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# **Discrimination against Migrant Workers 2007-2010: Trends and Challenges**

**Final report**

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## Introduction

### Scope of the report

The remit for this report was in a sense summed up by Ibrahim Awad, when he wrote that “Discrimination, violence and xenophobia, coupled with reduced demand for labour in times of crisis, result in migrant workers carrying out jobs at poor terms and conditions of employment. Unfortunately, information does not exist that provides evidence of such a situation” (Awad 2009:39). This missing information is to be collected and presented in this report, even if sketchily and incomplete.

The report is global in scope but very limited in time covering only the years from 2007 to 2010. It is based on a literature search and on data analysis, both of them extremely limited in scope. There is very much more material out there than this report could absorb. In many instances the need for updates on the published material is obvious. This would require first hand information from ministries, enterprises, worker organisations etc, i.e. considerable numbers of interviews. Examples do not amount to proof but a formal test of hypotheses is beyond the scope of this report.

Rural-urban migrants are sometimes also reported on in this paper. The main reason is that migration is not always free, and migrants, although citizens, may in the cities not always enjoy the same rights as non-migrants. One such case is China, and this is a particularly conspicuous one as, perhaps, there has never been a greater migration in the world than the current one within this one country. For this and other reasons it has been receiving special attention from the international community. “Extensive discrimination affects the internal migrants who make up an increasing share of the labour force in urban areas. An estimated 120-150 million people originally from rural backgrounds are employed in China’s cities or in other booming coastal areas far from their hometowns and villages. It is estimated that another 7 to 10 million new migrants head towards the cities every year, and that 60 percent of them take up jobs outside their home province” (ITUC 2008a:11).

### Selection and presentation of material

More material is being presented on some countries, less or none on others. Since the time frame for the report is 2007 to 2010, the abundance of material depends to some degree on which countries were visited or observed by human rights or other organisations in this period. Whether they were is partially accidental but may also at times reflect a certain sense of alarm.

No news is good news, presumably, but can also be the result of particularly stringent controls on the media and on international observers. There are other reasons, too. It will be noted, for instance, that very little material on Africa south of the Sahara is being presented. This is probably due primarily to an international lack of attention and should be remedied.

Rather than merely giving the references it lists almost all of the quotations that form the evidence. This will hopefully make the issues more accessible, although it also makes the report more voluminous.



## Chapter 1: The recession and its impact on migrant workers

### Not all migrant employing economies are equally affected by the crisis

The crisis that broke out in 2008 had its severest impact on output during the six months from October 2008 to March 2009. After that an increasing number of economies began to grow again. The effects on the labour market may not be felt until some time later, especially if growth remains slow for a prolonged period.

The crisis did not affect all parts of the globe equally. The best indicators to show which were affected more and which less are GDP or GNI per capita at fixed prices. By mid-2010 these indicators were only available up to 2007 (see <http://data.un.org/Search.aspx?q=GDP+per+capita>, 2010-06-07). All data beginning from 2008 are estimates and forecasts that may be subject to substantial revision.

Individual countries employing sizeable numbers of migrant workers were affected to various degrees. The following growth rates are based on data from the World Economic Outlook (IMF 2010) database (<http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/index.aspx>, 2010-06-07). The percentage growth figures were computed from the time series of gross domestic product per capita at constant prices in national currency units.

South, Southeast and East Asia:

Most migrant-employing economies in the region probably shrank, in 2009, usually by about 3%, although there are exceptions. Labour migration so far is either within or from the region but hardly into it. Strong population growth in some of the countries and considerable reserves in agriculture have helped to satisfy labour needs regionally.

- India: Growth after 2002 was strong and is expected to remain so. The IMF estimate even for 2009 still predicts more than 4%. India still has large labour reserves in agriculture but has nonetheless been receiving migrant workers from its eastern neighbours as well as from Nepal and Bhutan.
- Korea: The economy is expected to keep growing at about 4% annually. The crisis in important export markets temporarily slowed growth, in 2008 and 2009, when it may have been only 2% and about zero, respectively.
- Malaysia: After the 2001 recession the economy grew by 3% to 5% between 2002 and 2007 and is estimated to have grown by slightly less than 3% in 2008. In 2009, it may have shrunk by about 3.4%. From 2010 to 2015 it is expected to grow by 3% to 3.5% annually in real terms.
- Singapore: The economy shrank considerably, in 2001 (-5%), but grew between 3% and 5.5% in most subsequent years. In 2008, it may have been slightly negative, and considerably so in 2009 (-3.7%). Growth until 2015 is expected to start out at close to 4% in 2010 but to decelerate to less than 3%.
- Thailand: The economy grew by 4% to 5% in most years from 2002 to 2007, and by 1.6% in 2008. In 2009 it is estimated to have shrunk by 3.2%, and in the six years from 2010 to 2015 it is expected to grow by 4% to 4.5%.

Middle East and North Africa:

In per capita terms the economies in the region have been growing unevenly. A number of large-scale migrant employing economies in the region have been experiencing much short-term volatility in the past decade. This is not like the boom-and-bust cycles seen in Latin America, but year-to-year. Kuwait, Libya, Morocco, Qatar, and the Emirates are affected. Growth forecasts can only

predict the trend, not the short-term swings. Being used to the volatility an economic decline may not immediately trigger pressure on migrant workers. By contrast, as will be seen farther below, there are longer term policy shifts to be observed in the region that are likely to engender discriminatory tactics in order to squeeze migrant workers out of employment, the labour market, and the country.

- Bahrain: According to the IMF's estimates the economy underwent an extreme recession indeed, in 2009. Since 2000, growth had been between 3% and 6% except 2002 when it was about 2%. In 2010 and 2011, the economy is expected to grow slowly and to return to about 3% after that.
- In Israel estimated growth of real GDP/capita was negative, in 2009, (-1.5%), and is expected to be between 1% and 2% between 2010 and 2015. If the projections hold up, the depression will have been minor in comparison to 2001 and 2002 but renewed growth will also only be half the level of 2004 to 2007.
- Jordan: After 2003 real per capita growth was around 6% until 2008. In 2009, the economy may have nearly stagnated. It is expected to resume growth, though at only half the pre-2009 pace. Due to the war in Iraq Jordan received large numbers of refugees that are now working in the country.
- The Kuwait economy probably shrank by about 5%, in 2009, is expected to grow by about 1%, in 2010, and by close to 3% in the following years until 2015.
- Lebanon: Because of the complicated political situation the economy has gone through ups and downs unconnected with the economic climate in the region or the world. Its performance 2007 to 2009 is estimated to have been strong – about 7.5% annually. Until 2015 a growth path at a level of about 3% is being expected by the IMF.
- Oman: The economy has been going through ups and downs but probably escaped a recession in 2009-2010. 2008 may have been the best growth year in a long time (7%). Until 2015, only weak growth is being expected.
- Qatar: The economy probably shrank both in 2008 and 2009 in the vicinity of 2%. Up until then it had been experiencing considerable volatility in the range between -2% and 12%. Forecasts after 2011 are currently severely negative but their chances of becoming true should not be overestimated.
- In Saudi-Arabia estimated growth of real GDP/capita was negative in 2009 (-2.3%), and is expected to accelerate from 1.4% in 2010 to 2.6% in 2015.
- Syria: After taking a hit, in 2003, from which it quickly recovered the economy kept growing moderately at about 2%. If the estimates hold up, 2008 will have been better than usual (2.6%) and 2009 somewhat below form (1.5%) but without a recession. The IMF expects performance to improve to about 3% after 2010. Like Jordan, Syria received large numbers of refugees from Iraq that are now working in the country.
- In the UAE the economy may have shrunk by 3.6%, in 2009, and by 1.7%, in 2010, but is expected to go from zero growth in 2011 to 1.7% in 2014 and to grow at greater speed after that.

### Caribbean, Central and South America:

There are not many economies in the region employing recent international migrants. Among the few the growth performance in the crisis has been diverse. From about 1960 until very recently, labour migration was either within or from the region but not into it. Only in the last couple of years are there signs of migration from Africa to urban areas in Argentina, and perhaps to Brazil.

- Argentina: The economy famously took a dive in 2001-2002 but has been performing strongly since then. As of April 2010, the IMF thought GDP/capita growth had in real terms been near zero in 2009 (-0.1%), would be 2.5% in 2010 and only about 2% in each of the next five years. This moderate growth would normally not expand the labour market much if at all.
- The Brazilian economy had difficulties in 2001 to 2003, and again in 2005, but grew by about 4% the other years of the decade. It may have shrunk by about 1.2% in 2009, and is expected to grow by between 3% and 4.5% between 2010 and 2015.
- Costa Rica: The economy performed poorly in 2001-2002 and again in 2008-2009. In 2009, it may have shrunk by almost 3%. It is expected to grow little in 2010 but to pick up steam in subsequent years to return to about 4%.
- Dominican Republic: Itself a migrant source country it is also an important employer of migrant workers from Haiti. It grew rapidly in 2005 to 2007, more slowly in 2008 to 2010, and is expected to grow at about 8% annually after 2011.
- Venezuela: Real per capita GDP is thought to have shrunk by about 5%, in 2009. The recession is expected to continue for several years and to be followed by several years of stagnation. The economy had also suffered in 2002 and 2003 shrinking by about 10% in each of these years. 2004 to 2007 growth was strong, although slowing successively to 6%, and in 2008 it is thought to have been 2.7%.

### North America, Europe and CIS:

Growth in the area was almost uniformly negative, in 2009, ranging with few exceptions between -2.5% and -7.5%. Poland stood out for not going into recession, and Switzerland for doing only moderately so. Most economies are expected to grow moderately in 2010. Only few of them are currently being expected to start growing enough before 2015 for labour demand to expand. The few are Slovakia, Poland, Slovenia, the Czech Republic, and Sweden. All others are forecast hardly to exceed 2% real growth in the period if at all. In the CIS most labour migration is south to north. Within the EU, where it also used to be south to north, it is now predominantly east to west. Immigration into the EU, today, originates from most parts of the world, not least from North Africa, West Africa, the Horn of Africa, South Asia, and Latin America.

- Ireland: While it would not be true to say that more recent migrant-employing economies in the EU were generally the hardest hit Ireland is a case in point. Recruitment in predominantly Catholic countries in Eastern Europe began in the mid-1990s. Its per capita GDP shrank by an estimated 4.9%, in 2008, and by 7.4%, in 2009, and is expected to shrink some more in 2010. Ireland's further growth performance is expected to remain below 2%, insufficient for the labour market to expand.
- Other severely affected economies include Italy and Spain, both of them with 20-year-histories of labour immigration, but also Luxemburg and Denmark, the UK and Sweden with much longer histories. Other countries with relatively recent immigration histories in Southern and especially in Eastern and Central Europe were less affected.

- The US and Canadian economies shrank by about 3.5%, in 2009, and had shrunk by less than 1%, in 2008. They are expected to grow by 1% or 2% annually in the next several years.

Africa south of the Sahara:

There is practically no immigration into the region but considerable labour migration within it and from it to other parts of the world. Data on migration within the region are not particularly reliable. For several decades Côte d'Ivoire and Nigeria were the main destinations for migration within West Africa but Côte d'Ivoire has become less attractive. South Africa remains the important destination of labour migration in the southern part of the continent. Mauritius is also noteworthy but relies much more on Southern Asia than continental Africa for additional workers.

- Côte d'Ivoire: The economy was in recession from 2000 to 2008, and is expected to grow only very moderately in the next several years.
- Mauritius: In years of weak growth (2002, 2005, 2009) real GDP/capita grew by less than 1% while otherwise growth was between 3% and 5% and is expected to continue in this vein.
- Nigeria: Since 2000, the economy has been growing fairly reliably by between 3% and 4.5% and sometimes more. This is expected to continue. Growth in 2008 and 2009 is also estimated to be around 3%.
- The South African economy is estimated to have been in recession (-3%), in 2009. From 2005 to 2007 it had grown by more than 4% annually. After 2010 it is expected to grow by about 3% annually.

Evidently the crisis is global but has not been felt evenly around the globe. The richer economies and those in the Gulf have by and large been affected considerably more than the middle- and the low-income economies. For them this is the worst crisis since 1945, since they had not felt other recessions as much. The novelty of the experience could result in postponing harsh measures in the labour market for a few years. In economies with more recession experience, accumulated especially in the last two crises (1997, 2001-2002) but in some cases also intermittently, business may continue as usual including also the continuation of 'accustomed' practices regarding migrant workers. If so, any new developments in the treatment of migrant workers are more likely to occur in some of the high-income economies. Basically the verdict of early 2009 remains true in mid-2010: "It will take more time for the full scale of the global economic crisis to unravel and for its impact on the cross-border movements of labour, their conditions of employment and possible return to become manifest" (Abella/Ducanes 2009:1).

### Crisis impacts on the number of migrant workers: data issues

Observing migration is a challenge. If migrant workers leave the country of erstwhile employment, their dropping out of the labour market and the labour force will not become visible in the country's labour force participation, employment or unemployment rates, not even in those of the migrant population by itself. Instead they show up in another country's population base, unemployment, and perhaps employment, at least theoretically. In practice, the return migrants may simply be too few in number to make a dent in the other country's rates.

Given past experience there are good reasons to expect that migrant workers might leave crisis areas, but one question is for how long, and another is whether there are the data to tell.

Any estimate of how migrant flows are related to the crisis comes up against a number of difficult issues. The first is outflows from countries of employment, the second is return to the same country of employment, the third is migration to another country for employment. Three scenarios should briefly be sketched:

1. Migrant workers might be leaving the country of employment in droves at a particular moment but might all return later after the dust has settled. The crisis impact on the population size would be temporary. Depending on how frequently stock data are collected, it would become visible or not. If there are flow data they will show more going and more coming than usual. They might even be able to show which was first, the going or the coming. An example is provided by the last big crisis in Argentina: “Immigration to Argentina slowed down (and a return migration flow probably occurred) by the year 2000, when Argentina experienced one of its worst economic crises ever. However, a couple of years later, with the devaluation of its currency, a more favourable external situation and changes in macroeconomic policies, the economy began growing at high rates and consequently labor demand for immigrants (in sectors such as construction, manufacturing, commerce and personal services) significantly expanded. Unfortunately there is no updated data on migrant stocks that will provide a more solid evidence of this recent immigration trend [fn 23: One indirect piece constitutes the large numbers of immigrants who recently were regularized]” (Cerrutti 2009:9-10). The interval between leaving the country of employment and returning to it to resume work can be considerably shorter than “a couple of years”. Dubai, in 2009, got bailed out much faster than Argentina in 2000.
2. In another country of employment workers may not be leaving in unusual numbers but may face difficulties in returning to the place when they are ready to do so. In this case the crisis impact on population numbers would become visible only after a time lag. In this scenario the impact on migrant workers could be different from the impact on the economy in which they worked. The economy might suffer a permanent loss but the migrant workers might become employed in a new country.
3. In still another country of employment migrant workers might be leaving in fewer numbers than usual exactly because of the crisis. Several reasons could account for this behaviour. Firstly, workers might fear difficulties of re-entering. Secondly, origin countries could also be hit by the crisis, and post-crisis prospects may be judged better in the country of employment rather than the country of origin. Thirdly, migrant workers are often refugees, either legally so or de facto, and cannot leave or at least cannot go back to where they came from. Fourthly, workers may simply have no ‘home’ to go to other than where they are now and have been for a long time. So they stay put regardless of their economic fortunes unless deported.

These movements are extremely hard to follow, more so if workers move more than once within a reporting period. Return migration is among the trickiest problems of international migration statistics, and so is onward migration. Because of the difficulty of locating return or onward migrants in a population there is also next to no research on the causes or effects of such migration.

Measuring either flows or stock changes of migrant workers presupposes a definition of both ‘migrant’ and ‘worker’. While there is a UN definition of the former and an ILO definition of the latter national data providers often have trouble sticking to them. The small print does not always say that very clearly. Comparability of measurements between origin countries and countries of employment has therefore remained a large unresolved issue.

In the UN Population Division’s estimate of currently about 200 million migrants, and the ILO’s of about 100 million migrant workers, refugees are included. At national level it is not always clear who is included and who is not. The term ‘refugee’ itself is also used inconsistently. It is often unclear whether it covers only those officially recognized as enjoying protection under the 1951 Geneva Refugee Convention or a broader section of the population, and, if so, how much broader.

In the literature ‘migrant’ and ‘migrant worker’ are often used synonymously making it hard to pick apart information actually referring to workers as opposed to non-labour migrants. It is also often not clear if literature refers to migrants or to the children of migrants that are not actually migrants themselves, although the country they live in may treat them as if they were.

In Asia the expression “migrant workers” is sometimes used to denote migrants on temporary contracts only. The definition of “temporary” is often unclear, though. Extreme care is necessary in interpreting data and reports not to be misled by inconsistencies between the expressions used and the actual fact described.

### Are migrant workers leaving crisis-hit labour markets?

What evidence there is appears to suggest that the pull of a well-performing home country economy has greater impact than the push of a host economy crisis. The latter may be expected to be only temporary, short enough to be sat out. Further, measures to curtail the issuing of permits to workers residing abroad, perhaps specifically in order to protect workers currently in the country, and stepped up border enforcement may make return intended to be temporary too risky and effectively lock migrant workers into the host country. If there is a penalty for leaving, i.e. risk of being excluded for good, and a reward for staying, i.e. protection from new or repeat immigrant competition, migrant workers will not be likely to take a chance. Finally, some governments appear to only have waited for the opportunity and used the crisis as an excuse for attempts at expelling migrant workers that, of course, often only result in driving them into an irregular status.

Four notable points were made in November, 2009:

- “Global developments show that migration flows are expected to be reduced temporarily, but may pick up again after the crisis. Given economic and demographic trends in the key countries of destination, it is not expected that the fundamental trends towards increased migration would be reversed. At the same time, push factors for international migration continue to exist. This calls for regional solutions to mitigate the effects of the global economic crisis on migration and the migrants themselves” (UNESCAP 2009:4).
- “The situation of migrant workers laid off requires special attention. In many cases they may not be able to pay the return ticket or in worst case may still have to repay debts taken to cover the recruitment fees they had to pay to agents. Countries of destination may consider ways to assist migrant workers such as subsidized air tickets and extending the grace-period for remaining in the country legally before finding a new job” (UNESCAP 2009:5).
- “For sending countries the crisis shows that they have to protect the migrant workers from their countries more than ever. The crisis also alerts that it would be time to revise current practices, such as the high fees the migrants have to pay to recruitment agencies. Better governance of migration would be necessary to avoid such situations in the future” (UNESCAP 2009:5).
- “Overall, experience from previous crises has shown that migrant workers cannot be fully substituted by local workers. It can therefore be expected that the demand for migrant workers would continue in the times of the crisis, although at a slower pace” (UNESCAP 2009:5).

The listing below contains, both, cases of workers leaving and of being given incentives to stay.

#### Argentina

“With the purpose of improving the human right situation of migrants who have been living as undocumented in Argentina, a regularization program was put in place in April of 2006 (Patria Grande Program). Since December of 2007, 565,831 individuals were regularized [fn34: Argentina’s migratory new open policy, not only is the first initiative in the region but also constitute a significant change compared to Argentina’s regulations in the past. Historically this country applied a selective and restrictive migratory policy toward nationals from neighbor countries. As a consequence of these policies and relatively permeable border, the size of undocumented migration was high and pervasive. The regulation of migration was highly connected to the political situation: more restricted under military governments and more open under democratic ones. Several amnesties

(1958, 1965, 1974, 1984 and 1992) to undocumented migrants were granted, all with the purpose of reducing illegality and improve migrant integration]. Acquiring residency – either temporary or permanent – under this program is relatively easy and does not take a long time. Migrant have to present an update personal ID, a certification of entry to Argentina, and proves of no criminal records in both their countries of origin and in Argentina. They have to pay a fee of about 67 dollars in order to obtain the residency. No intermediaries are needed to process the paper work” (Cerrutti 2009:19-20).

“It is too early to establish the consequences of this massive regularization program for the lives of regional immigrants residing in Argentina. However, some improvements are expected particularly regarding the labor conditions of immigrants. Becoming either temporary or permanent residents will allow them to be protected by labor regulation. If hired by formal employers they will obtain fringe benefits at work (including social security). In addition, migrants’ regularization will help to reduce negative orientations of the general public toward immigrants. These new orientations and policies towards international migrants have been also accompanied by public campaigns to increase tolerance and to ban discrimination” (Cerrutti 2009:20).

#### Austria

With a much reduced net intake of migrant workers, in 2009, the country, by mid-2010, had entered into a government-initiated debate on future migration needs that included both quantity and quality issues.

83 percent of the 2009 reduction in net intake was attributable to increased departures, only 17 percent to fewer arrivals. This varied somewhat by citizenship. While among non-citizens in total 79 percent of the reduction was due to increased numbers of departures, the share was only 65 percent among citizens of the EU15 and EFTA countries but 86 percent among all others. Among the latter group shares varied widely between next to none of the reduction being due to increased departures, like the 3 percent in the case of Bosnian citizens, and the increase in departures being considerably greater than the reduction in net intake, like the 136 percent in the case of Bulgarian citizens. In the case of Germany, that had become by far the most important single source country of new migrant workers, 52 percent of the reduction were due to the rise in departures. Whether those leaving were employed, unemployed, or inactive prior to departure is not known. There were no policy changes that could account for the greater number of departures, and public belief appears to be that fewer arrivals were the cause of the net reductions.

#### Gulf countries

“According to Saudi Arabia’s General Statistics department, over 8 million migrants work in the kingdom [fn 9]. They comprise roughly one-third of Saudi Arabia’s population of 24.7 million [fn 10]. Indonesia, India, and the Philippines each contribute over one million workers to Saudi Arabia and more than 600,000 come from Sri Lanka” (Human Rights Watch 2008c:15). There is considerable uncertainty, though, about the number of household workers, and among them especially of domestic workers, and consequently of the actual total (Human Rights Watch 2008c:15-16). Given Saudi law a noteworthy change in the official figure is unlikely, since households have to give permission to leave and may instead chose to lower the wage or stop paying it altogether.

“To date, many companies have not massively laid off workers, but rather sent their workers on extended – and unpaid – leave, on the one hand to save separation cost, on the other hand aware of the fact that once migrant workers are sent home, hiring new migrant workers would be costly” (UNESCAP 2009:3).

#### Israel

“Unlike the construction and agriculture sectors, where originally foreign workers were meant to replace Palestinian workers from the Occupied Territories, the recruitment of foreign workers in the

nursing care sector created ex-nihilo an occupational ‘niche’ of live-in migrant women caregivers, who are managed by private service providers and manpower agencies. The employment of foreign workers, mainly Filipino women, was restricted to private homes, and was aimed at enabling a shift of the geriatric care system from geriatric institutions and hospitals to care in private homes while at the same time saving up to fifty percent of the costs of elderly care. The institutional infrastructure and rationale for employing foreign workers was established with the formulation of the Long-Term Care Insurance Program (LTCIP) in 1986 and its subsequent implementation in 1988. Under the LTCIP, the National Insurance Institute (NII) provides the financing for long-term care services to seriously disabled, chronically ill, elderly people living in the community. The services include non-professional personal care, such as assistance in dressing, bathing, mobility, feeding, administering of medications and general attendance, as well as help in home-making activities. Clause 8 of the LTCI Bill stipulates that the program provides benefits in kind and that the services are to be provided by non-governmental agencies. According to the Ministry of Finance, which originally pushed for the inclusion of the clause, benefits in kind, and not cash, were to serve as a means of cost containment and allowed the state to develop a market of private-care service suppliers regulated by governmental agencies [fn 11]. Demand for foreign workers, in what was to become the largest employer of foreign labour in years to come, was thus created both by the fact that the LTCIP was from the outset an underfunded social program and by the fact that subsidies were allocated through private for-profit brokers (Kemp 2010:9-10).

