Discrimination

Emigrants leave Kyrgyzstan primarily for economic reasons. Most of these migrants enter their destination country (usually Russia or Kazakhstan) without difficulty, but stay longer than the law allows and work without permits. Their undocumented status makes their stay in Russia or Kazakhstan more difficult than if they have a legal work permit. A 2008 survey of return migrants to Kyrgyzstan found that most returned because of the shortage of jobs in their destinations. However, return migrants also reported other reasons for leaving, including bad health (24 percent), poor relations with their employer (14 percent) and xenophobic behavior from locals (11 percent). Employers cheated workers and wage arrears were substantial. Blatant discrimination occurred on the job from managers and other workers.

The 2008 report is consistent with results from a separate survey of return migrants in Bishkek conducted by ACTED (Aid Agency for Technical Cooperation and Development) in 2009. Returnees fell into three categories: those who had successfully completed their work overseas and returned healthy; those who had worked for unscrupulous employers, received low or no wages and returned unhealthy; and those who were victims of human trafficking. The report did not concentrate on the last group. Those in the second group reported many violations of human rights while living abroad. They were frequently denied access to health care, xenophobia was common, and attacks and murders by skinheads made the international news. The Federal Migration Service in Russia and police were corrupt, extracting bribes from migrant labour at their place of employment or transport centers. Employers did not pay back wages, and workers only got the attention of the local authorities if they had legal employment contracts. Consular fees rose but services did not improve; consular staff was of little assistance to migrants when problems with employers or police arose.

More egregious mistreatment of migrants was reported in *Two Kyrgyz Women* which documented the kidnapping of one young woman for sexual exploitation in the Middle East and trafficking of the other for slave labour on a tobacco plantation in Kazakhstan. Both women lived in desperate economic circumstances and were victimised by people they trusted. They escaped and their stories illustrate the extreme human rights violations that many migrants face.

Sources: El Pakir Public Opinion Study Center, "Assessment of the Social and Economic Situation of Kyrgyz Labor Migrants Returning to their Homeland," (Bishkek, Kyrgyzstan: El Pakir, 2009); Irina Lukashova et al., "Impact of the Global Financial Crisis on Labour Migration from Kyrgyzstan to Russia," (Bishkek, Kyrgyzstan: Organization for Security and Co-operation in Europe (OSCE) Centre and Aid Agency for Technical Cooperation and Development (ACTED), 2009); Marinka Franulovic, Two Kyrgyz Women: Inspired by True Stories of Victims of Trafficking, (Bishkek, Kyrgyzstan: Bishkek Center for Social Initiatives, 2007).

Indonesia

Indonesia provides a somewhat discouraging example, in that most of the laws and policies designed to reduce abuse of overseas workers have not been effective. Law No. 39/2004 established the National Agency for the Placement and Protection of Overseas Indonesian Workers (NAPPOIW), and is the legal basis for protecting emigrants. Emigrants are required to attend training in language and other skills they need to do their jobs in destination countries. When workers understand what the employers ask them to do, verbal and physical abuse on the job declines. Language skills also help workers obtain health care when they need it and increases job safety. The Indonesian government does not allow workers to legally deploy to countries with a history of significant abuse cases against TKIs. A moratorium on deployment

of TKIs was applied to Saudi Arabia in 2011 after a series of abuse cases against Indonesian female workers.⁷⁶ Undocumented emigrants are most vulnerable to abuse and violence. Their freedom of movement from the job is frequently denied and they often work involuntarily or overtime without payment. Up to 74 percent suffer verbal or psychological violence and 64 percent have their documents confiscated. Their access to health care services is limited, and they are more likely to experience sexual harassment and rape than legal emigrants.⁷⁷ Many undocumented emigrants were recruited by illegal employment agencies because the workers did not know the standard legal procedures involved in TKI recruitment. More than half were trafficked as domestic workers, and many women were forced to work as prostitutes. The government tries to monitor and prevent deployment of undocumented TKIs by private agencies.⁷⁸ The licenses of employment agencies are revoked if they are caught sending undocumented migrant workers overseas (Law No. 21/2007). However, this policy is not effective, and illegal agencies still operate and traffic Indonesian workers. Undocumented migration has not diminished with the few regulations placed on agencies.⁷⁹

Discrimination on the job, including sexual harassment, is discussed in pre-departure orientation sessions. Emigrants can report abuse cases to the Indonesian embassy, and they are supposed to receive assistance from embassy staff.⁸⁰

Abuse by Indonesian officials and administrators has been reported. Emigrants are often forced to exchange their money at lower official exchange rates in the airport, and immigration officials pocket the difference in the market. Female workers are often groped or fondled when airport officials suspect they are concealing money in their underwear. No policies have been implemented to reduce these problems.⁸¹

A 2008 law stating that all Indonesians are equal before God, regardless of their race or ethnicity, was enacted to eliminate racial and ethnic discrimination within Indonesia. These regulations also affect the treatment of emigrants by local officials and administrators. Discrimination based on race or ethnicity violates the Indonesian Constitution and the Universal Declaration of Human Rights. The law provides protection, enforcement, assistance and compensation for any losses resulting from discrimination. Penalties for discrimination proven in court include prison and fines, and “Intentional hatred” increases the penalty.

⁷⁶ Erlangga Djumena. “Pembicaraan Macet, Moratorium TKI ke Arab Belum Dicapai.” (Indonesia: Kompas.com, 2011) <http://nasional.kompas.com/read/2011/12/08/13171929/Pembicaraan.Macet.Moratorium.TKI.ke.Arab.Belum.Dicapai>.

⁷⁷ International Organization for Migration (IOM). *Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*. Geneva, Switzerland: IOM, 2010. www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report_English.pdf.

⁷⁸ See United States Department of State (USDOS), *Trafficking in Persons Report 2010*. (Washington DC: USDOS, 2010). <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> for a description of cases of trafficking.

⁷⁹ International Organization for Migration (IOM). *Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*. Geneva, Switzerland: IOM, 2010. www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report_English.pdf.

⁸⁰ Guy Morgan and Chris Nolan, *Step Up: Improving Recruitment of Migrant Workers in Indonesia, Findings from a Research Visit to Semarang, Indonesia, May 3-7, 2011* (BSR Migration Linkages, 2011). http://www.bsr.org/reports/Improving_Migrant_Worker_Recruitment_in_Indonesia.pdf.

⁸¹ International Organization for Migration (IOM). *Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*. Geneva, Switzerland: IOM, 2010. www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report_English.pdf.