“Recent years have seen an increase in the share of women coming from India and Nepal. In 2006, women made up 47% of the entrants with work permits from India and 83% of those from Nepal; in 2007 their share grew to 52% and 87%, respectively. Indian and Nepalese women entering Israel with permits are considerably younger than their Filipino counterparts. Thus, for example, 18.2% of Nepalese are between the ages of 15-24, and 35.2% age 25-29, in comparison to 5.9% and 21.9% among Filipino foreign workers with permits [fn 14]. However, to date there is not empirically grounded research on the sociodemographic characteristics of these groups and their working conditions in Israel. Given their lack of proficiency in English (or Hebrew), advocacy organisations on migrant worker issues have repeatedly warned of the vulnerable situation of Indian and Nepalese women and reported violations. Apparently, an informal hierarchy has evolved in the home-care sector wherein the most dependent disabled elderly are assigned to migrant worker women from these countries [fn15]” (Kemp 2010:11).

## Japan

“According to one study, an estimated 50,000 Brazilians, or about 17 percent of all Brazilians in Japan left the country between September 2008 and June 2009. A small portion of this group likely participated in Japan’s pay-to-go program” (McCabe et al 2009).

## Latin America

Anecdotal evidence suggests that new labour migration flows have come into being in Latin America: “Hondurans and Guatemalans crossing to El Salvador for agriculture and construction work; Bolivians and Paraguayans working in large numbers in Argentina; Mexicans from the state of Chiapas moving to the Yucatan for work, with Guatemalans replacing them at even lower wages to harvest Chiapan crops; ... The data and tracking needed to accurately record these trends is limited in Latin American countries” (Mazza/Sohnen 2010). Due to a lack of (reliable) intercensal population data we still see year 2000 data being reported as the most recent, in 2010 (Mazza/Sohnen 2010). Current sentiment is that “Intraregional migration [within Latin America] appears to have increased in a similar time frame as migration to Spain and Japan, but official statistics are thought to highly underestimate the flows, which may range from 13 to 30 percent of all migration originating in the region. As with migration out of the region, intraregional migration appears to follow global trends in which an increasing proportion of migrants are female” (Mazza/Sohnen 2010). “By qualitative indications from government sources, it is believed that in-

traregional migration has increased dramatically over the last 10 years”, i.e. since the year 2000 round of censuses (Mazza/Sohnen 2010), but the results of the 2010 round of censuses will not be known for several more years and may not be particularly successful at counting migrants in an irregular situation or migrants considering themselves to “really” be living elsewhere.

The earthquakes in Haiti and Chile, in January and February 2010, appear not to have impacted migration perceptibly (Mazza/Sohnen 2010). Haiti has established migration links to the U.S. while Chile has recently been both an origin and a receiving country albeit on a small scale.

“Women have increased their participation in international migration worldwide from 46.6% in 1960 to 48.8% in 2000. However, there is large regional heterogeneity in terms of both their share in different migratory streams and its evolution overtime (Zlotnik, 2003). In Latin America the percentage of women among international migrants grew from 44.7% in 1960 to 50.5% in 2000. Intra-regional migration in South America also experienced a process of feminization and today women’s representation among immigrants in the region is one of the highest in the world: 52.5% in 2000” (Cerrutti 2009:20).

It has been said that “scholarly work on this issue agrees in linking regional female increasing participation in international migration to two main processes: changes in sex roles, particularly a greater participation of women in public sphere including providing economically for their families; and a growing demand of immigrant labor in the service sector (particularly domestic services and caring occupations)” (Cerrutti 2009:23).

## Malaysia

Regardless of the business cycle Malaysia has a policy of reducing the number of migrant workers. “Malaysian Human Resources Minister S. Subramaniam reported in February 2010 that the number of legal migrant workers fell from 2.2 million in early 2009 to 1.6 million in early 2010. There may be another million unauthorized foreign workers, making migrants at least a quarter of the 11 million-strong work force. The Malaysian government aims to reduce the number of foreign workers to less than 500,000 by 2015” (Migration News 17/2, April 2010, [http://migration.ucdavis.edu/mn/more.php?id=3600\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3600_0_3_0), 2010-06-30). It is unclear whether the difference of 600,000 workers actually left the country and where they went. The policy is not easy to implement. When “economic growth resumed in fall 2009, manufacturers of electronics, furniture and other goods requested permission to recruit foreign workers. The government first urged them to raise wages to attract Malaysians, but later approved the admission of 100,000 additional migrant workers, an average 20,000 a month” (Migration News 17/2, April 2010, [http://migration.ucdavis.edu/mn/more.php?id=3600\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3600_0_3_0), 2010-06-30).

## Poland

“Some trade unions in Poland called for restrictions on the entry of non-EU foreign workers, mainly from Ukraine, Belarus, and China [fn 117]. They felt that this was necessary in order to make room for returning Polish workers, expected to lose their jobs in other countries of the EU [fn 118]” (Awad 2009:38).

## South-East Asia

“Countries in South-East Asia have recently turned from countries of net out- to countries of net in-migration. The countries of East Asia with their ageing societies and low fertility are increasingly becoming destination countries for labour migrants” (UNESCAP 2009:2).

“Most East and South-East [Asian] destination countries for migrant workers are taking into account the demographic developments in their economy and have not announced any fundamental policy change to their migration policy. So far, only Malaysia announced plans to reduce the number of migrants in the country. However, experience from the 1997 crisis has shown that a more

restrictive migration policy has not reduced the number of migrants actually staying in the country [fn 7]" (UNESCAP 2009:3).

#### South Korea

"The government took steps to reduce the employment of foreign workers by dramatically cutting the quota on foreign workers from 100,000 in 2008 to 34,000 in 2009. The policy change came amid slightly rising unemployment and against the backdrop of an increase in the number of immigrants in the workforce in recent years" (Fix et al 2009:55). "Director-General Lee Jae-Gap of the Ministry of Labor's Employment Policy Bureau stated in March 2009, "In the first half of this year, the ministry will manage the scale of foreign workforce introduction more strictly, because of the increasing number of the Korean unemployed and in order to protect the foreign workers who are already in Korea [fn 123]" (Fix et al 2009:56).

Of 317,000 male migrant workers employed in South Korea, in February 2009, "some 45 percent ... had E-9 work visas for low-skilled work, while 88 percent of the [163,000] female migrant workers present legally had H-2 work visit visas issued to ethnic Koreans in China" (Fix et al 2009:56). Thus the number of male E-9 employees must have stood at about 142,000 with a small number of women in addition. On June 1, 2010, the Ministry of Labour put the number of E-9 employees at 160,000. So obviously there had been no reduction in the preceding 15 months or it had already been made up for again.

#### Spain

"Migrant stocks from Colombia and Ecuador leveled off from 2005 to 2007 – and even, in the case of Ecuador, appear to have decreased. But growth in stocks from Bolivia, Peru, Venezuela, and Paraguay picked up. As with Ecuador, Spain began requiring visas for Bolivians in 2007" (Mazza/Sohnen 2010).

"In the wake of the global recession, these flows to Spain in particular have shifted. High unemployment rates motivated the Spanish authorities to create a voluntary incentive program, allowing migrants to receive their accumulated unemployment insurance benefits if they returned home" (Mazza/Sohnen 2010).

"As of April 2010, however, Spain's National Institute of Statistics (INE) reported that many Latin American nationals did return home in 2009, most of them independently of the unemployment insurance program, including 27,000 Ecuadorians, 20,000 Bolivians, and 12,000 Argentineans. In contrast, the number of Dominicans and Paraguayans in Spain actually increased 2.4 percent and 4 percent, respectively, over the course of 2009" (Mazza/Sohnen 2010). This is in spite of growth performance, since 2000, having been weak in Bolivia, mixed in Ecuador, and, due to catch-up after the previous collapse, strong in Argentina (from 2003 to 2008).

"In contrast [to Poland], other unions, such as in Spain, denounced reported quotas of forced monthly repatriations of migrants in irregular situations [fn 119]" (Awad 2009:38).

#### United States

There are some signs of migrant workers leaving the U.S. but the movement appears to have started before the onset of crisis. Primarily it seems to affect workers with citizenships of countries whose economies in recent years had a good press: Brazil and China. At the same time there are signs of fewer workers entering the U.S. but this movement, too, appears to have started before 2008.

"Migration to the United States and Europe appears to have slowed in the wake of the recent global financial crisis, and return migration to [Latin America] appears limited" (Mazza/Sohnen 2010). "Numerous reports have found that immigration flows from Mexico [to the U.S.] dropped from 1 million in 2006 to approximately 600,000 in 2009. This is largely a result of a decrease in

unauthorized-migrant flows, which have proven to be sensitive to this and earlier recessions” (Mazza/Sohnen 2010).

- “... the US Department of Homeland Security (DHS) now estimates that the number of unauthorized immigrants residing in the United States fell by about 1 million between January 2007 and January 2009. According to a new DHS report, 11.8 million unauthorized immigrants lived in the United States as of January 2007. By January 2009, that number had fallen to 10.8 million” (Chishti/Bergeron 2010a).
- “In April 2009, the Pew Hispanic Center estimated that between March 2007 and March 2008, the size of the unauthorized immigrant population decreased by 500,000 people” (Chishti/Bergeron 2010a).
- “US Customs and Border Protection registered only 556,000 apprehensions of individuals attempting to enter the United States illegally during fiscal year (FY) 2009 (the federal government’s fiscal year runs from October 1 through September 30). That number represents the lowest level of apprehensions since the mid-1970s. The 2009 level of apprehensions was a 23 percent drop from the number made in FY 2008 (724,000) and a 50 percent drop from the apprehensions number in FY 2006 (1.1 million)” (Chishti/Bergeron 2010a).

“In terms of country of origin, the number of unauthorized Mexican immigrants dropped by only about 5 percent (or about 300,000). DHS estimates that the number of unauthorized Chinese immigrants fell by about half and the number from Brazil by about a fifth. In contrast, there was a marked increase in the number of unauthorized immigrants from Honduras and Ecuador” (Chishti/Bergeron 2010a).

- “The US Census Bureau’s Current Population Survey (CPS) estimates that just 175,000 Mexican immigrants entered the United States between March 2008 and March 2009, the lowest level in over a decade” (Chishti/Bergeron 2010a).
- “Similarly, survey results from Mexico’s National Survey of Employment and Occupation (ENOE) have reported that flows out of Mexico were 20 percent lower between February 2008 and February 2009 than during the same period a year earlier” (Chishti/Bergeron 2010a).
- “According to ENOE data, between February 2008 and February 2009, an estimated 443,000 Mexican immigrants returned to Mexico, roughly the same number of immigrants who returned between February 2007 and February 2008 (440,000), and 36,000 fewer than returned between February 2006 and February 2007 (479,000)” (Chishti/Bergeron 2010a).

While family and refugee arrivals remained unaffected “the recession has tempered employer-driven demand for highly skilled temporary workers. In 2009, the annual cap of 65,000 H-1B visas for skilled foreign-born workers allowed was reached more than eight months after US Citizenship and Immigration Services first began accepting applications. In prior years, the cap had been met within the first few days or weeks of the filing-eligibility date” (Chishti/Bergeron 2010a). The decline in demand for H-1B visas has been linked to the legal provisions of the U.S. government’s bank bailout scheme (Fix et al 2009:59).

#### Origin country data

Origin countries often have next to no information on the return of their migrants. For instance, “There are no specific studies conducted on this type of migration [i.e. return migration to Argentina], particularly on sex imbalances” (Cerrutti 2009:21).

Annual outflows of migrant workers from the Philippines had been just slightly more than 600,000 in 1991, crossed 800,000 in 1998, and reached 1,000,000 in 2005. In 2007, the outflow was close

to 1.1 million, but in 2008 it rose to about 1.35 million. After the 1998 Asian crisis outflows increased only moderately in 1999 and 2000, and after the 2001-2002 crisis they declined a little in 2003. The secular upward trend, however, was never broken. The migrant worker outflow from Indonesia exhibited more volatility but, at a level about half that of the Philippines, followed a similar pattern. Outflows from Bangladesh rose gradually from about 150,000 in 1991 to about 250,000 in 2005, but then skyrocketed to more than 800,000 in just two years with a moderate further increase in 2008. Outflows from Sri Lanka increased from about 70,000 in 1991 to about 170,000 in 1995 and to about 250,000 in 2008. All show some reaction to external shocks in the first half of the 1990s, in the Asian crisis, and after the IT bubble, but in no case is the inexorable rise stopped (Abella/Ducanes 2009:2).

The unusual increases after 2003 could conceivably result in a 'correction' in the current crisis. Additional workers might have been on short-term contracts and may now be returning or may lose their jobs and be forced to return. However, as shown above, most of the important destination countries of migrant workers from South and Southeast Asia are either less affected by the global downturn or used to stop-and-go economic growth. "South Asian workers are largely concentrated in the Gulf States where public investments are foreseen to remain strong in spite of the severe drop in oil prices. Accumulation of reserves over many years of high oil prices are enabling governments of that region to continue with their planned large scale infrastructure projects, thus making up for some of the decline in investments in the private sector" (Abella/Ducanes 2009:2). Workers from Southeast Asia are more widely distributed, especially also within the region. They may therefore feel some of the economic repercussions (Abella/Ducanes 2009:3-4) but should also benefit from the expected strong performance in the next five years. Any exodus from Malaysia or Thailand may therefore be reversed quickly or be compensated by employment elsewhere in the region.

Rather than to return staying on outside the formal employment system may be the preferred option because, "these workers, particularly newly arrived migrants, have in many cases invested heavily in getting recruited, travelling to and establishing themselves in a foreign country. As a consequence, returning to their home country is often not an option and they may accept almost any conditions just to retain their jobs. In cases where they have lost their jobs and work permits, they become undocumented and may move to the informal or shadow economy" (ILO ROAP 2010:13).

The South Korean Ministry of Labour announced, on 9 June 2010, that it saw signs of improved demand for skilled workers and planned to provide "200 workers in the tourism industry in South East Asia, 200 flight attendants in the Middle East, 1,500 welding workforce in Australia and Canada" and another 3,000 to 4,000 skilled workers, partly in medical services and partly in construction and engineering for recruitment, one third more than originally planned (Ministry of Labour 2010a).

A review of the experience of South Asian origin countries, in 2009, resulted in a differentiated picture:

- "Countries such as Bangladesh, and Nepal, sending a large number of migrants to the United Arab Emirates and Malaysia, are expected to be the most affected by returns and reduced future opportunities to migrate. Most key countries of out-migration have not yet reported of disturbingly high numbers of return migrants in the first quarter of 2009. To date, migrant outflows are still continuing, including to the United Arab Emirates, although at a lower pace. Group recruitment has significantly slowed down [fn 8]. In response to this, several key sending countries have launched domestic employment programmes and seek to protect the migrants in their countries of destination" (UNESCAP 2009:3).
- "Bangladesh, as a large supplier of unskilled workers to Dubai and Malaysia is double affected by the crisis: domestically because of the slowdown in exports paired with reduced opportuni-

ties to migrate when domestic jobs are lost. The Government of Bangladesh reported that currently about 51,000 Bangladeshi workers who were expected to migrate to the GCC countries have stayed in the country and that the numbers of returns from abroad in the first four months of 2009 was already around three fifths of the total number that returned in 2008. Although remittances were still high in 2008, it expects a drop in remittances in 2009 [fn 9]" (UNESCAP 2009:3f).

- "The Consulate of India in Dubai and the Northern Emirates estimates that between 50,000 and 150,000 of migrants have returned from Dubai. The number of workers being laid off is currently not known. Many decided to remain in the United Arab Emirates to search for an employment opportunity" (UNESCAP 2009:4).
- "Prospects for migrants from the Philippines are mixed, given the variety of countries Filipino migrants migrate to and the variety of sectors and skill levels they work in. Job opportunities in some sectors, such as the health sector may even increase due to projects of improving health services in GCC countries and increased demand due to an ageing population in East Asia. Overall, the Government of the Philippines has not yet reported large numbers of return migrants, but is aware migrants' increased vulnerability. It has launched a number of programmes to assist its migrants upon return or in the country of destination" (UNESCAP 2009:4).
- "Sri Lanka has in the past sent a high number of domestic helpers to the GCC countries. Recruitment agencies reported reduced demand for migrant workers and anecdotal reports mention increased hardship for domestic workers. Sri Lanka expects to be able to accommodate returning construction workers in the reconstruction of the North of the country. Aware of the fact that difficult working conditions for domestic helpers are not new, but have only been aggravated by the crisis, it seeks to provide better training for women willing to migrate for them to be able in a larger variety of occupations [fn 10]" (UNESCAP 2009:4).

### Voluntary return programmes

Voluntary return or pay-to-go programmes were practiced by a number of European governments from the mid-1970s. Those of Belgium France, Germany, and the Netherlands are documented in the literature (McCabe et al 2009). Only the French programme became a permanent feature while going through various mutations (Plewa 2009). In the 2008-2009 crisis they were copied or re-invented in the Czech Republic, Japan, and Spain (McCabe et al 2009). Skipping the details they are briefly being described below.

#### Czech Republic

"The foreign-born workforce in the Czech Republic grew ... from 2.2 percent in 1995 (111,900 individuals) to 4.6 percent in 2007 (240,200 individuals) according to the Czech Ministry of Labor. Most foreign workers come from Ukraine and neighboring Slovakia (also an EU Member State), with smaller numbers from Poland (another EU Member State), Vietnam, and Mongolia" (McCabe et al 2009).

"When the Czech Republic's unemployment rate reached 6.8 percent in January 2009, the government introduced a voluntary return program to purportedly prevent unemployed foreign workers from remaining in the country illegally, becoming homeless, engaging in informal work, and even resorting to crime. The Czech Ministry of the Interior runs the program jointly with IOM. To qualify for return assistance, the migrant must be a non-EU citizen who has lost his or her job or ability to renew a work and/or residence permit. The migrant must also be unable to cover the cost of travel back home from his or her own resources. It is unclear how this 'inability to pay' is determined and if this requirement has been strictly enforced. The program was initially devised to run from February 16, 2009, until it reached the 2,000-participant mark. However, ... the program was later di-

vided into two parts and the participant goal was increased to 4,000. ... All program participants must forfeit their Czech documents.” Conditions for participants in the programme extension were not exactly the same as in the original programme. In particular they are financially less favourable (McCabe et al 2009).

“The program overall has slightly exceeded its initial goal of 2,000 participants with 2,015 participants as of October 2, 2009. But that number falls well short of the upgraded goal of 4,000 participants. Although the majority of individuals eligible for the program are from Ukraine and Vietnam, those from Mongolia made up 64.8 percent of program registrants as of October 2, 2009” (McCabe et al 2009). Mongolia had been experiencing stable growth between 3% and 9%, from 2003 to 2008, and is expected to return to the same performance after the 2009 recession (-3%).

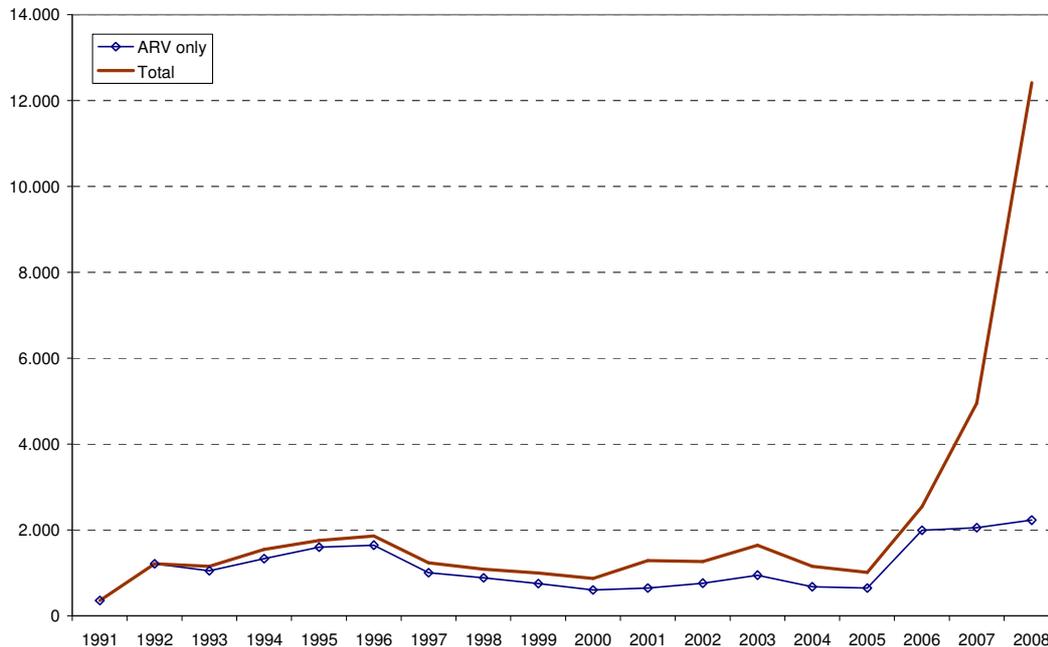
From September 19, 2009, to December 15, 2009, the Czech government also ran a pay-to-go programme for noncriminal, unauthorized migrants who are not currently in deportation proceedings. This programme provided participants with paid transportation home and, as a penalty for residing in the country illegally, specified a time during which they are banned from the Czech Republic. Individuals who agreed to pay for their own plane tickets home were granted reduced bans on reentry (McCabe et al 2009).

Simultaneously “The Czech Republic stopped issuing work permits indefinitely to migrants from five non-EU countries (including Vietnam and Mongolia). Between January and August 2009, these policies altered the number and composition of work-permit holders. The number of Vietnamese workers has already dropped from 14,081 in January 2009 to 4,553 in August 2009” (McCabe et al 2009).

## France

French voluntary return programmes have been increasing enormously, since 2006, from just 1,008, in 2005, to 12,418, in 2008. This is true of Voluntary Return (ARV) but especially of ‘Humanitarian Return’ (ARH) which is aimed at failed asylum applicants and destitute migrant workers. The increase was accompanied by changes in the regulations, but these were issued only in December 2006 (Plewa 2009:10). An earlier marked increase, though of much smaller magnitude, occurred in the 2001 crisis. Unfortunately, how many of the returnees had ever become workers in France is not reported by the authorities.

Voluntary returns from France 1991 to 2008



Source: Secrétariat etc 2007a:106, 2007b:123, 126, 2010:98.

## Japan

“As part of a wider emergency strategy to combat rising unemployment and to assist immigrant and particularly Nikkei [i.e. foreign citizens of Japanese ancestry] workers who continued to live in Japan, the Japanese government authorized on April 1, 2009, a voluntary return program for legally resident Nikkei workers. To qualify for the program, workers must be unemployed and prove that they had entered and worked in Japan before April 1, 2009. The program offers \$3,000 to the applicant and \$2,000 to each dependent to cover airfare. The government allows immigrants to keep any unused amount. The program has helped Nikkei workers who wanted to leave Japan but could not due to financial constraints, as well as those who could afford their own return ticket. Initially, the government had denied Nikkei workers reentry under the same residence permit or visa for an indefinite period of time, but it subsequently modified its policy due to public criticism. Under current provisions, Nikkei workers and their family members are prohibited from reentering Japan under the same visa or residence status for three years” (McCabe et al 2009).

“As of October 1, 2009, the Japanese government had received over 13,000 applications and had approved more than 11,000 of them. Those denied were primarily ineligible to participate in the first place. The vast majority of applicants were from Brazil” (McCabe et al 2009).