India: Kerala

An early attempt to protect women and girls from trafficking was Act No. 104 in 1956. The Indian Constitution and the Indian Penal Code strengthened the Act with over 20 provisions that make human trafficking illegal. The Indian government also ratified the South Asian Association for Regional Cooperation (SAARC) which upholds the protection of the rights of women and children in South Asia. However, the SAARC ignores human trafficking of men.⁸²

The law applies to women under the age of 21. Brothels or use of property for prostitution are illegal, as is earning one's living as a prostitute or soliciting a prostitute. Abducting women without their consent for the purpose of prostitution is illegal. If girls are detained or harassed to force them into prostitution, the police can intervene and place the girls in protective custody. All violations of this law are subject to time in prison or fines.⁸³

Act No. 10 of 1993 created the National Human Rights Commission which investigates complaints of human rights violations, reviews safeguards in the law for effectiveness, assists with the effective implementation of human rights treaties signed by the Indian government, and works with NGOs that help mitigate human rights abuse. The commission also provides education on human rights and human rights safeguards through seminars, media and publications. The act applies to the human rights abuse of domestic and migrant workers and their families.⁸⁴

Two laws enacted in 2005 seek to protect women and children from abuse. Women are protected from domestic violence including physical, sexual, verbal and economic abuse. A Protection Office was established under one of the laws, which provides monetary relief, custody, and medical and psychological services for victims. Free legal assistance is provided if the Office supports the case.⁸⁵

The MOIA has taken several steps to protect Indian citizens who work abroad, especially female workers, from abuse:⁸⁶

- No woman under the age of 30 can emigrate without special permission.
- The employment contract has to be attested by the Indian government (rule 15(2) of the Emigration Rules of 1983) to ensure that the emigrant is not exploited in the destination country.
- The Indian Mission is a special office of the Indian embassy. It provides distressed women emigrants with shelter and legal assistance. It provides a helpline and toll free access to the Mission. The Mission is open to women emigrants whenever they want to come and

⁸² South Asian Association for Regional Cooperation (SAARC). www.saarc-sec.org.

⁸³ International Organization for Migration (IOM-MLD), Migration Law Database (Geneva, Switzerland: IOM-MLD, 2013). www.imldb.iom.int/search.do?action=search.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ministry of Overseas Indian Affairs (MOIA), Webpage. (New Delhi: MOIA, 2013). <http://www.moia.gov.in/index.aspx>.

voice their grievances. It hires local lawyers if an Indian worker must appear in court in the destination country.

- The MOIA established the Overseas Workers Resource Centre (OWRC) in India to respond to and monitor complaints and grievances from emigrant workers or potential emigrant workers.
- Pre-departure orientation in law, finance, and culture as well as skills and language training prepare workers for the destination and thereby reduce abuse.
- The MOIA has Memoranda of Understanding with many destination countries which are designed to protect Indian workers, especially those engaged in informal and domestic jobs.

Kerala has its own worker welfare laws. The NRK Welfare Act of 2008 is the legal basis for worker protections overseas. NORKA-Roots provides insurance coverage to Keralite workers who hold identity cards issued by the Kerala government, which covers accidental death, permanent or partial disability.⁸⁷

Kerala has not passed separate legislation to prevent human trafficking. However, many trafficking cases have been documented in airports in Kerala. In 2012, about 10,000 people travelled abroad without complete and proper documents. Most of the victims were women and unskilled workers. This abuse allegedly involves senior airport officials. The Kerala police plan to set up a police station at airports in Kerala to reduce these crimes.⁸⁸

There are no specific policies in India or Kerala to handle discrimination abroad. NORKA acts as a shelter for depressed Keralites while they are working abroad. NORKA-Roots in Kerala gives workers information about laws in the destination countries to raise their awareness of local issues. This information is incorporated in their pre-departure orientation program.⁸⁹

Mexico

In 2007, the Mexican government enacted federal legislation that prohibits all forms of human trafficking with a minimum penalty of six years in prison if convicted. The penalty for a public official is one and a half times the penalty for an ordinary citizen. The government also raised awareness of trafficking through posters, television and radio. It endorsed the United Nations Office on Drugs and Crime's Blue Heart Campaign against Human Trafficking. Mexican immigration agents implemented an identification system for potential trafficking

⁸⁷ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu (Quezon City, The Philippines: MFA, 2012).

⁸⁸ Indian Express, "Kerala's Nedumbassery Airport Under International Human Trafficking Scanner," (17 December 2012). www.indianexpress.com/news/keralas-nedumbassery-airport-under-international-human-trafficking-scanner/1046436/0.

⁸⁹ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu (Quezon City, The Philippines: MFA, 2012).

victims, especially children entering or exiting the country. The government trained agents and some NGOs to identify and interview victims.⁹⁰

The Institute of Mexicans Abroad (IME) was created in 2003 as an independent department of the Ministry of Foreign Affairs. Its main purpose was to organise the diaspora in the US and link the diaspora to government institutions and businesses at home. The IME focuses on education, health, protection of migrants from employer or official abuse, the organisation of migrant communities abroad, and business promotion. Its strong links to the many consular offices in the US mean that abused migrants in the US have significant support and protection. The advisory board to the IME is comprised of Mexican migrants. Information from migrants is used to formulate policy and international negotiation.⁹¹

Undocumented Mexican workers are subject to abuse by US employers. The Mexican government included this issue in a bilateral agreement with the US government, but it has proven ineffective. The Mexican government recently changed its advocacy strategy to public diplomacy and strengthening community organisations. This will reduce illegal migration and reduce abuse cases in the US and elsewhere.⁹² The Mexican and Canadian governments signed a Memorandum of Understanding which emphasises the equal treatment of Mexican migrant workers and local workers.⁹³

Labour contracts are prepared by foreign employers. In the US, the contract varies by type of employer and visa. The employer frequently violates the terms of a written labour contract, and migrant workers have little power in the US to ensure that the expected employment conditions are maintained. "Employers sometimes tell employees that the contract was only created to satisfy the visa application requirements, and that the employer never intended to respect it." The Mexican government has not negotiated a standardised employment contract for Mexican migrant workers.⁹⁴

El Salvador

In 2005, El Salvador enacted Memoranda of Understanding with the US and Guatemala to protect women and children from trafficking. The Salvadoran government also works with both governments to identify the problem areas in all three countries. Campaigns in El Salvador, the US and Guatemala provide emigrants and Salvadoran nationals with information

⁹⁰ United States Department of State (USDOS), *Trafficking in Persons Report 2010*. (Washington DC: USDOS, 2010). <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> for a description of cases of trafficking.

⁹¹ Laureen Laglagaron, *Protection Through Integration: The Mexican Government's Efforts to Aid Migrants in the United States* (Washington, DC: Migration Policy Institute, 2010).

⁹² Francisco Alba and Manuel Ángel Castillo, *New Approaches to Migration Management in Mexico and Central America* (Washington, DC: Migration Policy Institute, 2012).

⁹³ International Labour Organization, *Protecting the Rights of Migrant Workers: A Shared Responsibility* (Geneva, Switzerland: ILO, 2009). www.ilo.org/public/english/protection/migrant/download/brochure_migrant_rights.pdf.

⁹⁴ Centro de los Derechos del Migrante, Inc. (CDM), "Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Challenges," Paper presented at the first meeting of the International Labor Recruitment Working Group. (Washington, DC: George Washington University, October 17-18, 2011). <http://www.cdmigrante.org/wp-content/uploads/2012/12/Monitoring-International-Labor-Recruitment.pdf>.

about trafficking, where it is most likely to occur, and how to avoid it. Victims in the US and Guatemala receive consular protection and can be returned to El Salvador at the Salvadoran government's expense. Medical and psychological help are provided to victims.⁹⁵

Decree No. 655 (2012) protects Salvadoran migrants and their families. They are guaranteed basic human rights, and discrimination based on age, gender, ethnicity, religion and other characteristics is against the law. Human rights protection is provided in El Salvador and abroad. The most vulnerable (women, children, the elderly and the disabled) are protected from abuse under this decree.⁹⁶

The Decree facilitates the return and reintegration of migrants into Salvadoran society. The Council for the Protection and Development of Migrants and Their Families (CPDMF) of the Ministry of Foreign Affairs develops policies to facilitate migration and minimise the abuse of migrants. It monitors compliance with Salvadoran human rights laws and works with NGOs, foundations, and international organisations to develop and coordinate programmes for return migrants. The CPDMF also assists with care services, provides humanitarian assistance and legal assistance, and compensates families for the deaths of migrant family members. Humanitarian assistance includes reparations, search for missing persons overseas, and other forms of help for victims and returnees. The Council also runs an awareness campaign highlighting the risks of emigration without legal documents.⁹⁷

United States and Canada: Destination Policies

Protection of migrants against human right abuses and trafficking cannot be the sole responsibility of the sending country, which has limited powers once the migrant has left. Destination countries have adopted specific measures, and often subscribe to international treaties. The main issue is the extent to which such commitments are enforced in practice.

The Canadian Immigration and Refugee Protection Act of 2001 and Regulations of 2002 outline the many rules for legal, temporary residence in Canada for students and workers. Categories of persons who will not be admitted legally are provided.⁹⁸

The 1983 Migrant and Seasonal Worker Protection Act in the US regulates employment of migrant labour. It requires businesses that hire migrant workers to keep records of their employment and wages and that wages are paid as promised. Migrants cannot be required to buy goods and services of the business or the owner's family or friends. Businesses must meet the legal health and safety standards which are monitored by the Occupational Safety and Health Administration; provide safe motor vehicles if they are needed for the job; and not discriminate based on race, gender, ethnicity, religion or age. The terms of employment contracts must be upheld. Firms are liable for violations of these employment regulations for migrant labour.⁹⁹

⁹⁵ International Organization for Migration (IOM-MLD), Migration Law Database (Geneva, Switzerland: IOM-MLD, 2013). www.imldb.iom.int/search.do?action=search.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

Both the US and Canada expect anti-discrimination laws to apply to migrants and natives. In the US, children of undocumented migrants cannot be denied education and migrants cannot be denied emergency medical care. Under the welfare reform of the 1990s, however, legal migrants are not eligible for welfare benefits for the first five years of their residency and undocumented migrants never qualify for welfare benefits or social security.

International Trafficking Policy

Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplements the United Nations Convention Against Transnational Organised Crime. Over 800,000 persons worldwide are trafficked across borders, and more than 800,000 are trafficked within countries. They are trafficked for cheap labour, sex and criminal activity. Article 3 is designed to counter international trafficking. Signers of the Convention agree to respect human rights, support the physical, mental and social well-being of all persons, and maintain institutions to support these commitments. The United Nations has no power to enforce these articles in any country.¹⁰⁰

The International Organization for Migration focuses on prevention through information campaigns and technical assistance to governments to build capacity to prevent trafficking. This includes training police and NGOs, supporting institutional improvements, and providing direct assistance such as safe places, medical and psychological care, skill development and training, “reintegration assistance,” and resettlement to safe countries. The IOM Handbook on Direct Assistance for Victims of Trafficking outlines ways to provide effective service delivery and counter trafficking.¹⁰¹

Lessons for the Kyrgyz Republic

This brief review of experience shows that in most countries laws and regulations guarantee human rights for migrants. Since migrant abuse continues, it is apparent that concentrating on legislation cannot be the main strategy for sending countries such as the Kyrgyz Republic. Collaboration with receiving countries is important (see Section 5 below), and ambivalent views as they prevail at times in the Russian Federation, for example, do not help in this respect.

There are other practical ways in which sending countries can complement their laws to increase their effectiveness. One of the most important ways to prevent abuse is through information. The policies that work best include pre-departure orientation sessions and information campaigns on trafficking and human rights. Some countries do not allow migrants to work in countries with extensive migrant abuse. This reduces the abuse in those countries but does not eliminate the abuse of workers trafficked there. International trafficking is a serious problem but is less widespread than discrimination and violation of employment laws. Unless the police and immigration officials are held accountable in origin and destination countries to uphold the law, laws to protect migrants can be passed but will have no impact on abuse.

¹⁰⁰ Ibid.

¹⁰¹ International Organization for Migration (IOM), Handbook on Direct Assistance for Victims of Trafficking (Geneva, Switzerland: IOM, 2011).

Section 5. Social Protection: Pensions and Health Care

Pension Portability

Portability involves the ability of the migrant worker to preserve, maintain and transfer acquired social security rights regardless of the country of residence. Portability may be complete, partial or unavailable. Fully portable arrangements guarantee the actuarial value of accrued pension rights when migrants change jobs. Partial portability means that only part of the accrued pension benefits are maintained when migrants change jobs. In addition to portability, a good pension system across national boundaries should have fair totalisation and apportionment rules. Totalisation means that pension benefits are based on the total contributions across countries in which the migrant worked. Apportionment means that each country in which the migrant worked pays a portion of the total accrued benefits, but the country's share of the payment is based on the amount of time the migrant worked in the country and the amount of income earned there. Vesting rules are also important to the determination of benefits, and vesting periods may vary in each country in which the migrant worked. If the vesting period is long, the migrant may accrue no benefits from work in that country. Finally, when statutory pension plans are defined benefit plans, benefits are based on the wages earned during the last years of employment in each country. If wages are not adjusted for inflation, then benefits are affected as workers move across countries. Because of these considerations, it is important for countries of origin to negotiate bilateral social security arrangements with major destinations where the migrant workers accumulate such rights. In reality, however, this mostly applies only to skilled temporary labour migrants in Asia and the Pacific.¹⁰²

Policies affecting the portability of pension plans generally only apply to legally registered migrants. The only recourse for undocumented migrants is to invest in a private pension plan, invest in property and other assets at home, or save through a financial system that facilitates remittance transfers abroad. Unregistered migrants comprise a large share of Kyrgyz migrants, so the lack of pension portability throughout the world is an important consideration. The discussion below focuses on available portable plans for legal migrants.

The EU offers the best pension package for both EU migrants and third country migrants who move within the EU. The regulations for third country migrants are a little different from those for internal EU migrants in that they must choose the pension plan of only one state in the EU, where they work or where they live. For EU migrants, pensions are fully portable within the EU and pension rights are based on total EU service. Pension benefits should be no lower than if the migrant had remained in one EU country for her entire working life. This meets the totalisation condition. The payment of the pension benefit is also apportioned to each state based on the percentage of time that the migrant worked there. There are no losses due to differential vesting arrangements although migrants can lose because benefits are based on nominal not real wages. The European Court of Justice enforces the award of statutory pension benefits. Benefits from occupational or union plans are less portable and are not governed by these rules.¹⁰³

¹⁰² Alvaro Forteza, "The Portability of Pension Rights: General Principals and the Caribbean Case," World Bank Social Protection Discussion Paper No. 0825 (Washington DC: The World Bank, 2008).

¹⁰³ Ibid.

There are bilateral agreements with some EU countries and migrant sending countries, which have some advantages for migrants. These focus on the penalties that EU countries can impose on pensions earned by third country migrants if they receive that pension in another country. Two examples are agreements between Germany and Morocco and Germany and Turkey.