## Spain

In Spain the impending crisis became sufficiently evident by late July 2008 for the government to start taking action in a tripartite manner. The policy package approved by parliament in November 2008 included a voluntary return programme called APRE (Plan de Abono anticipado de Prestación a Extranjeros) for migrant workers from those 20 countries not members of the EU or EFTA with which Spain had a bilateral social security agreement. This covered 11 Latin American countries along with Morocco, Tunisia, the Philippines, Ukraine and Russia, Australia, Canada, the U.S., and neighbouring Andorra. The programme gives unemployed migrant workers the option of

being paid a one-way ticket to the country of origin and their entire remaining unemployment benefit claim in two instalments, if they give up residence in Spain for at least three years. The claims were expected usually to be in the range of €7,000 or €8,000 (Plewa 2009:18-19; McCabe et al 2009). There were several features and circumstances that may have diminished programme success:

- It “did not include any training or job creation provisions” and therefore the countries to which the migrant workers would have to return to “expected the programme to increase unemployment pressures and interrupt remittance flows” (Plewa 2009:20).
- It “did not provide any assistance that would make it easier for the settled workers to sell property, prepare children for transition into the new school system, professional training, or post-return labour market integration” (Plewa 2009:21).
- “Even when unemployed, migrant workers were better off in Spain than in their countries of origin. Spanish law provided migrants with basic services such as free health care, free education for children, re-qualification programmes, regardless of the legal and employment status” (Plewa 2009:21).
- ... “the crisis had a milder effect on demand for workers in the unstable jobs and informal economy, thus as long as somebody was willing to accept difficult work for low pay they had an alternative to voluntary return” (Plewa 2009:21-22).
- After introducing the voluntary return programme, in November, the government began to change the Foreigners Law, in December 2008. This reminded “those who would strategically leave a family member in Spain” to facilitate their later re-entry that perhaps this was going to be difficult and to depend on more than family ties (Plewa 2009:22).
- Overall, “the policy could potentially appeal to those approaching retirement age (with largest accumulated unemployment benefits and least likely to find a new job in Spain) and the newly-arrived (with smallest unemployment benefits and more likely to find a job abroad)” (Plewa 2009:23).
- Neither migrant NGOs nor trade unions or employers were particularly supportive of the programme (Plewa 2009:20-24). The social partners were surprised to find it included in the government package, since their own submission had not done so (Plewa 2009:18).

Given prevailing levels of unemployment “Migrants from Morocco (23 percent), Ecuador (13 percent), Romania (12 percent), and Colombia (7 percent) are the program’s four biggest potential beneficiaries. ... As of June 2009, the Spanish government had approved over 4,000 principal applicants for the APRE program. The overwhelming majority (around 92 percent) were from Latin America, with Ecuadorians making up the largest share. However, although 47,723 Ecuadorian workers were eligible for unemployment benefits in August 2009, a 122 percent increase from January 2008, only 2,330 had applied for the APRE program as of June 17, 2009. Moroccans appear to be even more cautious as they do not appear in official data about the program. ... Given overall participation levels, the government has lowered its expectations of the program from 130,000 participants to 87,000. However, as of November 2009, the program did not have any closing date” (McCabe et al 2009). At that point, i.e. in its first 12 months, 8,724 migrants had participated in the programme (Mazza/Sohnen 2010).

There apparently was no outright effort to squeeze migrant workers out of employment, the labour market, and the country. The Spanish government, like others across Europe, made efforts to limit the intake of new migrant workers. Unlike some others it restricted the effort to workers with non-

EU citizenship but nonetheless abolished transition rules for Romanian and Bulgarian citizens at the beginning of 2009 (Plewa 2009:20), although rising unemployment would have offered a perfect excuse for not doing so. The Romanian government, in fact, expressed interest in the inclusion of its citizens in the APRE in spite of being EU citizens. There was a widespread belief in Romania, at the time, shared by the government and western investors that recalling emigrants would help to overcome bottlenecks in the skilled and highly skilled labour market (Plewa 2009:20).

The new programme was added to an earlier one, PREVIE (Programa de retorno voluntario de inmigrantes desde España), initiated in 2003, and administered by the International Organization for Migration (IOM) on behalf of the government. This “program aims to encourage the return of non-EU immigrants who have lived in Spain for more than six months but are living in precarious social situations. It provides these immigrants with a ticket home and a travel stipend. Between 2003 and 2007, IOM assisted the return of about 500 migrants a year, but the number more than tripled to 1,592 in 2008” (McCabe et al 2009).

Still earlier, in the 1970s and early 1980s, Spanish workers, especially in France, had participated in voluntary return programmes (Plewa 2009:4).

## Summary

The overall summary made of the 1970s and 1980s programmes remains true today: “Despite these examples, it is still hard to determine how significantly pay-to-go programs stimulate returns and the extent to which they subsidize those individuals who were already planning to return to their countries of origin. The lack of evaluation of these past programs limits their usefulness for predicting how the current-day programs in Japan, Spain, and the Czech Republic will ultimately play out” (McCabe et al 2009). Ongoing evaluations of the current programmes would therefore be of significant interest.

“In addition, critics have observed that because pay-to-go programs target specific immigrant populations, they serve to expel (rather than integrate) culturally distant populations or groups subject to social prejudice. Some simply characterize the programs as anti-immigrant in nature and highlight the fact that they make remaining and prospective immigrant groups feel at risk and unwelcome” (McCabe et al 2009).

A further point of criticism has been the unilateralism on the part of countries of employment. It is being argued that cooperation with the countries to which migrant workers are meant to return would produce better employment and growth outcomes and contribute to anchoring return migrants in the country.

Finally there is a need to emphasize that “Despite the focus on pay-to-go programs, none of these countries has used its program as its main or only option for managing migration during this recession” (McCabe et al 2009).

## Population employment rates

Employment, unemployment, and labour force participation rates are prime candidates for assessing the impact of the crisis on employment and on the functioning of the labour market. Observing them within national borders is routine (which is not to say it is always easy). Where possible we focus on the age group 25 to below 50 as their data are least affected by being in education or in (early) retirement.

There appears to be disagreement over the impact recessions usually have on the industries in which migrant workers tend to be employed. On the one hand, “Studies have found that historically, recessions affect unauthorized workers disproportionately, as they are more likely to work in industries that are sensitive to business cycles, such as construction, manufacturing, and hospitality. In addition, unauthorized immigrants tend to have less secure contractual arrangements with their employers than do native-born and lawful-immigrant workers” (Chishti/Bergeron 2010a). On the other hand it was noted of Spain that the recession had “a milder effect on demand for workers

in the unstable jobs and informal economy” (Plewa 2009:21). Mixed results also became evident in Taiwan where formal migrant worker employment in manufacturing and construction declined sharply, in 2009, while employment in private households and in agriculture and fisheries kept rising (Fix et al 2009:53-54).

The table below shows how much employment rates of the age group 25 to 49 differ, i.e. by how much that of country citizens is greater than that of non-EU citizens. It does so for all first quarters of the period 2005 to 2010, if data were available. In some countries with smaller numbers of migrants the changes between years are not always very plausible. Comments will be restricted to the larger ones. The main question is how much the gap widened in 2008 and 2009 in comparison to changes between preceding years.

In Europe there are few countries with small differences between the employment rates of male country citizens and male non-EU citizens aged 25 to 49. Italy is a case in point. In the first quarter of 2009 they were almost the same and they had at most differed by 4 percentage points since 2005. Greece is another case in point. In both countries the employment rates of migrant workers were slightly greater than those of citizens. Still another example is Portugal, and Spain was an example until 2008 but no longer in 2009. At the extreme other end there is Belgium where employment rates have been differing by between 28 and 35 percentage points which is large indeed. In Sweden the difference has declined from 32 to 24 percentage points, in France it has been oscillating between 18 and 23 percentage points, in Austria between 16 and 21, in Germany between 15 and 19. In the Netherlands it has declined from 29 to only 12 percentage points, especially in 2008 and 2009. In the UK it declined from 13 percentage points to only 6, especially from 2006 on 2007. Finland saw a sudden reduction of the gap between 2008 and 2009. In Denmark there was a decline from 21 to 17 percentage points until 2008 and an increase by 1 percentage point in 2009. Except for Spain there is no rise clearly attributable to the crisis. In Cyprus there was an upward trend from 2005, although the crisis may have speeded it. Norway’s first quarter results look like the crisis could have contributed to a reopening of the gap but the fourth quarter results cast doubt on it.

Males 25-49 years, employment rate differences: citizen advantage over non-EU citizens, first quarter of each year, percentage points						
	2005	2006	2007	2008	2009	2010
Belgium	34.9	31.3	29.9	27.8	30.4	
Czech Republic	-5.1	2.5	-3.0	3.8	5.6	
Denmark	20.6	18.9	17.1	17.2	18.3	6.7
Germany	18.5	17.2	16.8	15.6	15.5	
Estonia	3.8	-2.4	-4.5	0.7	9.0	
Ireland				7.9	8.6	
Greece	-4.7	-3.7	-3.6	-5.2	-3.5	
Spain	1.6	0.6	4.9	4.4	15.5	17.2
France	19.5	22.5	18.8	17.9	22.7	
Italy	-1.9	-3.2	-4.0	-2.9	-0.7	
Cyprus	3.9	5.1	12.2	20.0	34.0	
Latvia				-2.6	8.3	
Luxemburg	3.5	18.1	24.9	31.0	7.4	
Hungary	-9.8	-13.2	-14.6	-5.1	-2.8	
Malta					-1.7	
Netherlands	29.3	25.2	24.0	13.8	11.7	23.4
Austria	16.2	17.2	21.2	18.0	18.2	15.4
Poland		11.5	11.6	18.8	-14.2	
Portugal	1.8	1.0	1.7	4.0	6.5	5.8

Romania				-2.0	-13.8
Slovenia		24.7	7.6	-8.4	11.6
Finland	22.9	17.5	21.9	21.7	11.3
Sweden	31.7	30.5	26.4	24.6	24.2
United Kingdom	12.7	11.5	7.2	6.4	5.6
Norway	28.5	34.4	16.7	13.1	23.1

Source of the underlying employment rates: LFS from Eurostat online database.

Fourth quarter results are for the most part similar. In some cases they are smaller. In Norway 2007 emerges as a year with an unusually small gap.

Differences between employment rates are larger among women. In Belgium they are around 50 percentage points, in the Netherlands around 44, in France around 40, in Sweden now around 36, in Germany around 34, in Denmark around 30, in Austria around 28, in Norway now around 25, in the UK around 20. There is some oscillation but little trend. None of the changes could definitely be attributed to the crisis. There are several issues here for further study: are countries different because citizen women have different employment rates or because migrant women do? Is there any kind of convergence towards similar levels for citizen women or for migrant women? Do educational differences explain the variety in gaps, do differences in industrial structure, differences in age composition, differences in occupational segregation?

Females 25-49 years, employment rate differences: citizen advantage over non-EU citizens, first quarter of each year, percentage points

	2005	2006	2007	2008	2009	2010
Belgium	49.7	39.3	47.7	53.0	46.7	
Czech Republic	28.2	-3.4	7.7	4.8	6.2	
Denmark	34.0	29.9	37.1	27.5	25.7	39.3
Germany	34.8	33.9	33.0	35.2	33.4	
Estonia	8.9	8.8	14.4	12.1	9.8	
Ireland				9.8	13.5	
Greece	5.4	7.3	10.0	12.1	13.8	
Spain	1.7	0.8	2.8	3.0	8.2	7.4
France	41.5	40.4	36.2	38.9	37.1	
Italy	10.1	7.2	11.9	7.9	7.8	
Cyprus	-9.4	-9.0	-7.8	-8.8	-6.4	
Latvia				17.6	14.8	
Luxemburg	22.6	26.9	19.7	37.4	28.8	
Hungary	2.5		2.9	-21.2	10.7	
Netherlands	46.3	43.1	47.2	39.4	35.9	42.6
Austria	23.1	28.6	29.4	28.2	27.7	25.3
Poland			-14.2	-9.4	11.2	
Portugal	-4.4	5.4	10.7	5.7	7.1	10.9
Rumania				3.8		
Slovenia			45.2	42.6	59.5	
Finland	39.3	38.8	42.7	35.6	38.9	
Sweden	43.5	39.1	36.2	36.3	36.1	
United Kingdom	18.4	20.1	21.7	19.4	18.4	
Norway	30.5	29.6	25.1	25.6	25.5	

Source of the underlying employment rates: LFS from Eurostat online database.

## East Asia

“In East Asia, many migrants occupy either low-skilled jobs in export-oriented industries or jobs in the health sector. While workers in export-oriented industries such as electronics and automobiles have already been affected by retrenchments, especially in Hong Kong, China and Taiwan Province of China, the need for migrant labour in the health sector is expected to be largely unaffected” (UNESCAP 2009:3).

## Israel

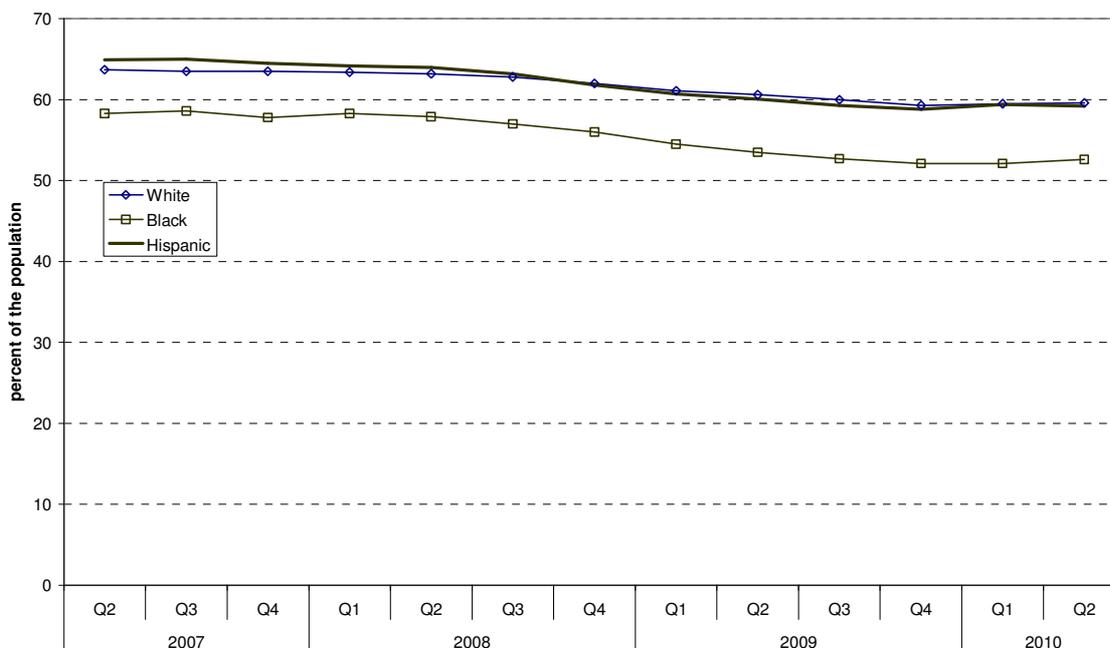
In February 2010, the Bank of Israel reported total civilian employment had risen by 2.1 percent between September 2008 and September 2009 but employment of foreigners and Palestinians had declined by 3.3 percent (Bank of Israel Research Department 2010:16).

## United States

In the U.S. the employment rate of immigrants aged 16 and over has been exceeding that of non-migrants by about 3 percentage points in recent years. In the current crisis they both shrank. While the gap narrowed somewhat, in 2008, it widened again in the first half of 2009 (Orrenius/Zavodny 2010:7).

Quarterly data from the Current Population Survey show the employment rate of the self-declared Hispanic population aged 16 and over was about 1.5 percentage point greater than that of the self-declared white population in the third quarter of 2007. This may have to do with age distribution, gender shares, and education participation. The U.S. Bureau of Labor Statistics (BLS) does not offer more disaggregated data for the Hispanic population on its website. Then the gap shrank and in the fourth quarter of 2008 the Hispanic employment rate slipped slightly below the white one. The black population is overwhelmingly non-migrant. Its employment rate has been 6 to 7 percentage points below that of the Hispanic population. The employment rate gap between Hispanic and black tended to shrink slightly until the end of 2008 but has been widening since then.

Employment rate of the U.S. population 16 years and older



Source: U.S. Bureau of Labor Statistics, Current Population Survey <http://www.bls.gov/cps/tables.htm#quarterly>, 2010-08-14.

Employment rates of the U.S. population aged 16 and older by quarter and by 'race'						
	Employment rate, percent			Difference		
	White	Black	Hispanic	Black-White	Hispanic-White	Hispanic-Black
2007Q2	63.7	58.3	64.9	-5.4	1.2	6.6
2007Q3	63.5	58.6	65.0	-4.9	1.5	6.4
2007Q4	63.5	57.8	64.5	-5.7	1.0	6.7
2008Q1	63.4	58.3	64.2	-5.1	0.8	5.9
2008Q2	63.2	57.9	64.0	-5.3	0.8	6.1
2008Q3	62.8	57.0	63.2	-5.8	0.4	6.2
2008Q4	62.0	56.0	61.8	-6.0	-0.2	5.8
2009Q1	61.1	54.5	60.7	-6.6	-0.4	6.2
2009Q2	60.6	53.5	60.1	-7.1	-0.5	6.6
2009Q3	60.0	52.7	59.3	-7.3	-0.7	6.6
2009Q4	59.3	52.1	58.8	-7.2	-0.5	6.7
2010Q1	59.5	52.1	59.4	-7.4	-0.1	7.3
2010Q2	59.6	52.6	59.2	-7.0	-0.4	6.6

Source: U.S. Bureau of Labor Statistics, Current Population Survey  
<http://www.bls.gov/cps/tables.htm#quarterly>, 2010-08-14.

### Labour force unemployment rates

One way of comparing unemployment rates between parts of a labour force is to see by how much the one part's rate needs to be multiplied in order to match the other parts. As with employment the focus is on the post-education, pre-retirement age group 25 to below 50. The first table below shows the factor by which the unemployment rate of male citizens aged 25 to 49 needs to be multiplied in order to match their non-EU citizen counterparts. The data pertain to the first quarter of each year and are shown for all available years since 2005. In a number of countries the trend was for the multiple to decline. Belgium and Denmark belong to this group, perhaps Estonia, certainly the UK.

Spain, France, and Italy clearly exhibit a rising trend, probably Cyprus and Sweden, Germany only very slightly.

Trends are flat or uncertain in the Netherlands, Austria, Portugal, and Finland.

Austria, France and Greece show a jump, in 2009, Portugal and Spain less so. The Austrian one is a fluke not observable in any of the nearby 2008 or 2009 quarters while the Portuguese one is more real but is being reversed until 2010.

Swiss unemployment rates were available only for second quarters. The multiple was largest in 2006 at 5.9. Between 2007 and 2009 it declined rapidly from 5.7 to 4.0.

If we also examine fourth quarters, we discover rises in 2009 in Spain, Greece, Italy, and Cyprus. Some countries had larger than usual multiples in 2008, including France, the Netherlands, and Sweden. In all three cases it did not persist in 2009. In other countries multiples were essentially flat or declining.

Males 25-49 years, labour force unemployment rates: migrant multiple, first quarter						
	2005	2006	2007	2008	2009	2010
Belgium	5.4	4.4	5.5	4.8	4.6	
Denmark	4.1			3.5	3.2	1.9
Germany	2.5	2.5	2.8	2.6	2.6	
Estonia	2.3				1.8	
Ireland					1.3	
Greece	0.8	0.8	0.8	0.6	1.1	
Spain	1.7	1.6	2.1	2.0	2.3	2.2
France	2.8	3.0	3.1	3.0	3.6	
Italy	0.9	1.0	1.1	1.1	1.4	
Cyprus		1.6			3.4	
Latvia					1.8	
Netherlands	5.4	4.0	4.3	4.2	3.0	4.2
Austria	3.7	3.7	5.2	3.8	4.8	3.4
Portugal				1.9	2.3	1.8
Finland			4.2	4.0		
Sweden	4.2	4.2	4.2	5.3	4.6	
United Kingdom	2.4	2.4	1.8	1.5	1.1	

Source of the underlying unemployment rates: LFS from Eurostat online database.

Among women of the same age group first quarter multiples are often lower than among men. This may be linked to seasonal employment patterns but would need to be investigated. There are no unusual multiples in the first quarter of 2009. France is flat, Spain and Sweden are the same as in 2005, Germany continues a slight upward trend, Belgium and the Netherlands are flat, Greece and Austria may be declining, some others are flat or uncertain in trend.

Females 25-49 years, labour force unemployment rates: migrant multiple, first quarter						
	2005	2006	2007	2008	2009	2010
Belgium	4.5	3.6	5.6	5.4	5.3	
Denmark				4.8		3.1
Germany	2.4	2.3	2.4	2.5	2.7	
Estonia					2.9	
Greece	1.1	1.1	1.2	1.0	1.0	
Spain	1.6	1.4	1.4	1.5	1.6	1.5
France	3.6	3.3	3.2	3.4	3.4	
Italy	2.0	1.4	2.4	1.6	1.3	
Cyprus		0.8				
Latvia					1.9	
Netherlands	3.8	3.4	4.2	4.3	3.8	3.7
Austria	3.1	2.9	3.1	2.8	2.2	2.2
Portugal				2.0	1.8	1.8
Finland			5.6			
Sweden	4.5	3.4	3.1	3.8	4.2	
United Kingdom	2.1	2.6	2.8	2.3	1.7	

Source of the underlying unemployment rates: LFS from Eurostat online database.

Female fourth quarter results show an unusually large multiple in Belgium, in 2008, and a much lower one in 2009. There is no rising trend in either Germany, France, Italy, or Spain, and there may be a declining one in Denmark as well as in Greece. In the Netherlands the multiple is much increased both in 2007 and 2008. In Austria it is unusually large in 2009, in fact the largest quarterly one since the beginning of 2005. The results also show an increased multiple in Sweden, in 2008, on top of an elevated level in 2007 and 2009, while in Britain multiples were unusually small in 2008 and 2009.

The comments above only concerned the changes in the multiples. It should not be overlooked that, even if multiples changed little or stayed on trend during the crisis, they show that migrant worker unemployment rates in Europe are often not only double but three, four or five times those of citizen workers. This is often excused by pointing to differences in educational attainment. While these exist, it is also true that for migrant workers education often fails to protect because they are employed below their educational level. Finally, the question is whether governments and social partners would be as tolerant of high levels of unemployment if the workers in high risk industries were citizens.

A number of countries large and small will be looked at below. The selection is driven by data availability. In a few instances figures are added to the discussion. Where they are missing they could be added on request. The primary focus is on male unemployment, since this is where multiples and their development in the recession were more problematic.

#### Austria

There is a very regular seasonal cycle to the unemployment of male non-EU citizens aged 25 to 49. It always peaks in the first quarter and reaches the bottom in the third quarter. From 2005 to 2008 the lowest point was always around 8 percent, but in 2009 it was 11 percent. The 2009 peak was 16 percent after it had been only 12 percent in 2008 and 15 percent in 2006 and 2007. The unemployment rate of country citizens reached 4 percent again in the first quarter of 2010 after it had been 3 percent or below almost all quarters from the middle of 2005 to the end of 2008. The EU citizen sample is too small to show the results.

The unemployment of female country citizens aged 25 to 49 had declined from above 4 percent to below 4 percent by the beginning of 2008 and remained there until early 2010. That of EU-citizen women declined from an 8 to 10 percent range to a 6 to 8 percent range. That of non-EU citizen women had been at about 12 percent but during the first half of 2008 declined to 8 percent. Although it was around 11 percent again in the second half of 2009, it reached a low of 7 percent in early 2010.