The bilateral agreement between Germany and Morocco reduces the penalty for receiving an EU pension outside the EU. A German pensioner can receive her German pension in any country of the world without penalty; this is not true for a non-German worker. The bilateral agreement with Morocco allows migrants to Germany who contributed to the German statutory pension plan to receive their full benefits if they leave Germany and retire in Morocco. In contrast, Algeria did not (in 2005) have a bilateral agreement with Germany so any Algerian migrant to Germany who contributed to the German statutory pension plan received a 30 percent reduction in the pension if she chose to retire and receive her pension in Algeria. However, if the Algerian pensioner chose to retire and receive her pension in Morocco, then her pension would be regulated through the bilateral Germany-Morocco agreement, and she would receive her full pension without the 30 percent penalty. A Turkish or Tunisian migrant who earned pension rights in Germany can only receive her full pension if she retires in the EU or any country with which Germany has a bilateral treaty. If she retired in any other country, she would receive a 30 percent reduction in her pension.¹⁰⁴

The Gulf states offer no pension rights to migrants and do not require legal migrants to pay into the system. Migrants to these countries have to contribute to private pensions or, in some cases, are allowed to contribute to the pension system of their home country. The Philippines is one country that allows migrants to contribute to the Philippine state pension plan and receive state benefits when they retire.¹⁰⁵

Two other multilateral agreements on pension portability illustrate some of the benefits and costs of these arrangements. The CARICOM Agreement on Social Security (CASS) is a statutory pension agreement for most countries in the Caribbean region. The CASS was signed in 1996 and was designed to protect pension rights of workers moving for work among Caribbean countries. Benefits are paid by the social security schemes in countries where the worker made contributions to the pension fund. In the EU, there is no overlap of benefits so migrants cannot make more from the pension by migrating than they could by working in only one country. In the CASS, overlap is possible because the accrual rate for pension benefits varies by years of service and is higher in the earlier years of employment. Workers who work for short periods of time on each job receive a higher pension than workers who worked for the same total amount of time in only one country. The pension itself is based on total contributions as in the EU, but the pension is not fairly apportioned. Migrants can choose to retire and take their total contributions to a country with a more favourable pension setup and receive a benefit based on that country's rules. Use of the pension agreement is overall very low. One reason is the lack of knowledge among migrants of how the system works and benefits them. Another is that the system is available only if the worker is not fully vested in any one country so migrants

¹⁰⁴ Robert Holzmann, Johannes Koettl and Taras Chernetsky, "Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices," World Bank Social Protection Discussion Paper No. 0519 (Washington DC: The World Bank, 2005).

¹⁰⁵ Ibid.

with a long period of work in any one country do not qualify. There is no adjustment for wage inflation, and there are different requirements by age and periods of contribution. This arrangement would be a poor model for the Kyrgyz Republic to adopt.¹⁰⁶

The system for MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay) was adopted more recently. The SAICI system (International Agreements System) manages the system under the terms of a multilateral agreement, including a database of all transactions among the four countries. The International Social Security Association (ISSA) awarded MERCOSUR a Best Practices Award in 2009 for the development of operations of the SAICI management system.¹⁰⁷ The system is similar to the CARICOM system with total years of work and contribution to statutory pension plans within MERCOSUR countries taken into account and benefits apportioned according to years of service within the country. Takeup of this multilateral pension system is low at 27 percent.¹⁰⁸

The relationship between New Zealand and the Pacific island countries offers a different approach to pension portability. If a Pacific Islander lives in New Zealand for at least 20 years since age 20 and receives the New Zealand Superannuation, the resident is paid in full. The Superannuation is a statutory pension that is not means tested and is equal to 66 percent of the average New Zealand wage. Pacific Islanders, through bilateral agreements between 22 countries and New Zealand, can receive this pension in their home country. They can receive partial payment if they lived in New Zealand for under 20 years with other rules attached. They must retain their original citizenship to receive the benefit outside of New Zealand.¹⁰⁹

Health care portability

Health care portability is less common than pension portability. There are relevant bilateral agreements between Turkey and some EU countries and between Morocco and Germany. However, in most other cases, health care outside the home country is regulated by national law. The usual practice is that returning migrants have access to health care benefits at home and these benefits are not age dependent. Medicare in the United States is one exception. There are usually no minimum contribution periods before returnees can receive health care. Retired return migrants usually are covered if they are eligible for the state pension. Emergency care is available to all persons. A migrant from some EU countries receives partial coverage for health care expenditures, but this is usually based on the costs of treatment in the home country, not in the EU. Austria is an example. A Moroccan migrant who had worked in Austria for many years is covered by the Austrian health care system which is heavily subsidised. If he retires in Morocco and receives a

¹⁰⁶ Alvaro Forteza, "The Portability of Pension Rights: General Principles and the Caribbean Case," World Bank Social Protection Discussion Paper No. 0825 (Washington DC: The World Bank, 2008).

¹⁰⁷ International Social Security Association (ISSA), *Good Practices in Social Security: The Case of MERCOSUR* (Geneva, Switzerland: ISSA, 2009). <http://www.issa.int/News-Events/News2/Good-practices-in-social-security-The-case-of-MERCOSUR>

¹⁰⁸ Robert Holzmann and Johannes Koettl, "Portability of Pension, Health, and Other Social Benefits: Facts, Concepts and Issues," IZA DP No. 5715. (2011).

¹⁰⁹ Geoff Woolford, "Social Protection for Migrants from the Pacific Islands in Australia and New Zealand," World Bank Social Protection DP No. 0912 (Washington DC: The World Bank, 2009).

1000 Euro charge for medical treatment there, he can apply to the Austrian health care system for reimbursement if he has continued to pay for coverage. If the charge for this treatment in Austria is only 500 Euros, Austria will pay 80 percent of the Austrian charge, or 400 Euros. The rest of the cost is borne by the retiree.¹¹⁰

The United States Social Security Administration (SSA) does not reimburse any medical expenses incurred outside of the US. The SSA is afraid that it cannot monitor the care and determine if it was necessary. Legal migrants, however, can return to the US for care. This is common practice throughout the world for legal residents. A Mexican retiree who was a legal resident in the US can return to the US from Mexico for health care. For those who cannot return to the US, the Mexican government created an alternative. The Mexican Social Security Institute offers health insurance for migrants and their families in Mexico or abroad. In 2005, the cost ranged from \$97 a year for children under age 19 to \$256 a year for adults age 60 and over. The policies are available to non-migrants as well and can be purchased at consulates in Chicago, Houston and Los Angeles.¹¹¹

In many Gulf countries, health insurance must be purchased by the employer for the migrant worker. This covers health care while the migrant is in the Gulf region. If migrants return home after work, health care is covered by the home country's insurance plan.¹¹²

Bilateral agreements are common. The agreement between Turkey and Austria is one example. A legal Turkish migrant to Austria receives an Austrian pension and is covered by the Austrian health care system. In Turkey, she is covered by the Turkish health care system and treated the same as Turkish retirees who never left the country. Additional costs incurred under Turkish care can be reimbursed through the Austrian plan. This plan covers care which cannot be postponed such as emergencies and conditions with acute pain. If the care can be delayed, the migrant is expected to return to Austria for treatment.