#### Belgium

The unemployment of male non-EU citizens aged 25 to 49 was at a catastrophic 30 percent in 2005 and 2006, at a still catastrophic 25 percent in 2008, and rose to 34 percent again during 2009. The unemployment rate of country citizens meanwhile was a mere 5 percent from the middle of 2006 to the end of 2008, and 6 percent throughout 2009. The unemployment rate of EU citizens ranged between 7 percent and 8.5 percent in 2008, and closed at 8.4 percent in 2009 after having reached as high as 13.6 percent in the second quarter.

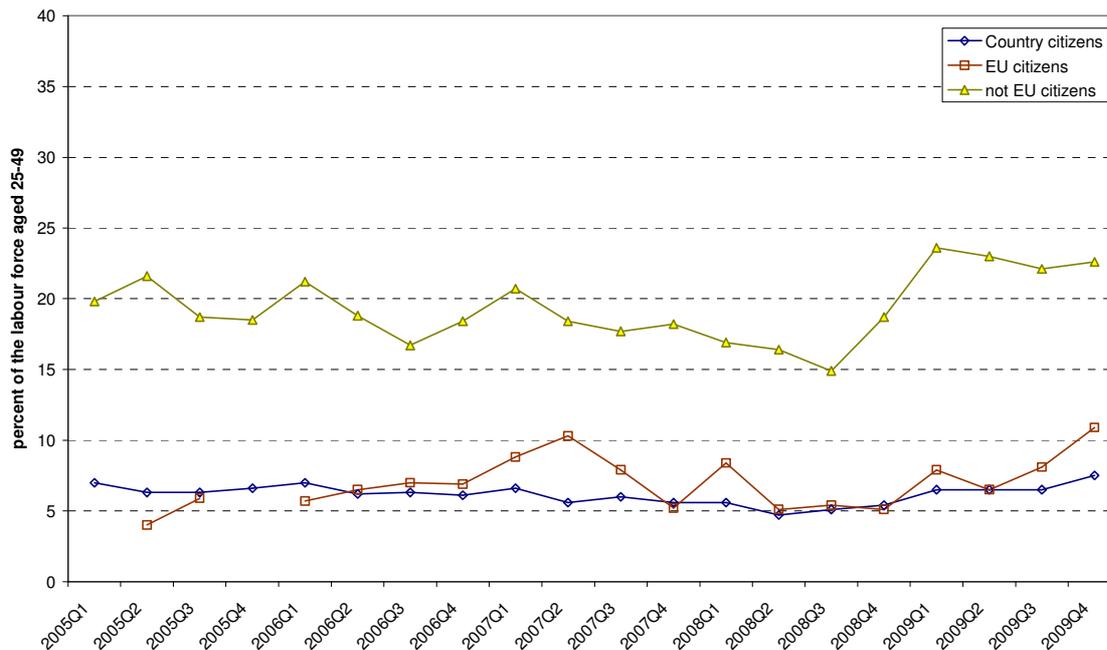
Female unemployment was unaffected by the crisis. That of non-EU citizens remains extremely high, somewhere between 20 and 40 percent with, perhaps, a slight downward trend. EU citizens experience unemployment at a rate of 10 to 12 percent, and country citizens at a steady 6 percent.

#### France

Eurostat unemployment data for males in the age group 25 to below 50 show non-EU citizens to have experienced a five percentage point decline from about 20 to about 15 percent, between the beginning of 2005 and the summer of 2008. The citizen unemployment rate meanwhile declined

from about 7 percent to about 5 percent. The latter started to rise slowly from the middle of 2008 to reach about 7.5 percent by the end of 2009 while the former took a leap in the half year between October 2008 and March 2009 to reach 24 percent. The EU citizen unemployment rate rose most of 2009 to reach 11 percent, its highest level since the beginning of 2005. From the second to the fourth quarter of 2008 it had been only about 5 percent.

France: Unemployment rates of the male labour force aged 25 to 49 by citizenship



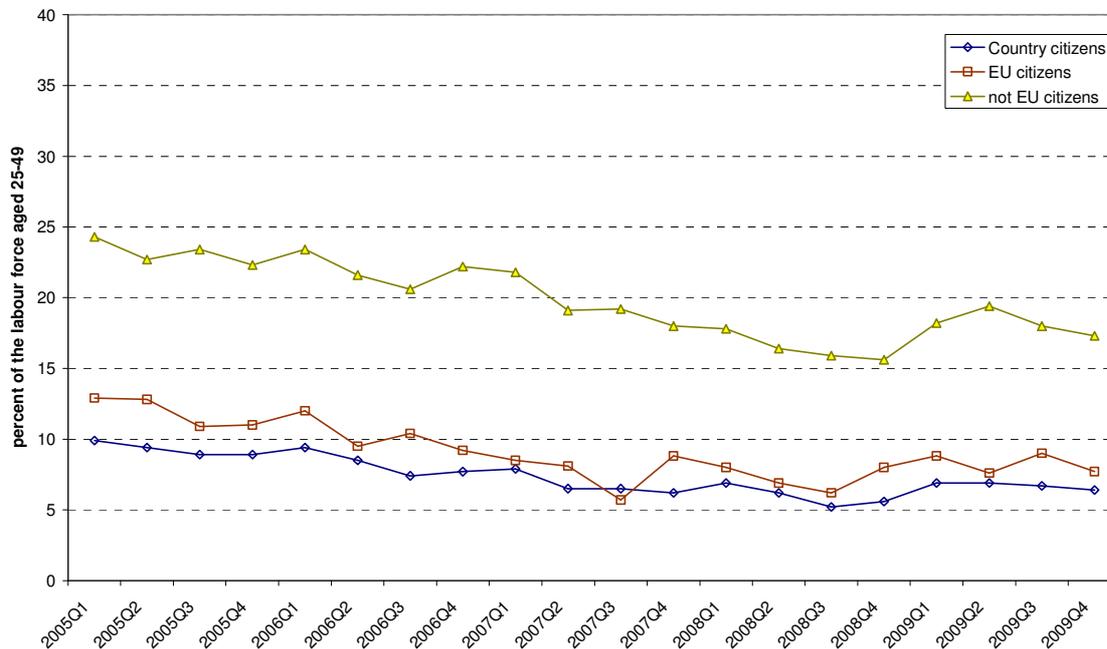
Source: Eurostat online database, 2010-06-04.

Female non-EU citizen unemployment had declined from above 30 percent in 2005 to about 20 percent in mid-2008 before climbing again to about 25 percent in 2009. Simultaneously the unemployment of EU citizen and country citizen women had declined to about 7 percent, from around 10, and rose again moderately to about 8 percent.

### Germany

In Germany the unemployment rate of male non-EU citizens aged 25 to 49 reached a low of 16 percent in the last quarter of 2008 after having stood at 24 percent at the beginning of 2005. It rose to 19 percent until the middle of 2009 and then declined again. The citizen unemployment rate declined from 10 percent to 5 percent by summer 2008, then rose to 7 percent by spring 2009 and started to decline again to about 6 percent. The EU citizen unemployment rate remained essentially flat from the beginning of 2007 until the end of 2009.

Germany: Unemployment rates of the male labour force aged 25 to 49 by citizenship



Source: Eurostat online database, 2010-06-04.

The unemployment rate of non-EU citizen women of the same age group was above 20 percent until the end of 2006 and has since declined to about 15 percent. The crisis may have inflicted a temporary rise during 2009. EU citizen and country citizen women both stood at about 6 percent at the end of 2009. For both of them this was the lowest level during the period under observation.

### Greece

According to the LFS, the unemployment of male migrant workers aged 25 to 49 was around 5 percent in 2005, then around 3 percent until the end of 2008, and then rose to 9 percent by the end of 2009. The unemployment rate of country citizens was 6 percent in 2005, then around 5 percent until the end of 2008, and has since risen to about 7 percent. Although Bulgarians have been an important source of labour, the EU citizen sample is too small to show the results.

Among women the citizen and non-EU citizen unemployment rates declined together from about 16 percent in early 2005 to about 11 percent in mid-2008 and subsequently rose again to 14 percent. EU citizen unemployment may have risen from the 10 to 15 percent range to the 14 to 18 percent range.

### Italy

According to the LFS, the unemployment of male migrant workers aged 25 to 49 was around 5 percent until the summer of 2008, and then rose to 10 percent by the end of 2009. The unemployment rate of country citizens was also around 5 percent and has since risen to 6.5 percent. That of EU-citizens rose from about 3 percent in the second half of 2008 to about 9 percent at the end of 2009.

While the unemployment rate of citizen women rose from 8 percent to 10 percent in the crisis that of EU citizen women rose from 10 percent to 14 percent. The unemployment rate of non-EU citizen women makes implausibly large swings in the LFS.

## Japan

“In 1990, the Japanese government established formal channels to allow Nikkeijin, or foreigners of Japanese descent, to immigrate to Japan. ... Among other changes, the 1990 law, which amended the 1951 Immigration Control and Refugee Recognition Act, permitted Nikkeijin to take up any occupation in Japan, including unskilled work. This effectively enabled Japan to circumvent its long-held policy of prohibiting the immigration of unskilled foreign workers to Japan.” Subsequent Nikkeijin immigration originated mostly from Brazil and in smaller part from Peru (McCabe et al 2009).

“The 2008-2009 recession prompted massive unemployment among the approximately 350,000 Nikkeijin residing in Japan. Between November 2008 and January 2009, 9,296 foreigners registered as employment seekers, an 11-fold increase from the same period a year earlier” (McCabe et al 2009).

“According to several surveys conducted in Japan, approximately 40 percent of Latin American workers, most of them Nikkeijin, were unemployed by the end of 2008 and the beginning of 2009, compared to the 5 percent unemployment rate among Brazilians and Peruvians in Japan in 2005” (McCabe et al 2009).

“The recession has hit Nikkei workers hardest, as many relied on contract-based employment and jobs that are sensitive to economic fluctuations. Many Nikkei Brazilians, for example, work under temporary contracts in the automobile, heavy, and electronic industries and are often employed indirectly through labor agencies in Japan and dispatched to employers. The Japanese manufacturing sector has suffered from a decline in exports due to the decrease in global demand for advanced manufactured goods such as cars, information technology, and machinery” (McCabe et al 2009).

## Netherlands

The unemployment rate of male country citizens aged 25 to 49 was below 4 percent the entire period from the beginning of 2005 to the first quarter of 2010 with a bottom near 1 percent in 2008. The unemployment of non-EU citizens, on the other hand, was more than 20 percent at the beginning of the period, declined to about 6 percent by the middle of 2008, and has since risen to more than 14 percent. The EU citizen sample is too small to show the results.

Female unemployment bottomed in mid-2008 at about 9 percent and 2 percent, respectively, and subsequently rose to 13 and 3.5 percent by early 2010.

## Spain

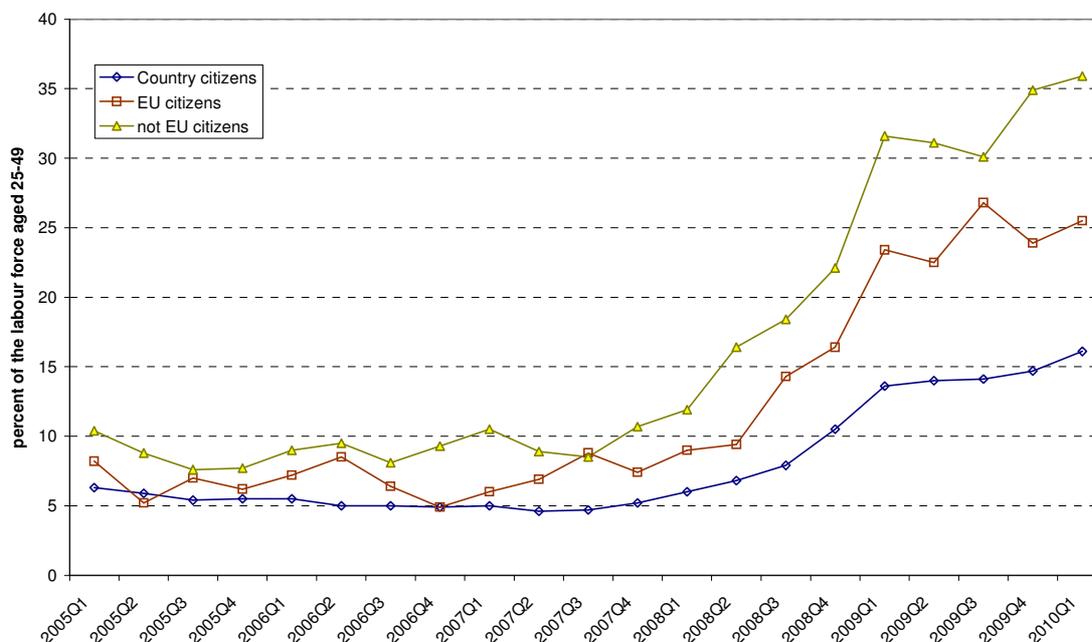
“In 2008, about 123,000 foreign workers lost their jobs in the construction sector, and 117,000 of them lost jobs in the service sector. ... The number of all foreign workers entitled to unemployment benefits more than doubled from 161,923 in January 2008 to 363,223 in August 2009” (McCabe et al 2009).

Eurostat data show the male labour force unemployment rate in the age group 25 to below 50 of non-EU citizens to have diverged from that of Spanish citizens continuously since 2005. Across the year the former was 1.5 times the latter in 2005, 1.8 times in 2006, 2.0 times in 2007, 2.2 times in 2008, and 2.3 times in 2009. While the crisis raised everybody's levels of unemployment spectacularly the underlying trend remained undisturbed. It must be added, though, that by European standards a multiple of 2.2 is low among males. The rise might be due to a continuous shift in the industrial or occupational distribution of migrant and non-migrant workers but this would need to be investigated.

The female labour force of the same age group with non-EU citizenship experienced a sharp drop of unemployment in 2005 to about 11 percent, almost at a par with country citizens, then 14 or 15 percent from the beginning of 2006 until the summer of 2008, and a sharp increase to 25 percent and above between October 2008 and March 2009. Women with EU citizenship experienced an

increase from about 15 percent to more than 20 percent during 2008 and 2009, and country citizens around 10 percent from the middle of 2005 to the middle of 2008 and an increase to about 18 percent until early 2010.

Spain: Unemployment rates of the male labour force aged 25 to 49 by citizenship



Source: Eurostat online database, 2010-06-04.

## Sweden

Male immigrant unemployment has been a long-standing concern of researchers and policy makers in Sweden. In the period under review, for the age group 25 to 49, it reached its lowest level in mid-2006 at about 16 percent. Since then it climbed to over 25 percent. On the other hand, the unemployment rate of EU citizens appears to have been converging with that of country citizens reaching about 6 percent at the end of 2009 after having stood at about 10 percent in 2005. Country citizens enjoyed unemployment rates below 4 percent in 2007 and 2008.

Since the beginning of 2005 there has been only one quarter, at the end of 2006, when the female migrant worker unemployment rate was less than 15 percent. It has since risen to 26 percent. The citizen unemployment rate was below 5 percent from the middle of 2006 until the end of 2008 and has since risen to 6 percent. The EU-citizen unemployment rate seems to have kept declining from an earlier 10 or 11 percent to 8 percent and below in 2009.

## Switzerland

Second quarter LFS results show the unemployment rate of male non-EU citizens aged 25 to 49 to have declined from about 11 percent in 2005 to about 7 percent in 2008 and to have risen to about 10 percent in 2009. That of country citizens was at 1 or 2 percent, even after rising by one percentage point between 2008 and 2009. That of EU citizens was at about 3 percent from 2005 to 2008, and may have been going towards 4 percent in 2009.

The unemployment rate of women of the same age group has been considerably greater than that of men. Among non-EU citizen women it reached its bottom in 2008 at 12 percent, after having

been 17 percent in 2006, and rose to 14 percent in 2009. That of EU citizen women declined from about 6 percent in 2005 to about 4 percent in 2009, and that of Swiss citizens remained at about 3 percent the entire period.

Unemployment rates of the labour force aged 25 to 49 by citizenship, second quarter of each year

	Women					Men				
	2005	2006	2007	2008	2009	2005	2006	2007	2008	2009
Switzerland	3.3	2.9	2.9	2.6	3.2	2.1	1.6	1.4	1.4	2.4
EU	6.0	5.8	4.8	4.6	4.4	2.8	3.4	2.6	2.8	3.6
Other	15.8	16.6	15.1	12.1	14.0	10.9	9.5	8.0	6.8	9.7
multiple	4.8	5.7	5.2	4.7	4.4	5.2	5.9	5.7	4.9	4.0

Source: LFS from Eurostat online database.

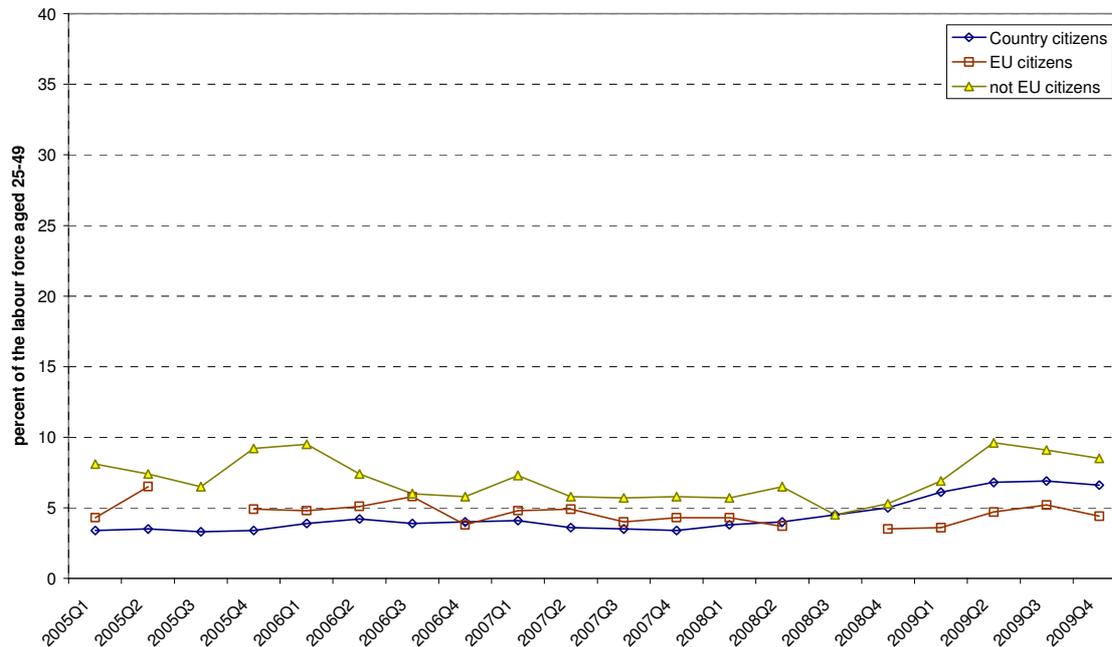
### Taiwan

“Japan, Republic of Korea, Hong Kong China and Taiwan Province of China, which have become East Asia’s key countries for migrant worker inflows have all been significantly affected by the global economic crisis. Especially Taiwan Province of China with a large export-oriented manufacturing sector and a large intake of migrant workers has been severely affected. In Taiwan Province of China, unemployment increased from 4.1 percent in September 2008 to 5.8% in May 2009 [fn 6]” (UNESCAP 2009:3).

### United Kingdom

In the UK the unemployment rate of male migrants aged 25 to 49 reached a bottom of 4.5 percent in the summer of 2008 and was then equal with that of British citizens. Over the next three quarters it rose to nearly 10 percent while that of citizens also rose but merely to 7 percent. By the end of 2009, they had begun to converge again but were still 2 percentage points apart. The unemployment rate of EU citizens continued its decline until the end of 2008, and then stood at 3.5 percent. Its subsequent rise hardly breached 5 percent. By the end of 2009 it had begun to descend towards 4 percent.

United Kingdom: Unemployment rates of the male labour force aged 25 to 49 by citizenship



Source: Eurostat online database, 2010-06-04.

Among non-EU citizen women of the same age group unemployment was between 6 and 8 percent in 2005, about 10 percent in 2006 and 2007, about 8 percent in 2008, and rose to about 11 percent in the second half of 2009. EU citizen women saw an increase from about 4 percent to about 6 percent between the beginning of 2008 and the end of 2009, and citizen women from below 4 percent to about 5 percent starting from the middle of 2008.

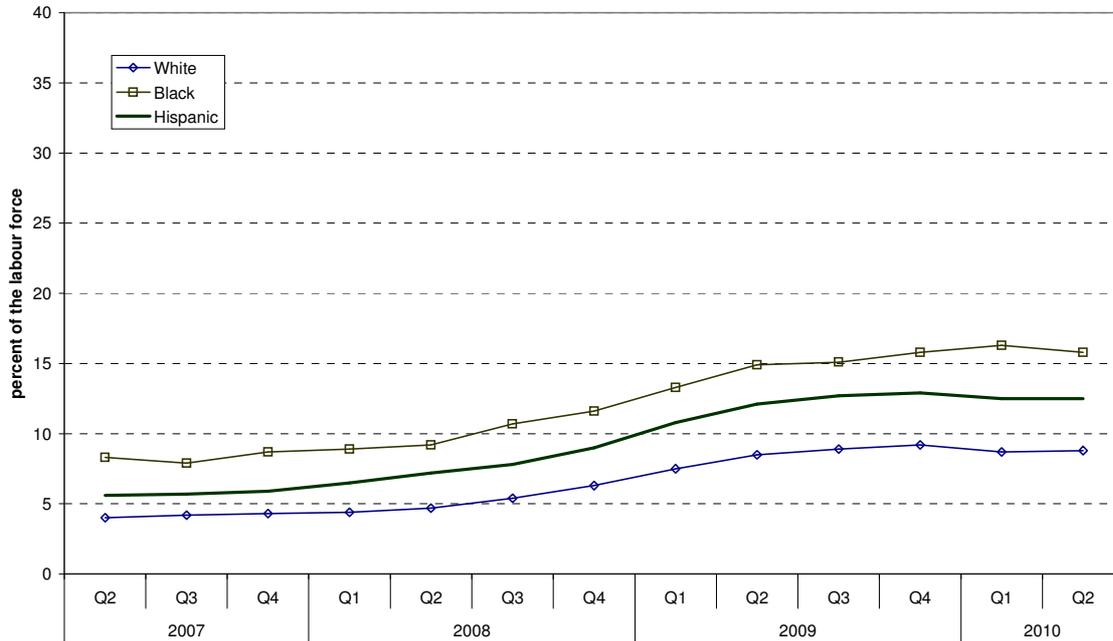
United States

Unemployment rates rose sharply during 2008 and 2009. There appears to be little difference in how migrant and non-migrant workers were affected. If anything, non-migrant minorities were hit worse than either the non-migrant majority or migrants (Fix et al 2009:26).

In the U.S. the unemployment rate of the immigrant labour force aged 16 and over had, until 2004, almost always been greater than that of non-migrants. Since then, it has at times been more than a percentage point smaller. In 2008 the migrants' unemployment rate rose far more than that of non-migrants but by mid-2009 they were the same (Orrenius/Zavodny 2010:8).

The quarterly data from the Current Population Survey, although for a wider age group than the EU data presented above, show a picture similar to Spain but at a much lower level. The gap between the unemployment rate of the Hispanic labour force and that of the white labour force increased from 1.6 percentage points in 2007 to 3.8 between the middle of 2009 and the middle of 2010. The increases were sharpest during the winter months 2008-2009 and 2007-2008. The gap between the black labour force and the Hispanic one remained roughly the same until the winter 2008-2009 when it widened slightly, and then widened some more in the winter 2009-2010 so that it stood at over 3 percentage points by mid-2010 rather than 2.5 three years earlier. In other words, as unemployment rates rose so did the differences between them.