The best multilateral example is the EU. Migrants enjoy portability within the EU. Care is available for employees and retirees in the country of residence. If the person retires in a country other than the one in which he worked, then the country providing the care is reimbursed by the country paying for the pension benefits.¹¹³

The Indonesian government has agreements with destination countries so that overseas Indonesian workers (TKIs) can receive insurance while they are working overseas.¹¹⁴ Social insurance is provided by the government to TKIs, but in order to receive this insurance they

¹¹⁰ Robert Holzmann, Johannes Koettl and Taras Chernetsky, "Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices," World Bank Social Protection Discussion Paper No. 0519 (Washington DC: The World Bank, 2005).

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Johanna Avato, Johannes Koettl, and Rachel Sabates-Wheeler, "Definitions, Good Practices, and Global Estimates on the Status of Social Protection for International Migrants," World Bank Social Protection DP No. 0909 (Washington DC: The World Bank, 2009).

¹¹⁴ Andy Hall et al., "Migrant Workers' Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand," Prepared by Mahidol Migration Centre, Mahidol University, Thailand for the Migrant Forum in Asia and Friedrich-Ebert-Stiftung. (Quezon City, The Philippines: Migrant Forum in Asia, 2011). hall_socialprotectioninasean_nov2011.pdf.

have to pay an insurance premium of \$47 prior to departure. NORKA-Roots provides insurance coverage to Keralite workers who hold identity cards issued by the Kerala government. The insurance covers accidental death, permanent or partial disability.¹¹⁵

Lessons for the Kyrgyz Republic

This brief review of portability of pensions and practices in the field of health insurance highlights three main lessons for the Kyrgyz Republic:

- Portability of pensions is an important issue for documented migrants. The welfare and choices of a large portion of current Kyrgyz migrants are unlikely to be affected, at least in the short term.
- In the long term, negotiation of pension portability is a bilateral issue. It would be important that priority be given to agreements with the most likely destination countries (Russian Federation and Kazakhstan), and that a dialogue on evolving EU approaches to such issues be opened as well. Because there are not many Kyrgyz migrants to the EU, the EU dialogue would be for learning purposes and present policymakers in the Kyrgyz Republic with some good ideas for possible pension reforms for migrant labour.
- Agreements on health benefits are less common and depend on the features of the health and social insurance schemes in destination countries. For the Kyrgyz Republic, negotiating minimum-access provisions to health facilities irrespective of status might be the most promising avenue to protect the health and human rights of migrants.

¹¹⁵ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu (Quezon City, The Philippines: MFA, 2012).

Section 6. Diasporas: Unleashing Potential Resources for Development

Diasporas are established communities of migrants in a host country, retaining an interest in developments in their country of origin. Their role in fostering better developmental outcomes of migration has been amply documented in the literature, and a recent publication provides a comprehensive analysis of arrangements in place around the world.¹¹⁶ From the perspective of labour migration flows, diasporas provide invaluable social capital and information for potential migrants. Diasporas can also be active vehicles for investment as well as knowledge transfers and can become actors in the political life of the mother country; for example, US- and Russia-based Ukrainian diasporas have taken opposite sides in a number of national debates in Ukraine

Diasporas have a natural tendency to establish economic, social and political relations with their countries of origin. International experience shows that the most important ingredient for a fruitful economic relationship with the diaspora is the existence of a favourable business environment. Members of the diaspora who want to invest in a country are no different from those living in the country as far as their demands for protection under the law and non-discrimination are concerned. Special programmes to attract diaspora resources cannot be a substitute for sound business policies.¹¹⁷ International experience also shows that governments, NGOs, and other international organisations can all work for a more effective relationship between diasporas and their countries.

Among the FSU countries, Georgia and Armenia have established ministerial agencies with a mandate to develop and encourage diaspora relations. The experience with these institutional arrangements is relatively new and it is too soon to evaluate their impact, but these dedicated institutions are expected to facilitate economic, technological and cultural exchanges. Other countries reviewed in this study have adopted non-ministerial approaches which can be equally effective.

In Mexico, diaspora participation on the IME governing boards and its activities has resulted in strong input into decision-making on migration issues. The president of the board is a migrant, and the other members are elected from Mexican communities.

Mexico has also engaged in programmes to help leverage diaspora resources. The 3 X 1 Program was developed in 2002 and matches every \$1 in migrant investment funds from Hometown Associations (HTAs) with \$3 from the government (federal, state, and local). For example, the HTA proposes an infrastructure project (sewer, water, school, for example) for a Mexican community. The proposal is vetted by government agencies and, if approved, the money is transferred to a community fund, and the project is developed. Currently the programme runs

¹¹⁶ Dovelyn Rannveig Agunias and Kathleen Newland, *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries* (Geneva, Switzerland: International Organization for Migration (IOM) and Migration Policy Institute, 2012). www.gfmd.org/documents/pfp/diaspora-handbook/Diaspora_Handbook_for%20Web_17April2012.pdf.

¹¹⁷ Similarly, it is futile to set up Special Economic Zones in countries that are hostile to the public sector.

in 27 of the 32 states, but most programmes are concentrated in just four states. The total amount invested is small relative to the total remittances transferred to Mexico.¹¹⁸

The 1 X 1 Program in Mexico targets individual emigrants rather than HTAs. For every \$1 that an emigrant contributes to a local business project, the government donates another \$1. The individual investor must submit a business plan which is vetted by the Mexican development agency, Sedesol. If approved, the investor can receive up to 300,000 pesos (\$23,765 on 16 July 2013) to help start a business in a Mexican community.¹¹⁹

Paisano Invierte en tu Tierra is a programme to develop rural areas of Mexico and generate employment through the establishment of agribusinesses. It is supported by the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) and operated by the Shared Risk Trust (FIRCO). Migrants and other Mexicans invest their own money and receive government funding to start or expand agribusiness which can include rural tourism or energy projects. The programme operates in all 32 states.¹²⁰

The Mexican Talent Network was established as a means to share the knowledge and talents of high skilled Mexican emigrants in the US with local workers and entrepreneurs. The IME holds conferences that bring together business owners and experts in technical fields, health and the automobile industry. The programme offers mentoring to Mexican IT companies and internship opportunities in the automobile industry in the US.¹²¹

Finally, there is a housing programme in which Mexican migrants living abroad can buy houses in Mexico with loans from the government. The loans can be repaid with transfers abroad.¹²²

El Salvador

In 1999, *Unidos por la Solidaridad* was launched as a social investment fund to engage the diaspora. It encouraged NGOs and Salvadoran organisations abroad to finance small infrastructure projects such as schools and health centers in El Salvador. This was the first effort to engage the diaspora from El Salvador.¹²³

In 2012, Decree 655 promoted technology transfer and brain gain projects. The Productive Cooperation Project and Technical Cooperation Program encouraged Salvadoran businessmen abroad to develop small and medium enterprises at home by allying domestic and emigrant entrepreneurs. The cost of sending remittances through the financial system for local investment was reduced.

¹¹⁸ Migration News, "Mexico: Migrants, Remittances, 3 X 1." 16, 4, (2009).

¹¹⁹ Ibid.

¹²⁰ FIRCO, Presentación de Paisano. (July 12, 2012). http://www.firco.gob.mx/proyectos/migrantes/Paginas/migrantes_01.aspx.

¹²¹ Lauren Laglaron, *Protection Through Integration: The Mexican Government's Efforts to Aid Migrants in the United States*. Washington, DC: Migration Policy Institute, 2010.