Unemployment rates of the U.S. labour force



Source: U.S. Bureau of Labor Statistics, Current Population Survey <http://www.bls.gov/cps/tables.htm#quarterly>, 2010-08-14.

	Employment rate, percent			Difference		
	White	Black	Hispanic	Black-White	Hispanic-White	Hispanic-Black
2007Q2	4.0	8.3	5.6	4.3	1.6	-2.7
2007Q3	4.2	7.9	5.7	3.7	1.5	-2.2
2007Q4	4.3	8.7	5.9	4.4	1.6	-2.8
2008Q1	4.4	8.9	6.5	4.5	2.1	-2.4
2008Q2	4.7	9.2	7.2	4.5	2.5	-2.0
2008Q3	5.4	10.7	7.8	5.3	2.4	-2.9
2008Q4	6.3	11.6	9.0	5.3	2.7	-2.6
2009Q1	7.5	13.3	10.8	5.8	3.3	-2.5
2009Q2	8.5	14.9	12.1	6.4	3.6	-2.8
2009Q3	8.9	15.1	12.7	6.2	3.8	-2.4
2009Q4	9.2	15.8	12.9	6.6	3.7	-2.9
2010Q1	8.7	16.3	12.5	7.6	3.8	-3.8
2010Q2	8.8	15.8	12.5	7.0	3.7	-3.3

Source: U.S. Bureau of Labor Statistics, Current Population Survey <http://www.bls.gov/cps/tables.htm#quarterly>, 2010-08-14.

## Youth unemployment

Youth, already at a disadvantage during buoyant times, has suffered specially in the crisis. Usually not all parts of a country's youth are equally affected. In a summary of the situation in the 30 OECD countries it was noted that, "While the characteristics of the group of youth left behind differ from one country to another, they share the common fact of cumulating multiple disadvantages. Youth in this group tend to lack a diploma, come from an immigrant/minority background and/or live in disadvantaged/rural/remote neighbourhoods. The size of this group can be proxied by the number of young people who are neither in employment, nor in education or training (NEET). This group represented 11% of 15-24-year-olds on average in the OECD in 2007. Among them, two in three were already far removed from the labour market, either because they had been unemployed for more than a year or were inactive and did not seek a job" (Scarpetta et al 2010:19). To emphasize, having an "immigrant/minority background" is shown to be a burden akin to the lack of a diploma or living in a disadvantaged location and, indeed, as increasing the chances that one or both of the latter may be present along with "immigrant/minority background". The data permitting, a three-way distinction would be useful to make between young migrants on their own, young migrants married or otherwise related to members of non-migrant or earlier migrant families, and the children of migrants. As the typical migration age in the OECD and globally is between about 18 and about 38, youth includes all three classes and often in roughly equal numbers. The children of migrants having in-country school certificates may expect to fare better in the labour market than young post-education migrants with a comparable level of education or training, but this is not always true and not in all respects. The children of migrants may stand a better chance of being employed according to their education but they may face the same problems getting a job as young migrants. Unfortunately the three-way distinction is rarely made in the data. This is not so much a gap in questionnaires used for data collection, although sometimes it is that too, than a problem of sample size, of presentation of household information in microdata available for analysis, and incomplete data analysis.

The sure solution to youth unemployment has not yet been found. "During an economic downturn and early phases of the recovery, apprenticeship programmes can play a vital role in promoting access to jobs to youth. But even in countries where the apprenticeship system is well established (Germany, Austria, Switzerland and Luxembourg), employers become reluctant to offer apprenticeships, especially to those youth lacking educational qualifications and from an immigrant background" (Scarpetta et al 2010:24). Insinuated in the previous quote discrimination has also been detected by others as a likely contributor to differential youth unemployment:

- "... in its 2008 statistical analysis the OECD pointed out that the employment chances of young second generation immigrants in Germany are 15 per cent lower than the chances of their native German counterparts. As only half of these disparities can be explained by differences in educational attainment, the OECD assumes that 'labour market discrimination is likely to be a strong explanatory factor' [fn 28]" (FRA 2009:33).
- "A survey by the University of Hasselt, Belgium [fn 68], found that most graduates of Turkish or Moroccan origin felt that they had to make more efforts than native Belgians because of prejudices towards ethnic minority job applicants. Indeed, the survey found that graduates of Turkish or Moroccan origin found employment on average three months and 28 days after their graduation, whereas native Belgians took only two months and five days" (FRA 2009:38).

If unemployment benefits are paid by the public employment service the organisation may have an incentive to offer jobs to older workers with higher benefit claims before offering them to younger job seekers. This would also apply, and often additionally, if the benefit claims of migrant workers or their children are lower than those of non-migrant workers.

## Practices, lessons, and gaps

The evidence shows there is no simple connection between recession and migration, not even in a crisis felt globally. For migrant workers to leave a country of employment the push of unemployment or deteriorating wages and working conditions is not sufficient. Without the pull of plausible income opportunities for the migrant and, later on, her or his children few return to the country of origin. In fact, in a crisis situation even less so when there is a risk of not being able to return to the country of employment at will.

Voluntary return programmes (VRP) as practiced and funded in the last several decades and also in the current recession appear to appeal mostly to those that would have left anyway but seem to have few takers otherwise. Like past VRPs the current ones were also set up ad hoc and no preparations were made, it seems, for a proper evaluation of their functioning. It is possible, of course, that they were aimed more at the electorate than the migrant workers.

Employment rates and labour force unemployment rates appear to be largely unfazed by the recession. Many of the changes that might appear to be linked to it turn out not to be once the trend over several years is taken into account. It turns out to be extremely important to go beyond the short-termism of the media and to look at the medium and longer term.

The data show unambiguously that it did not take a recession to create remarkable gaps between migrants and non-migrants in employment chances and unemployment risks. If Eurostat's LFS data can be relied upon, then it is also evident that the more organised northern societies have a much larger problem with discrepancies than the southern European ones.

For most societies in the world, however, there appears to be no way of telling how well migrants are doing in the labour market. Missing data pose a challenge for an assessment of how the crisis has been impacting on migrant workers. Many countries rely on decennial census data for keeping track of demographics or on data sources that do not distinguish between migrants and non-migrants.

A separate issue is the speed at which data become available. It takes very good organisation and high levels of skill in order to produce publicly available survey data pertaining to a situation less than six months ago.

Language, of course, is also an issue in accessing data internationally.

Some data not presented here may in fact exist and be publicly accessible. It would, however, take significantly more time than available for this project to contact government or social partner offices around the world to find them.

There is no data analysis to draw on, if the data presented need to be as new as possible. Academic articles take a year to write and often another one or two years to get published. Further, there is relatively little research using international data. Only U.S. society, it seems, produced rapid research in quantity and quality but has – legitimately – an unavoidable U.S. bias. There clearly is a need to beef up migration and labour market research capacity outside the U.S. even at very mundane levels of methodological sophistication.

## Recommendations

By the end of 2010 there may be enough data to launch a more formal assessment of how employment and unemployment behaved in the run up to and during the recession. It would be important to link these outcomes to data on monetary policy and to the features of public incentive packages.

A serious effort needs to be made to understand why differences in employment and unemployment rates between migrants and non-migrants vary so widely within Europe. This needs to go beyond merely economic variables. It ought to take ways of policy making and the distribution of responsibilities in societies into account.

A close eye needs to be kept on the data as they emerge from statistical offices. The labour market impact of the recession may not have been fully felt yet and its power to adversely affect migrant workers either directly or indirectly, i.e. by using them politically as scapegoats, may yet strike.

## Chapter 2: Discrimination against migrant workers

### *Introduction*

#### Forms of discrimination

In the 1958 Discrimination (Employment and Occupation) Convention No. 111 discrimination was defined as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” unless based on inherent requirements of the job. The subject area covered was defined as “access to vocational training, access to employment and to particular occupations, and terms and conditions of employment” (<http://www.ilo.org/ilolex/english/convdisp1.htm>).

Because forms of discrimination keep changing the detection and elimination of discrimination is in fact a moving target, and success against one of its forms may often merely result in the shift to other and perhaps more subtle forms (Massey 2005:148, 150).

Areas of concern in the economic downturn include, among others, demotion in employment and in the labour market (forced to do less acceptable work by agencies and public employment services), wage reductions for the same work, reduced hours, deteriorating working conditions, employment by agencies, selective enforcement of aliens regulations and accompanying scapegoating, flight into self-employment, illegalisation, involuntary return, attacks on migrant businesses.

Discrimination could be committed as an individual misdeed. The chapter below will not pay any attention to such incidents, infinite in number though they may be. It will be confined entirely to discrimination directly imposed by the law and its enforcement or indirectly the effect of the law and its enforcement in areas it was not originally meant to affect. It covers discrimination that is legal either because the law demands it or permits it or engenders it unwittingly.

The chapter focuses on the behaviour of governments and organisations. Behaviour is more easily identified as discriminatory than the results migrant workers obtain in employment.

#### The challenges of this chapter

The chapter is principally based on quotations from sources with a degree of independence and yet formally or informally accountable to the international community of states. This includes, in particular, sources within the UN system and NGOs monitoring state activities.

These sources, of course, all require a minimum of procedure and thus time to verify the information they process. As of mid-2010, there is little information at this level of quality that pertains to the crisis year 2009. However, as shown in chapter 1, the recession – and its impact on migrant workers – was considerably more an expectation held in late 2008 and early 2009 than came to materialize subsequently. In quality sources on 2009, when they become available, discrimination against migrant workers can therefore be expected to show up as business as usual.

There is a special methodological problem with this chapter. Much of the information is from human rights organisations, some intergovernmental, some non-governmental. This has the disadvantage that they have little leeway exactly under the most repressive conditions. In addition, under heavily repressive conditions migrant workers may not be their first concern. Their reporting will tend to indict the laggards and the more corrupt among the open regimes rather than the really repressive ones.

## ***The likeliness of complaints***

### Few official complaints

Complaints data can only be illustrative or indicative: "... in most EU Member States there is no accurate recording of official complaints of racial discrimination, and ... the inferences that can be drawn from such statistics are very limited" (FRA 2009:33). "The data provided are not easily comparable given the varied nature of the equality bodies. As noted in previous Annual Reports, a higher level of registered complaints is not necessarily a sign of high levels of discrimination. On the contrary, given the extent of subjectively experienced discrimination in all Member States, as noted in the EU-MIDIS survey, a higher number of complaints rather reflects that awareness is higher and that there is an efficient and credible mechanism in place [fn 41]. In almost all Member States, the number of officially registered complaints is remarkably low, ranging from virtually none, through a few dozens or hundreds. There are exceptions such as France (Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE)) which registered some 10,500 cases in 2009 [fn 42]" (FRA 2010b:33). All this is also true for most other countries. EU-FRA every year reports cases of individual misdeeds, as do others, but it would not really be useful to include any of them in the current report.

#### European Union

As the examples below show, legal, institutional, organisational, and cultural barriers to lodging a complaint need to be lowered, at least in Europe and probably elsewhere. Competence for and in dealing with discrimination complaints must be raised or created.

- "... in Belgium during the first six months of 2007, the only complaint of racial discrimination lodged with the Walloon Region was investigated by the Inspection Service of the Walloon Region. The reason put forward to explain the low level of complaints was that no service is clearly mandated or trained to process complaints of discrimination, a situation which might change when a new mediation service becomes operational [fn 131].
- In the Czech Republic employees of the anti-discrimination hotline pointed out that whilst dozens of complaints of racial discrimination were received, they remained unofficial, and were not dealt with due to a lack of evidence, or concerns of the injured parties about the high financial costs of the court case [fn 132]" (FRA 2008:49).
- "In Slovenia the government's Office for Equal Opportunities conducted a survey reporting inter alia experiences of racial and sexual harassment at the workplace, which also confirmed that a majority of victims did not report the incident to anyone [fn 153]" (FRA 2008:51).
- "In Spain the annual report of the Commission for Refugees' Support [fn 133] suggests that the number of complaints is rather low partly because the battle against discrimination has never been subjected to major public debate, so that victims are poorly informed about their rights.
- And in Romania a 2007 report by the European Roma Rights Centre (ERRC) [fn 134] points out that there is little incentive to make a complaint when 'employers in the public and private sector alike are not under serious threat of financial loss in case of discrimination, because sanctions imposed by antidiscrimination laws are usually not dissuasive, especially for larger companies' [fn 135].
- Finally, in Cyprus the new trade union organisation for handling complaints of employment discrimination [fn 136] actually operates a policy of not referring cases to the Equality Authority because of the belief that nothing will be achieved by this, and also from a motive of not want-

ing to ‘expose’ the Republic of Cyprus on issues of discrimination, preferring mediation and alternative solutions [fn 137].

- As for domestic workers in Cyprus, NGOs reported that many do not complain to the authorities out of fear of deportation [fn 138]” (FRA 2008:49).
- In Vienna, Austria, complaints about discriminatory job or rental advertisements, even if lodged in bulk, have been leading to nothing (FRA 2008:46).

The simple minded stance that an official complaint would “expose” the culprit or the culprit’s country has often led to much greater exposure at a later date. Great evils can come from small beginnings and are much harder to stop.

“The low awareness of where to complain is exacerbated by a feeling of disillusionment: almost two thirds of the respondents in the EU-MIDIS survey did not report discrimination due to a sense that nothing would happen or change by doing so“ (FRA 2010b:31).

#### Philippines

“(29) ... While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system or fear of retaliation and unfamiliarity with the redress possibilities” (Committee 2009:37).

“(31) The Committee notes with concern that, despite the State party’s efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially of women migrants and that these are underreported” (Committee 2009:38).

#### Russia

In Russia limited access of migrant workers to complaints bodies was reported (Human Rights Watch 2009a:80).

#### Saudi Arabia

“Embassies reported that few women approach Saudi authorities with these complaints due to the risk of being prosecuted themselves for adultery, fornication, or other moral ‘misconduct’” (Human Rights Watch 2008c:4-5).

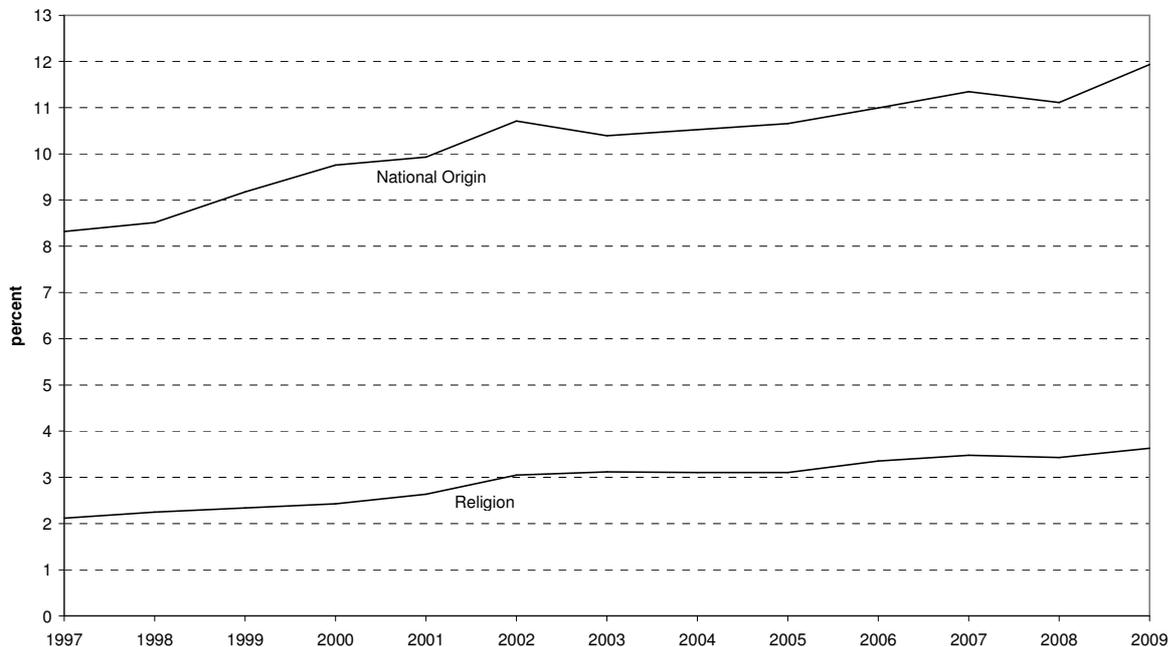
#### United States

The U.S. sports an exceptionally good and comprehensive system of keeping track of employment related discrimination charges. They were stable at about 80,000 per year from 1997 to 2007. In 2008, they suddenly increased to about 95,000, and they were still at a level of about 93,000 in 2009. The timing does suggest a link with the recession. The data are collected by “the EEOC [Equal Employment Opportunity Commission] – the federal agency that Congress created to receive, investigate, and resolve employment discrimination claims” (Hirsh 2008:240), and they are complete: “The EEOC also collects detailed data describing each discrimination charge filed with the agency [fn 4: The EEOC Charge Handling Database also includes charges filed with state and local fair employment agencies. Every charge that alleges violation of a federal antidiscrimination law (Title VII, the Equal Pay Act, ADA, and ADEA) is recorded in the EEOC charge database, even if the charge is received and processed by a state or local agency]. These data include the protected class of the complainant (e.g., complainants’ sex, race, and age), the nature of the allegation (e.g., harassment, discrimination in hiring, promotion, or termination), characteristics of the accused employer, and all actions taken by the EEOC while resolving the charge, including the final resolution and terms and conditions of settlements” (Hirsh 2009:252).

Of interest for the current purpose are charges of discrimination in employment based on “national origin” (EEOC 2010a) and possibly on “religion” (EEOC 2010b). “Race/color” (EEOC n.d.) is less likely to be invoked by migrant workers. “Workers can cite multiple bases in a single claim. For instance, an Asian female worker can allege discrimination on the basis of both sex and race. Workers can also cite multiple employment issues in a claim; a worker might file a claim citing sex discrimination in promotion and pay” (Hirsh/Kmec 2009:523 fn 11). Therefore the total number of charges is less than the sum of the claims. Neither citizenship nor legal status bars any worker from filing a charge (EEOC 2010a:2). The prohibition of discrimination by national origin covers a large number of markers: “It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group” (EEOC 2010a:1).

Age discrimination and retaliation featured prominently in the 2008 increase. Interestingly, although both national origin and religion recorded increased numbers of charges in 2008, neither increase was large enough to maintain their respective shares in the total. In 2009, though, both their shares rose and reached new peaks.

The share of National Origin and Religion in total EEOC discrimination charges, by Financial Year



Data source: Charge statistics FY 1997 through FY 2009 <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>, 2010-08-13.

Charges of employment discrimination in total and on grounds of National Origin and Religion in the United States by Financial Year

Financial Year	Number of cases			Share in total, percent	
	Nation	Religion	Total	Nation	Religion
1997	6,712	1,709	80,680	8.3	2.1
1998	6,778	1,786	79,591	8.5	2.2
1999	7,108	1,811	77,444	9.2	2.3
2000	7,792	1,939	79,896	9.8	2.4
2001	8,025	2,127	80,840	9.9	2.6
2002	9,046	2,572	84,442	10.7	3.0
2003	8,450	2,532	81,293	10.4	3.1
2004	8,361	2,466	79,432	10.5	3.1
2005	8,035	2,340	75,428	10.7	3.1
2006	8,327	2,541	75,768	11.0	3.4
2007	9,396	2,880	82,792	11.3	3.5
2008	10,601	3,273	95,402	11.1	3.4
2009	11,134	3,386	93,277	11.9	3.6

Data source: Charge statistics FY 1997 through FY 2009

<http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>, 2010-08-13.

### Access to information on protections against discrimination

#### European Union

Research conducted by the European Union Agency for Fundamental Rights (EU-FRA) has been discovering serious differences between groups of migrants regarding their rights awareness. Lack of knowledge can be severely disempowering.

“In some countries, as in the case of France and Spain, levels of knowledge are similar between the different groups surveyed. However, in some Member States very different levels of legislative awareness are apparent between groups; for example, in Ireland, 34% of Central and East European respondents were not aware of anti-discrimination legislation when applying for a job, whereas 57% of Saharan Africans were unaware” (FRA 2010c:5).

While some of the data FRA presented are suggestive of a link between awareness and duration of residence, others are not. For instance, only 20% of migrants originating from North Africa and living in Spain were aware of legislation but 37% in Italy, about 45% in Belgium and the Netherlands, and 66% in France. This does correspond to the recency of the immigration. Migrants from Romania in Spain and Italy, also recent, were also poorly aware of legislation in spite of being EU citizens. On the other hand, only 27% of migrants from Turkey were aware in Austria, but 35% in Belgium, 39% in Germany, 42% in Denmark, and 58% in the Netherlands. Similarly immigrants from the former Yugoslavia were considerably less aware in Austria and in Luxemburg than in Germany. Only about a quarter of migrants from Africa south of the Sahara were aware in Portugal but about two thirds in France, although the migration histories are similar, and more than 40% in Ireland where they are a much more recent presence. All this points to a difference between receiving countries rather than an influence of the duration of residence (FRA 2010c:6).

At times, gender is also being found to matter: “... a notable difference in awareness of anti-discrimination legislation when applying for a job was found between male and female interviewees with a Turkish background (encompassing six Member States where Turkish respondents were surveyed). That is, whereas 42% of Turkish male respondents said that there was legislation in this area, only 34% of Turkish female respondents thought that such legislation exists” (FRA 2010c:5).

Age is also being shown to be of influence, although this may be hard to tell apart from duration of residence: “the results show the clearest relationship between age and knowledge about the existence of legislation in this area with respect to Turkish and former Yugoslavian interviewees – with awareness of legislation declining progressively as respondents get older. In sum, 16-24 year olds in these two groups are most aware of anti-discrimination legislation in the area of employment, while those aged 50 and above are least aware. These results point to the need for targeted information campaigns among specific groups, such as women and older people, within different minority populations” (FRA 2010c:5).

These findings are complemented by results pertaining to the entire population, not just migrants. In Eurobarometer surveys, in 2008 and 2009, respondents were asked: “Do you know your rights if you are the victim of discrimination or harassment?” In 2009, “As in 2008, only one-third of EU citizens say that they know their rights, should they be a victim of discrimination or harassment (33%). Over half (52%) give the opposite answer, with the remainder saying that ‘it depends’ (12%)” (European Commission 2009a:34). “Although the direction of results in most countries is close to the overall EU average, there are nonetheless some countries where more citizens say they would know their rights rather than they would not: Finland (63% would know vs. 27% would not), the UK (49% vs. 44%), Sweden (47% vs. 43%), Malta (45% vs. 41%) and Slovenia (41% vs. 38%)” (European Commission 2009a:34). At the other end of the spectrum “The lowest proportions knowing their rights are recorded in Austria (16%). It can be noted in this context that in Austria the proportion of citizens saying they have suffered discriminated in the past year (22%) is above the EU average of 16%” (European Commission 2009a:35). France (38%), the Netherlands (38%), Spain (36%), and Ireland (36%) had above average shares of respondents knowing their rights, Belgium and Luxembourg (32%) were average, while Germany (26%), Italy (25%), and Portugal (24%) came out below average.

Neither in the MIDIS reports nor the annual reports does FRA suggest information is wilfully being kept away from either all or certain groups of migrants. On the other hand it is evident that information will often not reach migrant workers if no special effort is being made. If they are in segregated employment with little access to trade unions sympathetic to their situation, especially in private homes and perhaps also in agriculture, they may never learn of their rights. If the information is only available in a few languages, migrants not reading or understanding any these well enough to comprehend legal information will be excluded. There is an additional risk in the information becoming inaccurate if being handed on orally or if printed material is not easy to understand. Clearly, the more the law provides for rights the more important information on these rights becomes. There appears to be significant danger, at least in some places and for some migrant populations, that the blatant exclusion from rights based on citizenship is being replaced by the more subtle exclusion on the basis of information. Providing for rights without also providing for information on these rights can be close to not providing for the rights in the first place. An obligation to provide effective, accurate, and timely information needs to be an integral part of anti-discrimination legislation.

#### Philippines

“(29) The Committee is concerned at the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country” (Committee 2009:37).

#### Syria

“(19) The Committee is concerned that migrants who do not speak Arabic may not be in a position to easily access information on their rights under the Convention in the State party” (Committee 2008:15).

“(33) While welcoming the State party’s ongoing efforts to protect the rights of Syrian migrant workers seeking to work abroad, the Committee notes that the public information made available to migrant workers rarely refers to their rights arising out of the Convention” (Committee 2008:17).

### Right to an effective remedy

#### Azerbaijan

“(26) While taking note of the information provided by the State party that migrant workers have access to the courts of law and enjoy protection of the rights laid down in the legislation, the Committee remains concerned at reports that migrant workers, in particular those in an undocumented or irregular situation, have in practice limited access to justice, due to a lack of awareness of the administrative and judicial remedies available to them and to fear that they may lose their employment or face deportation if they approach the courts” (Committee 2009:8).

“(28) The Committee notes with concern reports that migrant workers who face expulsion or who have to leave the country after their employment has been terminated by their employer, are not given enough time to finalize pending matters and to seek redress for any violations of rights they may have suffered” (Committee 2009:8).

#### Bolivia

“(23) The Committee takes note of the information received from the State party that every individual, citizen or alien, has access to the courts of law and enjoys protection of the rights laid down in the legislation, and that complaint mechanisms before the Ombudsman (*Defensor del Pueblo*) are available for migrant workers. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them” (Committee 2008:22).

“(29) The Committee is concerned that it is not clear from the information provided by the State party whether migrants have access to appeal procedures in relation to expulsion decisions” (Committee 2008:23).

#### Bosnia-Herzegovina

“(21) The Committee is concerned at information indicating violations of the rights of migrant workers to an effective remedy, in particular in relation to the revocation of rights of citizenship and subsequent expulsion orders. In this regard, the Committee is concerned that migrant workers who have been stripped of their right to citizenship are particularly vulnerable to having their due process rights violated” (Committee 2009:15).

#### El Salvador

“(25) The Committee takes note of the information received from the State party that every individual, regardless of his or her nationality, has access to the courts of law and enjoys protection of the rights laid down in the legislation, and that complaint mechanisms before the National Human Rights Institution are available for migrant workers. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them” (Committee 2009:28f).

“(27) The Committee notes with concern that the procedure for expulsion/deportation is not fully regulated by law. The Committee further notes with concern that the right to seek a stay of the expulsion is not provided for in the law” (Committee 2009:29).

## Syria

“(25) The Committee notes the information received from the State party that every individual, whether citizen or alien, has access to the courts of law and enjoys full protection with regard to the rights laid down in the legislation. The Committee is concerned, however, that undocumented migrant workers, as acknowledged by the State party, are not entitled to seek redress through the Syrian labour commissions, bearing in mind also that this is the only means of seeking redress without incurring legal fees. The Committee is also concerned that migrant workers, irrespective of their legal status, may have limited access to justice in practice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them” (Committee 2008:15f).

“(27) The Committee is concerned about reports of instances in which migrant workers and members of their families found to be in violation of immigration regulations are detained and deported without due process” (Committee 2008:16).

## United States

“102. Numerous workers have witnessed immigration raids by ICE and local law enforcement across the city of New Orleans, at large hotels downtown, the bus station, hiring sites across the city, the Superdome, on work sites, in the parking lots of home improvement stores, and even inside homes that workers are gutting or rebuilding. Workers report frequent immigration raids; retaliatory calls to immigration authorities, or threats of such calls, by employers; and collaboration between local law enforcement agents and ICE to the benefit of employers.

103. The lack of labour and human rights enforcement in the Gulf Coast stands in stark contrast to the aggressive tactics employed by local police and ICE, who readily respond to tips from unscrupulous employers who report workers that voice employment-related grievances. As a result, ICE raids on day labourer and other work sites have increased substantially in the wake of Hurricane Katrina. Both ICE and the Department of Labor have expressed their commitment to developing a process whereby ICE will determine, before deporting any worker detained on the Gulf Coast, whether the worker has any unpaid wage claims. Although ICE and the Department are reportedly engaged in ongoing consultations on this subject, no agreement appears to be in place. Workers live in fear of these tactics every day and most cannot or will not complain for fear of more severe repercussions” (Bustamante 2008:23).

## Implementation gaps

### Bosnia-Herzegovina

“(19) The Committee welcomes the promulgation of the Law on Movement and Stay of Aliens and Asylum, which entered into force in October 2003, and provides that non-citizens shall not be subject to discrimination on any grounds. The Committee also notes that the Constitutions of Bosnia and Herzegovina and the Entities, similarly, prohibit discrimination. However, the Committee is concerned that there is no precise information available as to the extent to which the legal framework has been effective in protecting the rights of migrant workers from discrimination” (Committee 2009:14).

### Philippines

“(23) The Committee notes with interest that the principle of non-discrimination exists de jure in the Philippine Constitution, RA 8042, as well as a number of legislative measures. The Committee is concerned however, that, in practice, foreign workers in the Philippines are granted rights only under certain conditions, such as reciprocity, which may not be in line with the Convention” (Committee 2009:36).

## ***Employment opportunities***

### Employment, and specifically hiring

#### Azerbaijan

“(24) While taking note that, according to the delegation, migrant workers have equal rights with citizens of Azerbaijan, the Committee is concerned at information that migrant workers, in particular undocumented and irregular migrant workers, and members of their families, may in practice suffer from various forms of discrimination, in particular in the area of employment, education, and housing” (Committee 2009:7).

#### Belgium

“Members of the Muslim community, estimated at 450,000 and principally of Moroccan and Turkish origin, have stated that discrimination against them notably in education and employment exceeded that experienced by other immigrant communities” (ITUC 2008f:14).

#### El Salvador

“(23) The Committee is concerned at the information that migrant workers and members of their families may suffer from various forms of discrimination in the area of employment” (Committee 2009:28).

#### European Union

In the European Union Agency for Fundamental Rights’ annual report 2010 the employment chapter starts by saying that “In 2009 the area of employment continues to be identified as the area of social life where discrimination is reported the most” (FRA 2010b:48). Apart from a large number of individual complaints the report also includes a number of occurrences of wider significance. It does not make any mention of the recession at all, although Europe was hit worst.

What evidence there is suggests that in the European Union migrant workers are only second most likely to be or to feel discriminated in the labour market. Roma, Sinti, and Travellers seem to be affected considerably more. “In FRA’s 2009 EU-MIDIS survey, 38 per cent of Roma jobseekers felt that they had been discriminated against at least once when applying for a job in the 12 months preceding the survey. Twenty-two per cent of Sub-Saharan African and 20 per cent of North African jobseekers indicated the same” (FRA 2010b:51). Roma are sometimes recent migrants but usually not.

“As with previous years, there are studies from 2006/2007 which suggest that different rates of unemployment at least partly reflect forces of discrimination, rather than simply reflecting factors such as differences in education or skill levels. For example, studies comparing access to employment of equally qualified minority and majority populations in Belgium [fn 74], Germany [fn 75], the Netherlands [fn 76] and the UK [fn 77] found that after correcting for other variables – e.g. age, gender, education – there were still differences between majority and minorities in accessing jobs at various levels” (FRA 2008:43).

#### France

“... in France, a judgment delivered on 23 June 2009 by the French Court of Cassation [fn 83] found that several companies and an individual had committed ethnic discrimination when hiring employees via interim agencies (FRA 2010b:50).

#### Greece

“Unfortunately, women, migrant workers, Roma and other ethnic minority groups continue to face discrimination in employment” (ITUC 2008f:17).

## Italy

“The term ‘discriminatory legislation’ refers to a kind of ‘legal discrimination’ against non-EU nationals. With regard to the area of employment, the dominant issue here is that of regulations which restrict the access of such non-nationals to public sector jobs. ... Examples in 2009 which fall under this heading were found in Italy, where five long-term legally-resident non-EU nurses were excluded from a selection process by a hospital in Genoa on the grounds that they did not possess Italian or other EU citizenship. The head of personnel at the hospital insisted that nurses are public officials and as a consequence only Italian citizens can be employed in such posts [fn 119]. Another example was the public transport company of Milan, which was found guilty of discriminating against legally-resident third country nationals for requiring Italian or EU citizenship for access to work in the company [fn 120]” (FRA 2010b:55-56).

## Netherlands

“Labour participation of migrant women is still lagging behind that of women of Dutch origin. Participation is particularly low among Turkish and Moroccan women and women from the so-called new ethnic minority groups (e.g. from former Yugoslavia, Somalia, Iran and Afghanistan)” (ITUC 2008f:19).

“In the Netherlands, in November 2007, the Social and Cultural Planning Office and Art. 1, the Dutch Association against Discrimination, published a research report on labour market discrimination against non-Western ethnic minorities, based on quantitative analyses of the labour market position, interviews with ethnic minorities, and filed complaints. The research shows that discrimination limits the access to the labour market, and that higher unemployment figures for non-Western ethnic minorities can only partly be attributed to labour market-relevant characteristics. (However, discrimination seems to have less influence on the position of ethnic minorities who are already in employment.) It appears that Moroccans are confronted most with discrimination, whereas second-generation Antilleans have virtually the same opportunities for (permanent) employment as the indigenous population [fn 78]” (FRA 2008:43).

“In the Netherlands an instruction was circulated to branches of a supermarket chain not to take on applicants of Moroccan descent [fn 78]. Following the leaking of the instruction, a local anti-discrimination agency [fn 79] took the case to the Equal Treatment Commission and reported the case to the police. The instruction was withdrawn by the company, who agreed not to discriminate in its recruitment procedures [fn 80] (FRA 2010b:49).

## Spain

“Due to the significant increase in unauthorized migration from the region Spain began requiring visas for Ecuadorians in 2003 and for Bolivians in 2007” (Cerrutti 2009:3 fn 9). Both of these instances occurred when real economic growth slipped below 2 percent.

## Swaziland

... “migrant workers and non-Swazi nationals face significant discrimination in employment, while citizenship is virtually impossible for them to obtain” (ITUC 2008g:14).

## Sweden

“As with previous years, much information on the operation of discrimination in employment has come from the explorations of research. For example, in Sweden in 2007 a new research method to test discrimination was used by the Institute for Labour Market Policy Evaluation, using data from an Internet based CV database. Even after controlling for all other differences, the researchers found that jobseekers with non-Nordic names were contacted significantly fewer times by companies [fn 140]” (FRA 2008:50; see Edin/Lagerström 2006; Erikson/Lagerström 2007).

## Syria

“(23) While noting that Syrian law does not generally discriminate between Syrian nationals and Arab migrant workers in the areas covered by the Convention, the Committee remains concerned that non-Arab migrant workers and their families, in some instances, may be discriminated against in practice, especially at the local level, in their enjoyment of rights and freedoms under the Convention and in their ability to access employment, housing, health care and education” (Committee 2008:15).

## Thailand

“Thai migrant policy in 2010 is at a crossroads. The Thai government in 2009 announced a ‘final’ registration program that attracted almost 1.3 million applications from migrants for work permits by March 2, 2010. However, in order to receive renewable two-year work permits, migrants must begin the process of obtaining passports from their country of origin. This has been difficult for Burmese migrants in Thailand, who can obtain Burmese ID cards without leaving Thailand but not Burmese passports. The Burmese government insists that migrants return to Burma and provide proof of Burmese nationality to obtain passports.

By the end of January 2010, fewer than 13,000 of the 1.1 million Burmese who registered with the Thai government completed the nationality verification process. Many Burmese migrants are ethnic minorities reluctant to return to Burma because of the costs involved and the danger that they or their relatives will come to the attention of the government.

Acknowledging the slow pace of nationality verification for Burmese, the Thai government allowed migrants who begin the nationality verification process to work legally in Thailand. This entails submitting work permit renewal forms and paying fees that range from 900 (\$27) to 1,800 baht (\$54) a year, plus a health check up fee of 600 baht and a health-insurance fee of 1,300 baht (a total 3,800 baht or \$116). Those who submitted nationality verification forms before March 2, 2010 at Provincial Employment Offices received a receipt confirming that they began the NV process can remain in Thailand until February 28, 2012.

The Thai government said that 850,000 migrants had begun the NV process by March 2, 2010. This means that 500,000 migrants who registered in 2009 did not begin the NV process and are subject to deportation.

The purpose of nationality verification is to ensure that there is no confusion about the country to which the migrant is expected to return. The status of migrant workers while in Thailand is officially “illegal, pending deportation,” albeit with the right to work legally in Thailand. Thai employers must begin paying a levy of 200 to 600 baht a year, depending on their province, for each low-skilled migrant worker they employ (200 baht a year in all provinces for those employed in agriculture and fisheries).

The MOU [Memorandum of Understanding], nationality verification, and work permit and employer levy system reinforces the Thai government’s intention to change the past policy of having migrant workers arrive, go to work, and then be registered or legalized periodically by their Thai employers. Instead, the Thai government wants to admit migrant workers with passports and work permits under the MOUs, that is, have migrants legally enter Thailand. However, the cumbersome and costly nationality verification process is likely to delay the time when most migrants in Thailand are legally registered with authorities.

Meanwhile, the Federation of Thai Industries complained in February 2010 that there were shortages of workers in fishing, garments, and construction, adding “Thai people don’t want these jobs.” Thailand’s minimum wage rates in 2010 include 206 baht a day in Bangkok, 205 baht in Samut Sakorn, and 153 baht in Tak ([www.mol.go.th/statistic\\_01.html](http://www.mol.go.th/statistic_01.html)).

There were 108,000 registered migrant domestic helpers in Thailand in 2009; almost 95 percent were Burmese. Another 21,500 migrants were gardeners” (Migration News 17/2, April 2010, [http://migration.ucdavis.edu/mn/more.php?id=3600\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3600_0_3_0), 2010-06-30).

### Labour force nationalisation policies

Measures and practices designed to “push out” migrant workers, perhaps selectively, were to be expected against the backdrop of the crisis. Job losses could result in automatic loss of the right to remain in the country. This might also affect long-term residents and could cause true hardship. In several cases these policies hark back to the 2001 recession or even longer.

#### Gulf countries

“Although most GCC countries are still seeking to increase the participation of locals in the labour markets, it is not likely that they would be able reverse their dependence on foreign workers” (UNESCAP 2009:3).

#### Israel

Israel has in recent years been exhibiting an interesting example of policy efforts to squeeze migrant workers out of the labour force (and out of the country) in a bid to replace them with citizen workers – that are partly recent immigrants – and with trans-border commuters whom the migrant workers were earlier called in to replace. Thus migrant workers, over the past 15 years, were shown both sides of the medal. At certain points in time they were favoured and needed, and consequently tolerated even when they lacked papers, while recently they have been treated as superfluous and harmful. The whole treatment is obviously that of a buffer stock of labour that is expected to endure shifting around passively (see the detailed description by Kemp 2010:13-15, 28-29).

#### Korea

Parallel to a freeze on new visas and a crackdown on undocumented foreigners enterprises are being paid to hire citizen workers: “To encourage small and medium-sized companies, the primary employers of foreign workers, to hire more nationals the Government has announced a subsidy scheme whereby a subsidy of 1.2 million Korean won is granted to a firm for every newly-hired Korean worker” (Abella/Ducanes 2009:10).

#### Malaysia

“The Malaysian government has issued a freeze on the issuance of work permits for foreign workers, and like Singapore, has instituted a policy to terminate foreign workers first. It has also instituted a policy to fast-track the deportation of undocumented foreigners, under which offenders simply handed a fine and sent home, without going through court proceedings and jail [fn 12: Malaysia has an estimated one million undocumented workers according to its Ministry of Foreign Affairs]. This policy is reported to have already resulted in the deportation of 65 thousand undocumented foreigners. To help its own overseas workers, the Malaysian government has tasked its Labour Office to register all returning Malaysian workers in need of assistance” (Abella/Ducanes 2009:9-10).

#### Oman

“Most of the country’s 600,000 to 700,000 migrant workers are from Southern Asia and they have a particularly strong presence in the construction industry. Like most of the Gulf countries, the Sultanate of Oman has a declared policy to create more jobs for its own nationals, particularly in the private sector. As a result of that policy many sectors are not open to expatriates and the number of employed foreign workers has dropped” (ITUC 2008e:4).

## Employment termination

### Austria

“In its report on Austria, adopted in 2009, the Council of Europe’s ECRI [fn 121] criticised the Austrian legislation which allows employers, when making staff cuts, to dismiss foreign workers first. In its previous reports, ECRI had already called for the repeal of Section 8(2) of the Aliens Employment Act No. 218/1975. This provision was also found by the European Committee of Social Rights to be incompatible with Article 1 § 2 of the European Social Charter: although the scope of the disputed provision has been reduced since 2005 (it now applies only to foreign workers when they first enter the labour market). Section 8(2), which provides that in the event of reduced activity in the company, the employment contracts of foreign nationals may be terminated if such action might prevent shorter working hours for all workers, still constitutes discrimination based on nationality and is therefore incompatible with Article 1 § 2 of the Charter [fn 122]” (FRA 2010b:56).

### Malaysia

“The Malaysian government ... has instituted a policy to terminate foreign workers first” (Abella/Ducanes 2009:9).

### Singapore

“The Singaporean government is urging companies to avoid lay-offs by finding means to cut costs, but in case of unavoidable retrenchment, to lay off foreigners first. To boost domestic output, the government is increasing public spending. It is hiring more teachers and healthcare workers, and is also bringing forward construction projects that it had previously deferred. The Ministry of Manpower is tasked to ensure the enforcement of the legal obligations of employers and the proper settlement of disputes between foreign workers and employers, which are expected to increase as a consequence of the crisis. The Ministry is blacklisting errant employers” (Abella/Ducanes 2009:9).

## Illegalisation

### Azerbaijan

“(14) ... The Committee is particularly concerned that, under Cabinet of Ministers Decision No. 214 of 6 December 2000, individual work permits may be granted for a one-year period and renewed four times, each time for not more than one year, after which migrant workers concerned must return to their countries for at least one year before initiating again the proceeding to return to Azerbaijan” (Committee 2009:6).

“(44) The Committee is concerned at reports of the very high percentage of migrant workers who are in irregular situation, without adequate working conditions and social security benefits” (Committee 2009:10).

### Bolivia

“(31) The Committee is concerned at reports that long delays, failure to meet procedural deadlines and the cost of procedures hinder the regularization of migrant workers and may discourage them from pursuing the procedure for regularization, hence perpetuating their illegal or irregular situation. The Committee notes with concern that decree No. 24423 does not provide specific protection for migrants while undergoing registration procedures” (Committee 2008:23).

### Ecuador

“(28) The Committee is concerned at the information that there is in the State party a high number of persons in need of international protection, notably Colombians, who do not apply for asylum for

a number of reasons (including the fear of being deported and stringent documentation requirements) and who remain in a very vulnerable and marginalized situation” (Committee 2008:9).

#### El Salvador

“(43) The Committee takes note of the work of the Division for Humanitarian and Migrants’ Assistance in the repatriation of injured and deceased Salvadoran irregular migrants, and in the provision of medical assistance to injured migrants. Nevertheless, the Committee remains concerned at the various dangers that migrants encounter when they migrate irregularly” (Committee 2009:31).

#### Philippines

“(39) The Committee notes with interest the labour migration policy implemented by the State party, with the Government playing a supportive and regulatory role. The Committee further notes the efforts taken by the State party to strengthen the Philippine Overseas Employment Agency and the Department of Foreign Affairs’ handling of irregular migration. At the same time, the Committee is concerned about the large numbers of Filipino workers overstaying their visas and the continuing existence of irregular and undocumented Filipino migrants abroad, of which most are women serving as domestic workers, who may be more vulnerable to abuses” (Committee 2009:39).

#### Russia

“Under the new laws, upon receipt of an application, the FMS should issue the work permit, in the form of a plastic card, within 10 days of application. The fee for the work permit is 1,000 rubles (US\$42). In order for the work permit lasting longer than 90 days to remain valid, within 30 days of application, the foreign worker must submit medical documents, including a certificate on HIV status, tuberculosis, and other conditions [fn 52]. Medical documents can be obtained usually only from a few designated medical facilities in each city or oblast. The worker must obtain legal employment within 90 days of receiving the work permit or the permit expires. The work permit is valid only for the city or region in which the migrant worker applied. If a worker decides to move to another region, he or she must apply for a different work permit” (Human Rights Watch 2009a:21).

#### Syria

“(29) The Committee notes the States party’s position that those Iraqi nationals who have sought refuge in the Syrian Arab Republic since 2003 are neither to be considered refugees nor migrant workers falling within the ambit of the Convention. The Committee also notes the information that only some 500 of those Iraqi nationals have received a work permit in Syria” (Committee 2008:16).

### Forced return

Policies of forced return may especially affect the economic and social outcomes of non-migrants in origin countries depending on remittances, and indirectly whole communities and local economies.

Policies of forced return are often targeted against particular parts of the migrant worker population. One frequent target are workers in an irregular situation, but there were also two recent reports by Human Rights Watch on migrant workers with HIV/AIDS, especially their forced return to countries of origin where their situation will be more precarious than in the current country of residence. They are easy targets for return policies (Human Rights Watch 2009d, 2009e). The problem also affects internal migrants (Todrys/Amon 2009).

#### Malaysia

“The Malaysian government has ... instituted a policy to fast-track the deportation of undocumented foreigners, under which offenders simply handed a fine and sent home, without going through court proceedings and jail [fn 12: Malaysia has an estimated one million undocumented

workers according to its Ministry of Foreign Affairs]. This policy is reported to have already resulted in the deportation of 65 thousand undocumented foreigners” (Abella/Ducanes 2009:9).

#### South Africa

“Forced returns are especially controversial. Their number has been rising sharply in some countries, surpassing ... 300,000 in South Africa in 2008 alone” (UNDP 2009:99).

#### South Korea

“Like Malaysia, Korea has also intensified its crackdown on undocumented foreigners, with about 8 thousand already deported since November 2008” (Abella/Ducanes 2009:10).

#### Thailand

“In Thailand the Government has announced that no new work permits will be issued and that the planned registration of undocumented foreign workers will now be put off till after 2009. The work permits of about 500 thousand foreign workers will not be renewed for 2010 and the authorities have threatened to deport undocumented migrant workers” (Abella/Ducanes 2009:10).

#### United Kingdom

The Human Development Report 2009 mentioned that, “For example, in the United Kingdom the Foreign and Commonwealth Office team working on promoting the return of irregular migrants and failed asylum seekers is currently five times larger than the team focused on migration and development in the Department for International Development (Black/Sward 2009)” (UNDP 2009:99 fn 9). Though not directly labour related this does affect migration for employment as well.

#### United States

“Forced returns are especially controversial. Their number has been rising sharply in some countries, surpassing 350,000 in the United States ... in 2008 alone. ... a recent survey of Salvadorian deportees found that one quarter had resided in the United States for more than 20 years, and that about four fifths were working at the time of their deportation, many with children born in the United States [fn 10]” (UNDP 2009:99).

Enacted in April 2010 and scheduled to take effect from 29 July 2010, Arizona’s “SB 1070 is widely considered the toughest immigration enforcement measure any [U.S.] state has enacted. It requires law enforcement officers to inquire about the immigration status of anyone they stop, detain, or arrest for a state or local offense if the officers have a "reasonable suspicion" the individual is an unauthorized immigrant. SB 1070 also makes it a state crime for non-US citizens to fail to carry proof of their immigration status – the first state law to do so” (Chishti/Bergeron 2010b).