¹²² Javier Díaz de Leon, "Migration, Cooperation and Development: The Role of the Mexican Government," Presentation at the Center for Strategic and International Studies (Washington, DC, January 11, 2011).

¹²³ Sarah Gammage, *El Salvador: Despite End to Civil War, Emigration Continues* (Washington, DC: Migration Policy Institute, 2007).

The Council for the Protection and Development of Migrants and Their Families supports their contributions to the Salvadoran economy. It encourages the development of small and medium enterprises through business incentive programmes. Return migrants can bring a large amount of capital home, such as tools, cars and other property at low import fees. This lowers the costs of transmitting remittances back to El Salvador and encourages investment and technology transfer from the diaspora.¹²⁴

Philippines

Diaspora affairs in the Philippines are not limited to a specific ministerial-level institution but are handled within the activities and purviews of all agencies dealing with labour migration and protection of migrants. The Balikbayan programme was launched in 1989 to get the diaspora to visit the Philippines. Benefits include tax exemptions and duty free shopping up to \$2000. Departing workers at their pre-departure conference are encouraged to return home and provided with information on business and property ownership opportunities and skills retraining. They are also enrolled in health and life insurance and social security.¹²⁵

Lessons for the Kyrgyz Republic

The international experience suggests a number of conditions for the development of healthy and productive relations with the diaspora. These include trust between the diaspora and the national authorities (something that may be difficult to establish and can be easily damaged); cooperation by the authorities of the host countries; willingness by national authorities to seek views and inputs of diasporas into decision-making on migration and investment matters; effective use of consular offices and other resources for information-sharing, protection and representation; transparency and openness in the use of any public resources devoted to fostering diaspora activities; and an appropriate legal and regulatory framework that can make it feasible to invest in beneficial community projects. Special programmes can help foster diaspora investments but cannot be a substitute for the health of the overall business environment.

¹²⁴ International Organization for Migration, Migration Law Database (Geneva, Switzerland: IOM-MLD, 2013). www.imldb.iom.int/search.do?action=search.

¹²⁵ Rebecca J. Calzado, "Labour Migration and Development Goals: The Philippine Experience," Paper presented at the International Dialogue on Migration: Workshop on Making Global Labour Mobility a Catalyst for Development. (Geneva, Switzerland: October 8, 2007).

Section 7. International Cooperation

Cooperation between sending and receiving countries is of paramount importance for the success of programmes to manage labour migration and protect migrants' rights. Several fora currently exist in the major migration corridors, and they vary with respect to the degree of cooperation among participants and the format chosen to achieve common objectives. In this section, we highlight the features, advantages and disadvantages of three international processes relevant to the Kyrgyz Republic: (i) the Colombo Process, among a number of Asian sending countries and their receiving partners; (ii) the EaP process currently underway between the EU and six FSU countries (Ukraine, Belarus, Moldova, Armenia, Azerbaijan and Georgia); and (iii) the informal MIRPAL forum for discussion among FSU countries in the Russian Federation/Kazakhstan corridor.

The Colombo Process

The Colombo Process was established in 2003 by 11 Asian countries to monitor and discuss implementation of group members' immigration policies and support structures.¹²⁶ The process has involved four ministerial-level consultations, and involves high-level participation from destination countries, such as the European Union, the Gulf States, Australia, as well as a number of international organizations. Thus the process, while dubbed informal, has indeed a high degree of formalization.

As a regional consultative process, the Colombo Process most directly impacts best practices in sending country policies through information exchange and improved understanding of migration issues. Several concrete steps have been taken by member states and various receiving countries since 2005 to better regulate migrant flows, including:¹²⁷

- Legislation and policy formulation;
- Creation of Government bodies to support labor migrants;
- Bilateral agreements and memoranda of understanding between CP members and receiving countries;
- Innovative programs at national and local levels to foster implementation of migration support structures.

Members of the Colombo Process have adopted numerous strategies to discourage abuse by private recruitment firms and foreign employers. The main policies instituted across the participants of the Colombo Process include exit controls, licensing requirements for recruitment firms, and employment contracts based upon administratively set standards.

¹²⁶ http://www.colomboprocess.org/index.php?option=com_content&view=article&id=11&Itemid=38.

¹²⁷ Dovelyn Rannveig Agunias and Christine Aghazarm, *Labour Migration From Colombo Process Countries: Good Practices, Challenges And Ways Forward*, Issue in Brief, Issue 1. (Washington, DC: Migration Policy Institute, 2012). <http://www.migrationpolicy.org/pubs/colomboprocessbrief.pdf>.

According to participants and observers, the Colombo process has provided a useful forum that allows exchange of experiences under a high-level “watch”. Nevertheless, it is also recognized that challenges remain in implementation of agreements reached, and that translating paper decisions to practical changes is something that takes time and commitment.

Eastern Partnership – EU Collaboration

The EU has had an ongoing policy of collaboration with several of its neighbours under the Neighbourhood Policy including the six EaP countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine). Discussions on labour mobility are complicated by the multi-layered decision-making structure in the EU and the fact that member states retain responsibility for the conditions for admissibility of migrants. Nevertheless, for the past few years a number of panels have been convened to discuss issues of common interest, and negotiations between the EU and individual EaP countries have continued, albeit at an uneven pace.

Three features of the EaP-EU forum are worth emphasising:

- The EU is the dominant partner in the process. Although formal multilateral consultative mechanisms have been put in place, the *de facto* situation is that so far no common approach has been established, and negotiations on different types of liberalisation of movement remain country-based.
- The EU insists on agreements on repatriation of undocumented immigrants and the implementation of these provisions as the precondition for country-by-country negotiations. The forum has therefore been less useful with respect to other important items such as the opportunities for labour migration and the protection of migrants in the EU countries.
- The EU has insisted on and put some resources at the disposal of partner countries for strengthening basic management institutions, insisting on the adoption of a comprehensive migration strategy. (This is especially true in the case of Moldova.)

To date, the extent to which the discussions within the EaP-EU forum will lead to proposals and arrangements that are truly owned by all participating countries is debatable.¹²⁸ This points to the desirability of equal treatment in agenda-setting for all members of an international dialogue on matters of common interest, something that would certainly help in discussions between Kyrgyzstan and its migration partners.

¹²⁸ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, Eastern Partnership Review, 1 (Estonian Center of Eastern Partnership, October 2011). http://www.eceap.eu/ul/The_Institutional_Functioning_of_the_Eastern_P.pdf.

The MIRPAL Experience

The MIRPAL¹²⁹ initiative began as an informal forum in 2009 to discuss issues of common concern among FSU countries in the Russian Federation-Kazakhstan corridor. It is facilitated by the World Bank and received financial support from the United Kingdom Department for International Development (DFID). The Kyrgyz Republic has been a member of the informal network since its launch, and a number of other international organisations, including IOM, have provided support to the network.

Since 2009, the MIRPAL programme has conducted a number of experience-sharing initiatives aimed at creating a better understanding of the features of migration in the FSU corridor. These have included exchanging statistical information on migrant flows, discussions on ways to reduce the cost of remittances, and more potentially controversial policy debates on directions for migration policies, particularly in the Russian Federation.