#### Recruitment agencies

Exploitative worker recruitment practices are definitely not new. Nor is it news to see that poor legislation and its inadequate enforcement are the main causes. Recent evidence of undesirable recruitment practices has been less numerous than might have been expected. This may in part be due to the ILO’s past efforts at improving legislation and enforcement in this area. Not all is well, however, as the following examples show.

... Intensified competition between recruiters for custom could strengthen migrant workers or hurt them depending on the regulatory environment and its handling in the crisis.

#### Azerbaijan

“(40) The Committee notes the existence of recruitment agencies that may act as intermediaries for Azerbaijani citizens seeking work abroad, which require a permit from the Ministry of Labour and Social Protection of Azerbaijan. However, it regrets that insufficient information was provided

to assess whether the supervision of their activities is in conformity with the Convention” (Committee 2009:10).

#### Bosnia-Herzegovina

“(27) The Committee notes the existence of public employment services which provide information on migration. The Committee, however, notes (as did the ILO Committee of Experts on the Application of Conventions and Recommendations in its direct request of 2008 regarding Convention No. 97 (1949) concerning Migration for Employment), that the existence of official information services in itself is not enough to guarantee that migrant workers are sufficiently and objectively informed on migration-related issues. The Committee reiterates the concern of the ILO Committee of Experts that there is inadequate protection for migrant workers from misleading information from intermediaries who might have an interest in encouraging migration in any form, regardless of the consequences for the workers involved” (Committee 2009:15f).

#### Israel

“Several reports published on the recruitment process show that foreign workers are subject to exploitation by private recruitment agencies, both abroad and in Israel [fn 54]. Private recruitment agencies abroad charge high and illegal fees from workers, ranging from USD 5,000 in average paid by domestic care-givers from the Philippines [fn 55] up to USD 25,000 from Chinese construction workers [fn 56]. Though there are no precise figures regarding the amount of money that is transferred to recruitment agencies in Israel, in the case of Chinese construction workers, it has been estimated that up to 70% of this is transferred back to Israel [fn 57]. Due to the high fees involved, it is calculated that, on average, domestic care-givers from the Philippines need to work in Israel for 9 months and Chinese construction workers for 2 years in order to cover the loans that they have to take out back home to pay the high recruitment fees” (Kemp 2010:19).

“Thai workers pay high recruitment fees of USD 7,000-USD 8,000 prior to arrival” (Kemp 2010:26).

“The fraud reported most commonly takes place in the care-giving sector, and is called the ‘Flying Visa’: foreign workers pay high, illegal recruitment fees in their home country, but upon arrival find that no employer is waiting for them and that their work permit is not valid. After losing their legal status, foreign workers who have been victims of this ‘Flying Visa’ not only fail to find work but also are unable to return home since they cannot repay the loans they took out for the high recruitment fees. According to Kav La’Oved, in 2007 there were 10,000 foreign workers in Israel who arrived with a permit to work in the care-giving sector but did not find an employer and, having no other choice, worked in other kinds of jobs without a permit. The organisation reported that the Immigration Administration has not dealt adequately with the phenomenon and that the Ministry of the Interior prefers to put the blame on the workers themselves” (Kemp 2010:25).

... “it was reported that private agencies in all sectors in Israel ask employers to falsely report that they need more workers. The agencies can then charge recruitment fees from more foreign workers and leave a share to the employers (approximately USD 1,000 per worker). The foreign workers recruited in this way have no jobs once they arrive in Israel and often lose their permit as a result of the binding policy” (Kemp 2010:26).

#### Philippines

“(41) While noting that the State party has increased the penalty for agencies with exorbitant placement fees, the Committee expresses concern at claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants” (Committee 2009:40).

## Russia

“Despite these changes and simplification in procedures, obstacles to registering on the migration registry remain. Migrant workers, migration policy experts, and officials from labor-sending countries’ governments interviewed by Human Rights Watch indicated that migrant workers frequently struggle to comply with the requirement to register on the migration registry within three days of arrival in Russia. Many migrant workers entering Russia under the non-visa regime do not have a job or a place to live when they arrive in Russia, and for most of them three days is a very short period in which to identify one or the other, unless they already have established contacts prior to their arrival. Unable to register themselves, and fearing fines or deportation for remaining in Russia in violation of registration laws, many migrants resort to the use of intermediaries, many of whom provide false residency registrations and work permits and may charge excessive fees. Employers also often charge high fees for arranging residency registration” (Human Rights Watch 2009a:19).

## Sending policies

### Bolivia

“(37) The Committee notes the information provided by the State party according to which 60 per cent of its indigenous population has migrated abroad. The Committee is concerned about the effects of this mass migration, taking into account the often vulnerable situation of indigenous migrants” (Committee 2008:24).

### India

“In India the reported number of migrant workers only applies to those required by law to register with the Protector of Emigrants. All those exempted (generally those with ten years of education) are thus excluded from the count” (Abella/Ducanes 2009:5 fn 6), and presumably also from protection.

### Philippines

“(15) The Committee welcomes the information given by the State party’s delegation on the labour migration policy and, in particular, its efforts to ensure that Filipino migrant workers are only deployed to countries where their rights are respected. However, the Committee is concerned that State party’s policies, especially through Administrative Order Nos. 247 and 248, 2008 and 2009 respectively, would seem to be aimed at the promotion of foreign employment of migrant workers” (Committee 2009:34, see also page 37).

## Human trafficking

### Azerbaijan

“(46) While welcoming the steps taken by the State party to combat human trafficking, including the establishment of the National Plan of Action, the National Coordinator on Trafficking and the Unit in the Ministry of Internal Affairs and the Special Police Force, the Committee remains concerned at the persistence of human trafficking in Azerbaijan and at the lack of information on effective measures of prevention” (Committee 2009:10).

### Bolivia

“(41) While noting the State party’s willingness to address the problem of trafficking in persons, the Committee regrets that no mechanism exists to facilitate the identification of refugees or victims of trafficking among migrants, and that the assistance provided to victims of trafficking is very limited” (Committee 2008:24).

## Bosnia-Herzegovina

“(37) The Committee notes with appreciation the efforts of the State party to combat trafficking, including through cooperation with the international community, the implementation of two national action plans and extensive legislative and institutional reforms. The Committee, furthermore, welcomes the State party’s efforts to prosecute persons involved in trafficking. The Committee, however, remains concerned about the phenomenon of trafficking in Bosnia and Herzegovina” (Committee 2009:17).

## Colombia

“(35) The Committee welcomes the implementation of information campaigns in an effort to mitigate the lack of information on migration and to prevent Colombian migrants from becoming ensnared in networks engaged in human smuggling and trafficking. It also welcomes, inter alia, the steps taken to provide more resources for aiding victims and for pursuing the criminal groups that organize these illicit activities. The Committee is concerned, however, that the State party continues to be a major country of origin of victims of trafficking, especially women and girls trafficked for commercial, sexual and labour exploitation” (Committee 2009:24).

## Ecuador

“(32) The Committee recognizes the efforts undertaken by the National Council for Children and Adolescents, including the development of training and awareness-raising programmes in the area of trafficking in persons and commercial sexual exploitation of children. However, it is concerned at the involvement of migrant children in prostitution, especially in the Lago Agrio region and at the fact that there seems still to be a sort of social acceptance of this criminal behaviour against children in the Ecuadorian society” (Committee 2008:10).

“(43) The Committee welcomes the reform of the Penal Code introducing the crimes of trafficking in persons and smuggling of migrants as well as the recent adoption of a Plan of Action against Trafficking in Persons and the information that there would be sufficient budget to ensure its implementation. The Committee notes that of the 152 cases of trafficking in persons transmitted to the Office of the Attorney General so far, 4 have resulted in a final conviction” (Committee 2008:11).

## El Salvador

“(47) The Committee, while acknowledging the initiatives taken by the State party to combat the phenomenon of trafficking in persons, is concerned at the lack of studies, analysis and disaggregated data in the State party to assess the extent of the phenomenon in, through and from the State party’s territory. The Committee also notes with concern the relatively low rate of convictions in the cases of trafficking that were brought before the courts” (Committee 2009:31).

“(49) The Committee takes note of the criminal cases initiated for the crime of smuggling of migrants, but remains concerned at the paucity of information on the convictions and sanctions imposed as a result” (Committee 2009:32).

## Israel

“The combination of recruitment fees, the binding system and deportations was critical in giving rise to human trafficking for the purposes of labour. At the end of 2006, the Law against Human Trafficking came into force [fn 69: The Law of Forbidding Trade in Humans, 2006]. For the first time, the Law considers trafficking in persons for the purpose of labour and other purposes as a criminal offence (in addition to legislation against trafficking in women). In the U.S. State Department’s 2007 annual Trafficking in Persons Report (TIP), which was published in June, Israel was placed in the Tier 2 category of countries that have made efforts to combat trafficking in human beings, but have yet to fully comply with the minimum requirements. A study by the HMW showed

that the authorities, such as the Immigration Administration (Police), lack the knowledge and skills needed to identify trafficking offences. It also showed that instructions with regard to the enforcement of the new Law are not clear or explicit [fn70] (Kemp 2010:21).

#### Philippines

“(47) While noting the significant efforts of the State party such as the recent convictions of traffickers and the “We are not for sale” campaign, the Committee is concerned about the significant number of Filipino workers abroad who are victims of trafficking. The Committee further regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages” (Committee 2009:41).

#### Syria

“(39) While noting the increasing attention paid by the State party to the phenomenon of human trafficking, as evidenced by the recent holding of a series of workshops in Damascus on the subject of migration and trafficking, the signing of a memorandum of understanding with the International Organization for Migration (IOM) concerning the running of a shelter for victims of human trafficking in the Syrian Arab Republic as well as the elaboration of a draft law to combat trafficking in persons, the Committee is concerned that no specific anti-trafficking legislation has been adopted so far” (Committee 2008:17f).

### Discriminatory job advertising

#### Austria

“In Austria the problem of job (and flat) advertisements which state that ‘only Austrians need apply’ remains. Although the NGO ZARA filed 112 complaints with the Viennese municipal district offices over this practice [fn 103], no action was taken” (FRA 2008:46). FRA has been pointing out this problem in Austria every year since (FRA 2010b:50; FRA 2009:35).

“Informal recruitment also has implications the other way round – a survey in Austria found that migrants, particularly in lower skilled jobs, are more likely than Austrians to have found these jobs with the help of relatives or friends. In this way the operation of informal networks reinforces the concentration of migrants in certain sectors and occupations [fn 104]” (FRA 2010b:53).

#### Denmark

“In a 2009 Danish survey, 13 per cent of public employees and 36 per cent of private sector employees reported that their bosses employed friends or family members for jobs. One implication is that this is likely to disadvantage ethnic minorities, who have weaker networks among business leaders [fn 103]” (FRA 2010b:53).

#### European Union

A company in the Flemish part of Belgium had been sued for discriminatory job advertising. Since nobody had actually applied and been rejected the lower level courts were uncertain of whether this constituted discrimination in the sense of the EU anti-discrimination directives. The case was put before the then European Court of Justice (ECJ), now the Court of Justice of the European Union. “The 2008 Feryn case remains the only one that the Court of Justice (then the ECJ) has delivered interpreting the Racial Equality Directive [fn 27]. The Court provided a broad interpretation of ‘direct discrimination’ [fn 28], so that it encompasses ... the publication of a discriminatory employment policy (an unwillingness to recruit an employee of a certain ethnic or racial origin) even in the absence of an identifiable complainant [fn 29]. In the language of the Court, such publication would be discriminatory if it ‘declares publicly that it will not recruit employees of a certain ethnic or racial origin, something which is clearly likely to strongly dissuade certain candidates from

submitting their candidature and, accordingly, to hinder their access to the labour market' (paragraph 25) [fn 30]" (FRA 2010b:28).

"... the problem of discriminatory job advertisements continues and remains present in several countries. This year, the problem was noted by NGOs in Austria [fn 85] and Spain (Catalonia [fn 86] and Navarra [fn 87]). In Germany, advertisements requiring "mother-tongue German" were reported [fn 88], and in Slovenia an advertisement offered a job to third-country nationals with wages below the minimum wage [fn 89]" (FRA 2010b:50).

### Dress codes

The long standing issue of European dress codes keeps tending to affect Muslim women and Sikh men in particular (FRA 2008:47; FRA 2009:39-40; FRA 2010b:53-54). From the limited evidence we were able to accumulate customer interaction jobs in the public service seem to be particularly prone to excluding women wearing headscarves the argument usually being that it is a religious symbol and as such not a signal of impartiality.

"In several Member States the debate on religious and cultural symbols at work provides an ongoing discussion on the balance of the rights of religious and cultural groups on the one hand and the separation of church and state, the interests of public security, and rights of children and others, on the other. Different solutions have been chosen in different Member States, which are often determined by the particular concrete national context" (FRA 2010b:53).

#### Denmark

"In Denmark, the 'headscarf debate' continued regarding the police force, where religious headgear is banned [fn 105], and the Danish Home Guard, where a Muslim woman was forbidden to wear the headscarf [fn 106]. Whilst a public opinion survey in Denmark concluded that the majority of respondents were against Muslims' right to wear a headscarf and to pray during the working day [fn 107], another survey showed that nine out of ten Danish companies had no problem with these issues, and one of the major supermarket chains announced that their strategy was to recruit women with headscarves to improve integration and match the diversity in wider society [fn 108]" (FRA 2010b:53-54).

#### Germany

"In Germany, a report by Human Rights Watch concluded that bans in eight [out of 16] German Länder prohibiting teachers (and some other civil servants) from displaying religious symbols contravene Germany's international legal obligations and are discriminatory against Muslim women, forcing some Muslim women to choose between their job and their religious belief [fn 109: ... Muslim teacher trainees have been denied subsequent employment as teachers after they have completed their training – unless they take off their headscarves. According to the findings of the qualitative interviews, many of the interviewed women feel 'alienated and excluded', although some of them had been living in Germany for decades]" (FRA 2010b:54).

#### Netherlands

"In a case in the Netherlands, the Commissie Gelijke Behandeling (CGB) [Equal Treatment Commission] ruled that the Amsterdam police were not guilty of discrimination in refusing to allow a staff member to wear a headscarf when in uniform in a position where she was in contact with the general public [fn 110]" (FRA 2010b:54).

#### Sweden

"Swedes are increasingly suggesting that the headscarf should be banned in workplaces [fn 100]" (FRA 2010b:52).

## Language prohibitions

### Belgium

“In Belgium in 2007, Turkish workers at an automobile components company in Flanders protested at the internal rule stating that workers using other languages than Dutch on three consecutive occasions are punishable with dismissal. Workers were told to speak Dutch at all times on its premises, for ‘security reasons’ and out of ‘respect for other workers’. Seventy per cent of the company’s employees are of foreign origin. Some Turkish workers complained against these regulations and advocated that limited use of Turkish should be allowed [fn 111]” (FRA 2008:46). Such a prohibition would exclude potential workers with Flemish skills deemed insufficient from employment. This could include Belgian citizens.

## Access to vocational training

Initial and ongoing training are important elements of continued employability and occupational advancement. Receiving countries or areas tend to see training as the origin country’s task rather than their own. Interestingly in the recession there were no reports of differential worker retraining by receiving countries.

### China

In China “workers from the countryside are discriminated against in several ways. First, there are extensive restrictions on freedom of movement brought about by the ‘hukou’ system, a form of household registration whereby each family member is registered according to his or her family residence. Once classified it is hard to change status. The majority of rural residents, despite living in urban areas, therefore keep their rural status, which is passed onto their children. As an integral part of the hukou system, rural migrants are disqualified from freely seeking and obtaining better-paid opportunities in the cities unless they can obtain temporary residency and work permits. Today it is estimated that there are probably over 100 million people living in areas different from their registered status. This poses grave problems, as residing illegally in an urban area makes one illegible to receive education, access to medical care, housing and other public services. Even legally employed rural migrants living in cities face difficulties in terms of obtaining the same access to health, medical and education opportunities as that of urban residents. While recent reforms have loosened the hukou system for the well educated and rich, the reforms have not addressed the core problem facing most rural migrants which is the link between their hukou status and public services. One serious issue is the lack of affordable and accessible provision of educational opportunities for the children of migrants which in turn continues to impact on the growing number of child labourers” (ITUC 2008a:11).

## ***Working conditions***

### Working conditions in general

“Worldwide, domestic workers are the single largest group of unprotected workers, excluded from labour legislation in most countries and often denied fundamental rights, such as freedom of association and social protection. A key problem in Arab States is that migrant domestic workers are classified as foreigners under the Ministries of Foreign Affairs or Interior rather than as workers under the Ministries of Labour. As in many other countries, the majority of Arab States do not regulate the private sphere, which is where most women migrant workers are found. Labour inspectors do not cover the home as a workplace: these women are not recognized as workers, nor are the private citizens they work for considered employers. Thus, migrant domestic workers remain largely invisible in labour statistics, laws, policies and programmes” (ILO ROAS 2009b:1).

“Migrant domestic workers are often isolated from other employees, friends and family. Many cannot communicate in the language of the host country, are undocumented or lack adequate contracts. Many women migrant domestic workers endure labour rights abuses, such as extremely low wages, non-payment of salaries, excessive work hours, restrictions on rest times and movement, withholding of passports, lack of privacy, unhealthy or unsafe working and living conditions and lack of social protection in addition to instances of verbal, psychological or physical abuse. An underlying cause of the abuse is the lack of national policies and institutional capacities to regulate and monitor private placement agencies and employers, and to hold them accountable. Such a marked legal, political and institutional vacuum can often result in de facto modern forms of coerced labour” (ILO ROAS 2009b:2).

#### Bosnia-Herzegovina

“(33) The Committee is concerned that there are no precise data available on the number of seasonal workers employed in the State party. Furthermore, the Committee notes that there is no system by which seasonal workers are registered nor are there any bilateral or multilateral agreements on the movement of seasonal workers. The Committee is concerned that the lack of information and control may make seasonal workers vulnerable to inequitable conditions of work and to abuse” (Committee 2009:16f).

#### Ecuador

“(37) The Committee, while noting with appreciation the work performed by the National Council for Women (CONAMU) to include a gender focus in the State party’s migration policies, is concerned at the information reporting the vulnerability of undocumented women migrant workers, especially those working in domestic service, many of whom are subjected to inequitable working conditions and other abuses” (Committee 2008:10).

#### El Salvador

“(29) The Committee notes with concern that it is not clear from the information provided by the State party how in practice it guarantees and monitors the equality of treatment of migrant workers in agricultural and domestic employment, in accordance with article 25 of the Convention” (Committee 2009:29).

“(39) The Committee is concerned that frontier workers are at very high risk of being subjected to inequitable working conditions and other abuses” (Committee 2009:30).

#### European Union

“In 2009 there were a great many reports of extreme exploitation of migrant workers, often made possible by their legal vulnerability. There are descriptions of insecure workers suffering a range of injustices, including insults and harassments, having to work extremely long hours in unhealthy conditions in violation of labour regulations, being paid less than collective agreements, and denied sickness leave. There are several instances of groups of workers not being paid at all for their work. In other cases workers have had their passports confiscated and been confined in their sub-standard accommodation without freedom to leave, or have had the cost of their meagre accommodation and food deducted from their wages” (FRA 2010b:56). The report subsequently lists examples from ten EU countries (FRA 2010b:56-58).

#### Madagascar

“The January 2008 law on export processing zones contains elements that discriminate against migrant workers as compared to national workers, specifically with regard to wages and social security coverage” (ITUC 2008b:5).

## Mexico

“37. ... The situation of domestic workers remains of particular concern because of its wholly unregulated nature and therefore warrants further research. Federal law to a certain extent protects workers in the domestic sphere, but labour authorities seem to be doing little to monitor the situation of domestic workers or implement the obligations placed on employers. Health and education standards seem to be disregarded” (Bustamante 2009b:12).

## Singapore

“Because of a domestic labour shortage some 600,000 foreign workers are legally employed in Singapore, representing 30% of the total workforce. There is no reliable data on undocumented foreign workers. Most of the foreign workers are unskilled or domestic workers from other Asian countries. They are concentrated in low-wage, low-skilled jobs. Working hours tend to be longer although to some extent this consists of remunerated overtime work. The employers of the foreign workers are required to provide accommodation but there are reports that housing conditions, particularly for construction workers, are inadequate” (ITUC 2008c:6).

“An estimated 150,000 domestic female workers (mainly from the Philippines, Indonesia and Sri Lanka) are employed in Singapore. They have legal contracts, but low wages and dependence on their employers makes them vulnerable to mistreatment, abuse, and labour conditions that may amount to involuntary servitude” (ITUC 2008c:6).

## Thailand

“Migrant workers regularly work more hours than is legally permitted by Thai labor laws, get paid sub-minimum wages, work in unsafe conditions, and face illegal deductions from their pay. In some cases, migrant workers are cheated out of all their wages by unscrupulous employers, sub-contractors, or supervisors, leaving them with a difficult choice to continue to protest (and face possible retaliation) or abandon their pay claims, shift employers, and hope for better treatment next time. The inordinate control that employers have over a migrant’s ability to transfer employment means that many migrants face the choice of enduring exploitative work conditions or leaving abusive conditions without their employer’s consent and thereby losing their documented status” (Human Rights Watch 2010a:85-86).

## United States

“Since Hurricane Katrina [2005], tens of thousands of migrant workers, most of them undocumented, have arrived in the Gulf Coast region to work in the reconstruction zones. They have made up much of the labour to rebuild the area, to keep businesses running and to boost tax revenue. To support their families, migrant workers often work longer hours for less pay than other labourers. For some migrant workers, wages continue to decrease. Jobs are becoming scarcer because the most urgent work, gutting homes and removing debris, is mostly finished” (Bustamante 2008:20).

“89. These migrant workers, like their original local counterparts, are finding barriers to safe employment, fair pay, and affordable housing, and in some cases, experience discrimination and exploitation amounting to inhuman and degrading treatment. In fact, many workers are homeless or living in crowded, unsafe and unsanitary conditions, harassed and intimidated by law enforcement, landlords and employers alike.

90. Migrant workers on the Gulf Coast are experiencing an unprecedented level of exploitation. They often live and work amid substandard conditions, homelessness, poverty, environmental toxicity, and the constant threat of police and immigration raids, without any guarantee of a fair day’s pay. They also face structural barriers that make it impossible to hold public or private institutions accountable for their mistreatment; most have no political voice.

91. The dramatically increased presence of migrant workers in the region has fuelled local tensions over language barriers, education and health-care needs in a public services system strained by Katrina. The low-wage workers rebuilding New Orleans and the Mississippi Gulf Coast are almost entirely people of African, Asian and Hispanic and/or indigenous descent, many of whom are recent migrants from Latin America and Asia and many of whom are not proficient in English. African American residents are often pitted against migrant workers new to the area, with racial and ethnic tensions between marginalized minority groups in the region escalating. Moreover, as some internally displaced persons return to the region, concern is rising that migrant labourers have diminished job prospects for pre-Katrina residents. Day labourers shared stories with the Special Rapporteur about how they are paid less than promised, or not at all. They note that they are trying to rebuild a city that welcomed them when the most dangerous work needed to be done; only to rebuff them as the pace of rebuilding diminishes” (Bustamante 2008:21).

“94. ..., the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families establish workers’ rights to (a) a safe and healthful workplace, (b) compensation for workplace injuries and illnesses, (c) freedom of association and the right to form trade unions and bargain collectively, and (d) equality of conditions and rights for immigrant workers.