Participation in the MIRPAL debates has included a number of stakeholders, such as officials in relevant governmental agencies, representatives of diaspora communities and representatives of private sector operators. Given its informal character, the MIRPAL has provided a non-confrontational forum for discussion, sharing of experiences, and work towards common solutions.

Lessons for the Kyrgyz Republic

These examples of international collaboration on migration offer some useful lessons for the Kyrgyz Republic. First, an international collaborative context can be useful for migration-sending countries, particularly small ones, such as the Kyrgyz Republic. The Colombo Process has attained a number of successes, but it is also characterised by a very high degree of formalisation, which may not be optimal for all aspects of international discussions in the FSU region. On the other hand, the EU-EaP experience is essentially driven by the EU agenda and to a large extent, lacks the multilateralism in decision and consensus-making that might be desirable.

Strengthening the MIRPAL experience, perhaps through graduation from its World Bank sponsorship and development of a more ambitious agenda, could benefit all its current members, particularly the Kyrgyz Republic. The collaboration could be less formal than the Colombo Process but more structured than in its present structure. This development would require agreement and collaboration of all current members.

¹²⁹ <http://www.mirpal.org/>.

Part 2. Lessons and Recommendations

Part 1 of this paper reviewed the international experience with regard to seven aspects of migration policies and institutions that are crucial for positive outcomes for migrants, their families and sending and receiving countries. Lessons for the Kyrgyz Republic were offered in each section. Part 2 provides a summary of lessons and a set of policy and institutional recommendations for consideration. The strategy we propose could provide a road-map and a vision for the country at this time of reflection on migration matters.

One Size Does Not Fit All, Need for a Vision

The review of international experience demonstrates that there is no single model that works with respect to migration policies. The complex nature of migration issues means that many institutional actors, both government and non-government, are stakeholders to a certain degree and claim a seat at the table on migration matters. The review also shows that many countries have only recently attempted to establish better organisational models for migration management, and in many cases the jury is still out with respect to what works best and under which conditions. Conversely, available evidence shows that lack of action is also counterproductive. Pitfalls to be avoided include: continuing to deal with migration as a border security issue, for countries that are large importers of migrants; assigning migration matters to departments within ministries without sufficient clout; and at the other extreme, the appointment of high-level commissions that are largely ceremonial and equally ineffective. Some of the more interesting examples point to the advantage of a single-mandate agency to help coordinate government policies and provide a focalised access point for action to help migrants in their destination countries. The Kyrgyz Republic, with the support of the Central Asia Regional Migration Programme (CARMP) of the IOM, is currently experimenting with the establishment of the pilot Center for Employment Abroad in the Ministry of Labour. While the principle of piloting a new institution is to be commended, a bolder long-term vision could benefit Kyrgyz migrants. Possible innovations include establishing an agency with a high degree of autonomy and a clearly defined mandate to protect labour migrants during all stages of the migration process. The agency could be called the Labour Migration Protection Agency (LMPA). Its responsibilities would include: oversight of the activities of employment intermediaries and screening their selection; coordination of pre-departure education, including language, cultural, financial, and legal training; support for diaspora organisations to help with job placement, safe housing and transport, and reinvestment at home; and an active presence in Kyrgyz consular sections in destination countries, with honest helpful staff to assist with legal, medical and immigration problems.

The Kyrgyz Republic would be well advised to recognise and mitigate the weak state of its institutions and the ever-present potential for abuse by bureaucrats. It is important to ensure that, within the governance system of the LMPA, adequate representation and accountability is provided for stakeholders outside government through direct representation of migrants and their families on an advisory policy-review board within the agency, as with Mexico's IME or El Salvador's CONMIGRANTES. The agency and board

should be held to the most exacting standards of transparency through periodic reporting and ease of access to information. It should establish mechanisms such as an ombudsman for redress by affected parties. These measures would discourage arbitrary or corrupt behavior by agency officials. A reasonable objective would be to establish the LMPA within five years, with the active support of the international community.

need for a “Migration Lens”

The proposed LMPA cannot be burdened with an excessive mandate or it could risk losing its focus and diluting its mission. This then begs the question of how to incorporate migration-related considerations in other policy areas likely to affect the developmental outcomes of migration. One possibility could be the establishment of the Office of the Migration Advocate (OMA) as a small unit attached to the office of the Prime Minister. The OMA should have a clear mandate to review major policy initiatives in the areas of education, financial market reforms, and social protection, with a migration lens to evaluate the likely effects of proposed policies on migration outcomes. The OMA would remind sectoral agencies to evaluate the likely effects of new policies on migrants and their families and on migration and remittance transfers. The OMA could assess proposed reforms in the education sector, and, if necessary, point to missing or inadequate provisions for the education of potential migrants and their children, and propose improvements.

The OMA should not be constructed as a massive bureaucracy. In fact, the small secretariat could leverage the wealth of international experience provided by international partners already collaborating with the Kyrgyz Republic. Its mission would not be one of writing laws and regulations but rather of advocating for migrants. While a similar body has not been implemented as an autonomous office in any of the countries that we reviewed, it functions in different capacities in a number of agencies. It would be worthwhile for Kyrgyzstan to experiment with such an innovation.

Leadership is Key

A crucial element that appears from the review of international experience is the need for effective leadership. No agency will be effective or sustainable without substantial support from the top. It is imperative that the highest authorities of the country send a clear signal about the importance of migration as a national priority. Should the Kyrgyz Republic establish the LMPA or OMA, the leadership of these agencies should be selected based on criteria of professionalism, integrity and passion for the rights of migrants.

International Cooperation is Essential

The Colombo Process shows the benefits of engaging in a cooperative forum among sending and receiving countries. Most Kyrgyz migrants in the near future will continue to choose the Russian Federation and Kazakhstan as their preferred destinations. Existing regional collaboration should be strengthened which would benefit all countries concerned. The

MIRPAL network provides a blueprint that could be expanded. Technical discussions could be supplemented by more open consultations on future policy developments.¹³⁰

Information and Evaluation

None of our recommendations can be effective without accurate information. The Ministry responsible for labour migration must develop a database on all legal and return migrants, and it should conduct regular surveys of potential migrants, migrants in the destination countries, and returned migrants and their families. Periodic community surveys are also needed to assess the impact of migration and related policy on communities. Without accurate and updated data, it will be impossible to assess the economic and social impact of labour migration and the effectiveness of laws and regulations on labour mobility and human rights. However, good data collection is only the first step in assessment; the government needs to develop the capacity to analyse the data it collects. This may involve training government employees or local academics and consultants, as well as improving local education and reducing corruption at academic institutions. This investment in information and human capital will have long term benefits leading to the effective development and implementation of migration policies in the Kyrgyz Republic.

Social welfare

A concern of labour migrants returning to the Kyrgyz Republic is the impact of their migration on their pension and security. A migrant in Russia does not contribute to the Social Fund in the Kyrgyz Republic; his wages abroad are not documented in his Labour Book. This means that his pension will likely not reflect many years of work and will be considerably lower than if he had not migrated. There are two solutions to this problem. The first is to allow emigrants to contribute to a pension fund while overseas. The Non-Resident Keralite Welfare Act of 2008 mandates that the Kerala government provide a pension scheme to migrants. The participant pays into the fund for at least five years and payment can come from abroad; the participant then receives a pension after the age of 60.¹³¹ A second solution is to lower the cost of saving for migrants. The cost of saving and remitting money home is low for Mexican and Salvadoran immigrants to the US and Canada. The Mexican government has no programme to provide pension benefits for return migrants, but it does offer subsidised mortgage loans for migrants and encourages money transfer organisations to contribute to community welfare programmes.¹³²

¹³⁰ Annex A compares our recommendations to those of the Strategy report commissioned by the Department of External Migration of the Ministry of Foreign Affairs of the Kyrgyz Republic, in close consultation with international experts.

¹³¹ Migration Forum in Asia (MFA), Programmes and Services for Migrant Workers and Members of their Families in Three Indian States: Kerala, Andhra Pradesh, and Tamil Nadu. (Quezon City, The Philippines: MFA, 2012).

¹³² Abdul-Ghaffar Mughal, Migration, Remittances, and Living Standards in Tajikistan: A Report Based on the Khatlon Remittances and Living Standards Measurement Survey (Dushanbe, Tajikistan: International Organization for Migration (IOM), 2007); and Javier Díaz de Leon, "Migration, Cooperation and Development: The Role of the Mexican Government," Presentation at the Center for Strategic and International Studies. (Washington, DC, January 11, 2011).

Health and safety are concerns, and several of the reviewed countries have adopted programmes in this area. Bilateral agreements that are enforced work best. A bilateral agreement between Korea and the Philippines guarantees Korean social services to legal migrants. US law requires employers to abide by safety regulations and hospitals to provide emergency health care to migrants and their families.

We recommend that the Kyrgyz Republic adopt a more pro-active approach to the support of migrants and their families. Transparent financial institutions promote savings. Mobile banking makes money transfers easier and cheaper. Bilateral agreements on social security, health and safety can work if mechanisms are in place to monitor and enforce the agreements. Without the institutional capacity to enforce regulations, it will be difficult to make progress on the social security and welfare of returned migrants and their families. Without protections, migrants will have less incentive to return to the Kyrgyz Republic.

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Appendix. Comparison of the Preliminary Strategy for Reform of Migration Policy to Anderson-Barbone Recommendations.

The preliminary labor migration strategy for the Department of External Migration (Ministry of Foreign Affairs) in the Kyrgyz Republic outlines a legal and institutional framework to protect the "rights and interests" of labor migrants to destinations outside the Kyrgyz Republic and to ensure that the jobs that they acquire meet expectations for decency and protection. The framework focuses on protection of migrants, efficiency, and effective and transparent management. We describe these three broad policy goals and recommendations to achieve these goals. We briefly explain how our conclusions compare to these recommendations.

1. Protect the rights of labor migrants abroad
 - a. Strategy: Appoint a labor attaché to the diplomatic mission in each destination country. The attaché would protect migrant rights, help with employment search through knowledge of the local labor market and data collection, work with local agencies to facilitate job matching, and report on migrant needs and recommend policy adjustments.
 - We recommend that consular offices offer more services to migrants. This could be through a labor attaché or an agency (El Salvador, for example). Consular officials must place the interests of migrants ahead of their own financial concerns, and their activities must be transparent.
 - b. Improve regulations: review laws, conduct surveys, improve intra-agency coordination.
 - All laws and regulations must be periodically reviewed. We recommend modernizing the information system in the Department or Agency that addresses the concerns of labour migrants. Periodic surveys of potential, return, and

migrants in destination countries are necessary to evaluate the reasons for and effects of moving, the conditions under which they and their families live, and the effectiveness of policies and regulations.

- c. Develop a system of social and health insurance for migrant workers and their families
 - We recommend improved transparency in financial institutions and greater use of new mobile banking technologies to facilitate the transfer of resources across borders. We recommend bilateral agreements to monitor and enforce health and safety standards and to provide migrants with access to local health and education services. Examples from the US, Canada and Korea show that these agreements are possible. Incentives to save for retirement should be considered including a plan similar to the one in Kerala that allows migrants to contribute to their retirement plan while abroad.
- d. Initiate more bilateral and multilateral agreements on labor migration
 - We support bilateral and multilateral agreements for job matching, occupational safety, and the provision of basic social services to migrants and their families. We present several examples of effective agreements. We also support agreements that can be enforced to monitor and reduce human rights abuse and trafficking.
- e. Prepare workers for the external labour market and help improve their working conditions abroad: training, departure preparation, regional information centers.
 - We propose policies to prepare workers for jobs overseas and to help them adjust to new living conditions. These policies include training programs and pre-departure preparation. We strongly support language training. Kyrgyzstan citizens who go to Russia and are not fluent in the language are at great disadvantage in job negotiations and are more prone to abuse. Considerable research over several decades has shown the value of language and cultural assimilation for earnings and the standard of living of immigrants. We also support mechanisms to create job and safety information for potential labour migrants in all regions of the country.
- f. Expand transparent public and private partnerships including collaborations with diaspora, a Public Council on Labor Migrants Abroad to coordinate interaction, and the use of private agencies to foster good employment connections.
 - We support the development of programs that would motivate the diaspora to contribute to community development and assist new immigrants in finding good jobs and living conditions. There are many examples of successful diaspora programs throughout the world.

We also provide many examples of the effective use of private and public organizations to help match workers to good jobs in other countries. This policy must be accompanied with a monitoring program. Effective use of agencies in other countries includes close monitoring of the activities of these agencies.

2. Implementation

- a. Coordination by the Ministry of Foreign Affairs of the activities of various ministries in the Kyrgyz Republic, state administrators, local governments, NGOs, and international organizations

- We think that, as in most countries, emigration should be monitored by the Ministry of Foreign Affairs. Local and state administrations can facilitate migration and reentry and help the diaspora, through Hometown Associations for example, develop local communities.
- b. Create a consultative body of all participants {Supervisory Board for the Migration Strategy] to provide coherence to the strategy and reduce implementation barriers. Activities include institutionalizing conditions, analysis and evaluation of policies, financial support, and monitoring.
- We support the development of a consultative body such as CONMIGRANTES in El Salvador which includes the participation of migrants and community leaders in the formulation of effective policy.
3. Monitoring and evaluation: coordinated by the Ministry of Foreign Affairs. This is connected with part 2 above. Intermediate resource inputs would be provided. The execution of the plan would be monitored and the results evaluated and transmitted to the Ministry. We support programs to collect data, monitor effectiveness of policy and control corruption.
4. There are risks to the strategy.
- a. Economic: An action plan cannot be implemented because of inadequate financing.
 - b. Organizational: A lack of capacity in public agencies means that good policies cannot be carried out efficiently or with transparency.
 - c. Lack of inter-agency collaboration or coordination is related to b; it prevents good policies from working as planned.
 - d. Socio-economic: The government in the Kyrgyz Republic must be prepared to respond to changes in global demand for labor at all levels of skill. Without the capacity to evaluate markets and prepare workers for available jobs, migration policies will not be effective.
 - e. Information: There is a lack of reliable information on the job market in destinations and the needs of migrants. This problem must be addressed.

All of these concerns are addressed in our report. We also want to stress that implementation of good migration policy takes time and experimentation. The Philippine policy has evolved over 25 years; the Kyrgyz Republic cannot develop a fully functioning migration policy overnight, but it can begin to make progress.

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