95. Immigrant workers, including those who migrated to work in the regions affected by Katrina, often experience violations of these rights. Lack of familiarity with United States law and language difficulties often prevent them from being aware of their rights as well as specific hazards in their work. Immigrant workers who are undocumented, as many are, risk deportation if they seek to organize to improve conditions. Fear of drawing attention to their immigration status also prevents them from seeking protection from Government authorities for their rights as workers. In 2002, the Supreme Court stripped undocumented workers of any remedies if they are illegally fired for union organizing activity. Under international law, however, undocumented workers are entitled to the same labour rights, including wages owed, protection from discrimination, protection for health and safety on the job and back pay, as are citizens and those working lawfully in a country” (Bustamante 2008:21f).

### Wages

Migrant workers are found to be in danger of being defrauded of their wages. The culprits are either employers or agents. Behind their power over the migrant workers, however, there is usually poor legislation or poor enforcement (see, for instance, the section on “tying workers to employers”).

### China

“According to official sources, China has an estimated 94 million migrant workers who are owed a total of over 100 billion Yuan in back wages. The problem is most severe in the construction industry, which accounts for over 70 percent of the total amount owed. In the construction industry part of the problem comes from poor employment practices (such as illegal recruitment and lack of formal contracts) and a lack of clear accountability in legislation. To counter this problem, on 1 January 2005 a Supreme People’s Court interpretation (Interpretation of the Supreme People’s Court on Handling Construction Project Contract Disputes) came into force nationally which stated that any illegal sub contracts issued by construction contractors or others are null and void and that that migrant workers have the right to directly sue the original contract holder if their wages are not paid on time” (ITUC 2008a:11-12).

## European Union

In the economic downturn a wider use of legal and enforcement loopholes was being expected, especially in industries and firms employing migrant workers almost exclusively. “The incidence of low pay may also depend on employer “exit options” – de jure or de facto exemptions, exceptions or loopholes in otherwise inclusive paysetting institutions. Such “exit options” take many forms including: the ability of employers to withdraw from national collective agreements (as many small and medium enterprises have chosen to do in Germany); “sub-minimum youth wages” (in the Netherlands, the United Kingdom, and in the retail sector in Denmark); non-standard work arrangements, such as temporary contracts, temporary agency employment, part-time work, and Germany’s “mini-jobs”; and outsourcing, including the use of “posted” employees who work under the labour law of their country of origin rather than that of the country where they are actually employed. In some cases, exit options are legal and formal; in others, they result from the lack of enforcement of existing laws (see, for example, Vanselow et al., 2010, on the widespread violation of legal and collectively bargained labour standards in the hotel sector, likely related to the extensive use of immigrants in the sector)” (Bosch 2009:346).

## Israel

“According to Kav La’Oved [fn 100], foreign workers in the agriculture sector are especially vulnerable to violations of their rights, because they often reside in remote areas and are thus relatively isolated, do not speak English and are still bound to their employer. Findings published by the organisation indicate that often these circumstances lead to severe violations of the rights of foreign workers in agriculture. Most of the reported complaints are about delayed wages. ... According to a report by the Knesset Research and Information Center, foreign workers in the agriculture sector suffer the most severe violations. The average real wage paid to foreign workers in this sector is NIS 100 for an 8-hour day and NIS 14 for every extra hour ... [fn 101] [fn 102]” (Kemp 2010:26).

“A report released by Kav La’Oved in 2008 on the situation of Chinese construction workers noted that under the new corporate arrangement, 70% of corporations violated the rights of workers. The most common violation was delayed wages (64% of complaints filed in 2008). Before the new arrangement, employers would delay payment of monthly wages. Since the new arrangement came into force, corporations found a way to bypass the regulations and delay wages for the last month of work in each quarter. Other common violations are not complying with social rights (17%) and a lack of proper treatment of permit issues (17%). There has been a decline in the number of complaints about withholding passports, the lack of medical insurance and illegal deductions (with each at approximately 4%) ... [fn 97]” (Kemp 2010:25).

“Another common violation is salaries that fall below the minimum wage. Kav La’Oved reports that the average monthly wage of a foreign worker in the care-giving sector was NIS 2,200 (for 6 days of work), which is NIS 1,200 less than the minimum wage, with no payment for overtime [fn 98]. The maximum workweek that applies in the homecare sector is 186 hours. NGOs are demanding differential wages for homecare foreign workers, in accordance with the health situation of the employer/patient and the difficulty of the work involved (up to 220 weekly hours) [fn 99]. According differential wages based on NII subsidies should be in the interest of all the stakeholders: government officials interested in ‘closing the skies’ and introducing permit caps in the home-care sector too; employers/patients who are highly dependent on intensive day-long home care and need to ‘compete’ with less-demanding and less needy patients; and foreign workers who can base their choice of employer on utility-driven considerations” (Kemp 2010:25). A system of seven ‘care levels’ is in operation in Austria, for instance. Whether it has been resulting in differential pay for care workers in private homes is unknown.

## Mauritius

“Many migrant workers are not informed of the laws that provide them with the same level of protection as Mauritian nationals and hence they often earn between 2000 and 2500 rupees (70 to 90 dollars) less per month in companies located in the country’s EPZs” (ITUC 2008d:6).

“Migrant workers are openly discriminated against in companies in the export processing zones and have much lower wages than Mauritian nationals” (ITUC 2008d:7).

## Mexico

“36. ... Central American domestic workers reportedly earn significantly lower wages than their Mexican counterparts” (Bustamante 2009b:12).

## United States

“100. New migrant workers on the Gulf Coast have experienced a range of problems relating to wage theft which include:

- Non-payment of wages for work performed, including overtime
- Payment of wages with cheques that bounce due to insufficient funds
- Inability to identify the employer or contractor in order to pursue claims for unpaid wages
- Subcontractors - often migrants themselves - who want to but cannot pay wages because they have not been paid by the primary contractor (often a more financially stable white contractor).

101. These conditions are particularly salient for migrant workers, especially if they are undocumented as they are more easily exploitable. They may be hired for their hard manual labour and then robbed of their legally owed wages. The situation is exacerbated by the complexity of local employment structures. Because there are multiple tiers of subcontractors, often flowing from a handful of primary contractors with federal Government contracts, workers often do not know the identities of their employers. This is typical of the growing contingent of low-wage workers throughout the country. In New Orleans, workers explained that without knowing the identity of their employer, they cannot pursue wage claims against them” (Bustamante 2008:23).

## Excessive hours

### European Union

“For EU15 countries as a whole, [the table below] shows that immigrant health professionals work longer hours. This is especially true for foreign nurses: Over 13% work more than 40 hours a week as compared to 7.7% for native born. But it is for nightshift work that the differences are the most striking, with twice as many foreign-born nurses and doctors reporting that they work regularly at night. The differences are also large for Sunday work. The specificity disappears, however, when differentiating the two groups by type of job contract (permanent/temporary)” (Dumont/Zurn 2007:198).

Employment conditions of health professionals in selected European countries by country of birth, 2005, Percentages

		Nurses (ISCO 223+323)		Health professionals, except nurses (ISCO 222)	
		EU27	EU15	EU27	EU15
Percentage of employees working more than 41 hours a week	Native-born	8.5	7.7	40.2	42.9
	Foreign-born	13.6	13.3	48.7	49.8
Percentage of employees working at night regularly	Native-born	26.3	26.6	10.8	12.1
	Foreign-born	40.4	41.0	20.9	22.1
Percentage of employees who usually work on Sundays	Native-born	35.4	39.4	10.4	11.2
	Foreign-born	47.0	48.1	14.6	15.3
Percentage of salaried employees with a permanent contract	Native-born	90.4	90.0	80.1	78.2
	Foreign-born	91.3	90.6	72.6	71.4

Source: Dumont/Zurn 2007:199, <http://dx.doi.org/10.1787/0227333271412>.

“One possible explanation of these results could be the fact that a number of immigrant doctors are pursuing professional training in host countries and thus have employment conditions which generally are similar to those of (native-born) junior doctors. Another explanation, notably for nurses, could be that foreign-born nurses ask for overtime work or night shifts to earn extra money to remit home to their families” (Dumont/Zurn 2007:198).

#### Japan

There were news reports of a series of deaths of foreign trainees apparently attributable to overwork. 27 deaths were recorded in 2009, down from 35 (or 34) in 2008. The “Lawyers’ Network for Foreign Trainees” has been taking on the cases (Breitbart 2010; Japan Today 2010; Kyodo News 2010; Ryall 2010; Wallace 2010). These reports follow a string of earlier ones denouncing excessive working hours and extremely low wages foreign “trainees” are being forced to endure. “Twenty-one of the dead were from China, three from Vietnam, two from the Philippines and one was from Indonesia. A ministry official told local media that it was taking the situation “seriously” and that it would instruct firms not to permit such incidents to happen in the future. The family of Jiang Xiaodong will be the first to receive a labour insurance payment, of about ¥10 million (£75,000), since the scheme began in 2001. Jiang was 31 when he died of heart failure in his sleep in lodgings provided by metal processing company Fuji Denka Kogyo, in the city of Itako, Ibaraki Prefecture. He had worked as many as 109 hours of overtime – on top of his 350 regular working hours – in the months before his death” (Ryall 2010).

#### Mexico

Concerning coffee pickers in Mexico’s southern state of Chiapas “35. The Special Rapporteur has received reports of various abuses related to migrants’ irregular status and sentiments of racism and xenophobia, such as overwork and wrongful termination. Of particular concern is the practice of employing child labour” (Bustamante 2009:11).

### Religious holidays

#### European Union

“In Denmark a survey of private and public sector workplaces found that 9 out of 10 would try to facilitate days off for minority religious holidays, and would allow women to wear a headscarf [fn 75], and in Sweden a collective wage agreement made in 2007 allows, when reasonable, employees to choose holidays in accordance with their religious beliefs [fn 76]. In contrast, in a Slovenian

survey [fn 77] of 112 major employers, just 34 per cent asserted that it would be fair that all employees could have a day off to celebrate their biggest religious holidays [fn 78], and most thought that it was not sensible to express religious beliefs by wearing certain clothing at the workplace [fn 79]. According to a survey of the human resources managers of 130 companies in Belgium [fn 80]. 71 per cent of the large companies and 55 per cent of the average-size companies felt that recruitment of an employee with a headscarf for positions involving contact with clients would be problematic” (FRA 2009:39).

### Overeducation and deskilling

Overeducation of migrant and minority workers is not new in the crisis but may be exacerbated by it. Overeducation is defined by employment in a job for which considerably less education or training is required than the employee has attained (Dumont/Monso 2007:136). It results from systematic non-recognition of foreign certificates and diplomas, from lack of access to recertification, and from employer disregard for qualifications acquired abroad. The effect is that migrant workers with qualifications that would normally protect them from unemployment and poverty are relegated to occupations that do not offer such protections. Trade unions have shown little awareness of the issue. Not between the sexes but between migrants and non-migrants it has been shown to be a large issue. In the 2007 Global Report it was mentioned only in passing (ILO 2007:31 para 107). The OECD, however, has been addressing the issue since about 2004, with some striking results (Damas de Matos/Dumont/Monso 2005; Dumont 2005; Quintini/Martin 2006; Dumont/Monso 2007; OECD 2008b). In order to measure overeducation the OECD constructed a three by three matrix of education and occupation: low education was defined as ISCED levels 0 to 2, middle education as ISCED levels 3 and 4, and high education as ISCED levels 5 and 6; low-skilled work as ISCO major group 9, intermediately skilled work as ISCO major groups 4 to 8, and high-skilled work as ISCO major groups 1 to 3. ISCO major group 0 (military personnel) was excluded from the analysis as were the non-employed. The overeducation rate is then simply the share of the employed in an educational level greater than their occupational level (Dumont/Monso 2007:156). The analysis was initially performed on data from the year 2000 round of censuses, then also on sample survey data from subsequent years. The results do not change much over time.

As it turned out overeducation rates, although varying a great deal among OECD countries, are almost always greater among migrant workers than among non-migrant workers (Dumont/Monso 2007:137). In the table below rates in seven countries of employment are shown for non-migrant workers and for migrant workers from ten origin countries. Non-migrant rates are not always the very lowest but are never more than one percentage point different from the lowest.

Overeducation rate of migrant workers by country of birth and destination country, circa 2000, per cent

Residence Country of birth	Australia	Canada	France	Spain	Sweden	United Kingdom	United States
In country	13	21	11	7	8	14	14
All foreign-born	19	25	14	20	19	18	17
Argentina	21	22	11	12	15	17	13
China	32	24	20	16	19	25	13
Colombia	45	31	25	33	25	35	21
Ex-USSR	25	32	19	39	28	27	24
Ex-Yugoslavia	26	26	18	18	26	24	21
India	28	33	25	12	18	22	14
Morocco	16	21	14	18	33	25	21
Philippines	43	45	47	38	49	28	25
South Africa	12	16	12	9	16	14	14

Turkey	22	21	15	10	20	27	16
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Source: Dumont/Monso 2007:142.

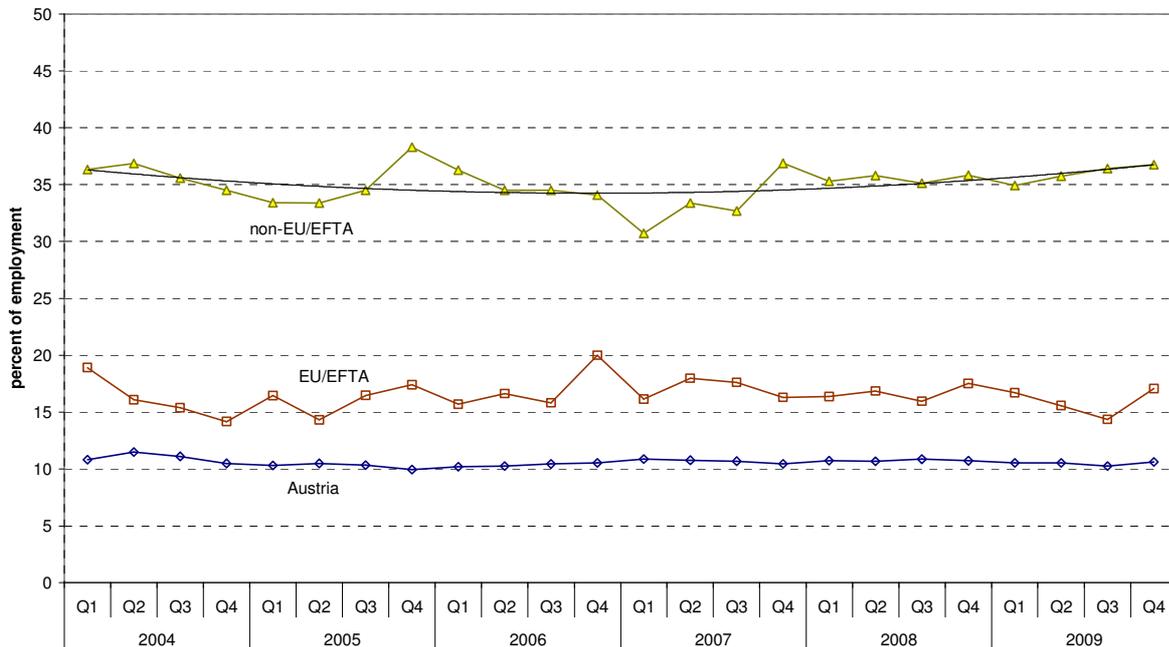
Overeducation rates of migrant workers from one country can vary considerably between countries of employment, and within one country of employment they vary considerably between migrant workers from different countries.

- In five of the seven countries workers born in the Philippines suffer overeducation rates exceeding 35 percent reaching as high as 49 percent in Sweden. None of the other nine countries of birth do nearly as badly. Workers born in Colombia come second with 45 percent overeducation in Australia and between 25 and 35 percent in five of the six other countries of employment. At first sight it may seem surprising that workers born in Morocco and in Turkey do not have high rates of overeducation. This is because relatively few of them have sufficient education to be employed overeducatedly. If percentages were calculated for only those with at least intermediate education, things would look different.
- The difference between the smallest and the largest overeducation rate shown is about 40 percentage points in Sweden and France, about 30 in Spain and Australia, about 20 in the UK and Canada, and about 10 in the U.S.

The abridgement and denial in the labour market of education and training acquired abroad does not stop at the intermediate or highly skilled. Consider the following report from the Dominican Republic: "According to a 2002 International Organization of Migration (IOM) survey of Haitians in the Dominican Republic, 70 percent could not read or write Spanish, and 42 percent could not read or write Creole. About 42 percent had not been to school, a figure that was significantly higher among women (51 percent) than men (39 percent). Of those who had been to school, 56 percent had an eighth-grade education or less, and 85 percent reported that their work did not relate to the education they'd received" (Mazza/Sohnen 2010).

From what data there are it seems that overeducation rates may be varying little over time. The example in the figure below is Austria. The overeducation rate of non-EU workers is around 35 percent during the entire period from the beginning of 2004 to the end of 2009, that of EU/EFTA workers is always around half that level, and that of in-country workers is always about one third that of non-EU workers. The data here differ from the tables above as they are neither by country of birth nor by citizenship but by country where the highest education was attained. In a quadratic regression on time the non-EU worker curve can be shown to be shaped like a flat bowl with the lowest point around the turn of 2006-2007, i.e. in the middle of the period of observation. These were the only two years when real growth of GDP per capita exceeded 3 percent. For the other two countries of highest educational attainment the regression line is nearly linear and horizontal. If all this is due to more than a fluke in the data, only the overeducation rate of non-EU workers would thus seem to respond to economic conditions.

Overeducation rates by place of highest attained education, Austria 2004 to 2009 by quarter



Computed from Statistics Austria Labour Force Survey microdata.

In a paper for the UNDP the expectation that female migrant workers would be more likely to become victim to overeducation was expressed with some force (Ghosh 2009:23-25).

Out of 26 countries for which the OECD published data (Dumont/Monso 2007:139) the difference between the overeducation rate of female and male migrant workers was less than 1 percentage point in four cases and less than 2 percentage points in another five. Among the remaining 17 countries there were two – New Zealand and the U.S. – where the women’s overeducation rate was smaller than the men’s but by less than 2.5 percentage points. On the other side there were two countries where it was greater by that amount. In all of the other 13 countries the female migrant workers’ overeducation rate was at least 4 percentage points greater than the male migrant workers’. The largest difference was observed in Greece (25 percentage points), the second largest in Finland (14), followed by Norway (9), Spain (9), and Luxemburg (8.5). In Italy, Austria, France, Germany, the Czech Republic it was at least 5 percentage points, in Slovakia, Canada, and Australia between 4 and 5. Is this order at all related to the gender difference among non-migrant workers? It is not. A correlation between the two sets of differences explains a paltry 3 percent of the variance and is, of course, statistically utterly insignificant. Sex differences in overeducation among migrant workers are not at all related to sex differences among non-migrant workers.

Of 13 cases with more than 10 percentage points difference between migrant and non-migrant overeducation rates one favours migrants (men in Mexico). The other twelve favour non-migrants, and of these seven concern women (Greece, Spain, Italy, Austria, Norway, Germany, Luxemburg) and five men (Greece, Spain, Italy, Sweden, Portugal). Is the female set of differences related to the male one? Yes, it is. In a correlation across the 26 pairs of differences 61 percent of the variance are explained and statistical significance is very large ( $F=37.1$ ). Leaving out the extreme case of Greece the explained part of the variance shrinks to 53 percent but remains statistically highly significant ( $F=25.1$ ).

The OECD found that in a few countries the overqualification rates of female and male migrant workers differ a great deal. “This is especially the case in Greece, where the over-qualification rate for female immigrants is 53%, versus 9% for native Greek women, and in Italy (where the rates are respectively 27% and 7%). In the majority of cases, the over-qualification rate is higher for female immigrants than for male immigrants, although the United States, the United Kingdom, Portugal, New Zealand, Sweden and Ireland are exceptions. The relative overqualification of women vis-à-vis men is more pronounced among immigrants: This is particularly so in Germany, Austria, Canada and Sweden, countries in which native-born women, by contrast, have lower over-qualification rates than do native-born men” (Dumont/Monso 2007:139).

Overeducation research should ideally be done neither on place of birth nor citizenship data but on place of highest attained education or most recently completed education. Recent research has shown that in Germany and in Austria there is between little and next to no statistical connection between the education obtained in Serbia or in Turkey and the occupational level of employment (Gächter/Smoliner 2010). The connection was weakest for male workers with education obtained in Serbia, as they were the best educated of the four population parts, and was best for women educated in Turkey, as they were the population part with the poorest education. For workers with little education emigration to Austria or Germany proved a gainful strategy while workers with intermediate or higher education would have fared much better occupationally had they stayed at home – or migrated to the U.S. as is suggested by the low overeducation rates the OECD reported.

### Freedom of association

#### Colombia

“(31) The Committee is concerned at the dearth of information about how the State party guarantees the right of association of migrant workers” (Committee 2009:24).

#### Ecuador

“(41) The Committee is concerned that access to the executive bodies of trade unions in the State party is limited to Ecuadorian nationals” (Committee 2008:11).

#### El Salvador

“(31) With reference to article 40 of the Convention, the Committee is concerned at the fact that article 47, paragraph 4, of the Constitution as well as article 225 of the Labour Code reserve to Salvadorans by birth the right to be part of the leadership of trade unions” (Committee 2009:29).

#### Philippines

“(33) The Committee is concerned about the fact that restrictions exist on the exercise of foreign migrant workers lawfully residing in the Philippines to engage directly or indirectly in trade union activities, as this right is only recognised for those migrant workers who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers. The Committee is concerned that holding the right to join and establish a trade union subject to reciprocity is in violation of the Convention” (Committee 2009:38).

### Legal provisions tying workers to employers

#### Azerbaijan

“(34) The Committee is concerned at reports that in case of early termination of a labour contract the residence permit of a migrant worker becomes null and void and that migrant workers do not have the right to seek alternative employment” (Committee 2009:9).

## El Salvador

“(35) The Committee takes note of the explanations provided by the State party, that in recent practice migrant workers in El Salvador are given 60 to 90 days after expiration of their contracts in order to find new employment or change their migration status. The Committee notes with concern, however, that article 26 of the Migration Law, requires migrant workers to leave El Salvador upon termination of their contracts, regardless of the reason therefore, or else risk expulsion” (Committee 2009:30).

## Saudi-Arabia

“Most migrant workers arrive in Saudi Arabia on two-year contracts in which their visas are tied to their employer, or ‘sponsor’. The sponsor bears responsibility for the worker’s recruitment fees, completion of medical exams, and possession of an iqama, or national identity card. The worker must obtain the sponsor’s consent to transfer employment or to leave the country (get an ‘exit visa’). This gives the employer an inordinate amount of power over the worker’s ability to change jobs or to return to her country of origin” (Human Rights Watch 2008c:26).

“Migrant domestic workers are not only at risk due to their exclusion from labor laws, but also as a result of highly restrictive immigration policies that rely on sponsor-based visas. The kingdom has instituted policies to increase the Saudi component of its workforce that have to date largely failed. These Saudi-ization policies have attempted to limit and control the number of foreign workers and their distribution in various economic sectors. One main strategy has been the kafala, or visa sponsorship system, where a worker’s visa and legal status is tied to her employer. This system creates a profound power imbalance between employers and workers and imposes tight restrictions on migrant workers’ rights” (Human Rights Watch 2008c:26; for some of the history see Human Rights Watch 2008c:25).

“This legal obstacle, which can result in the arbitrary and unlawful denial of a domestic workers’ right to leave Saudi Arabia and return home, is clearly incompatible with article 13 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of movement and the right to return to one’s country [fn 48]. In addition to its legal basis under treaty law [fn 49], the right to return to one’s own country has been recognized as a norm of customary international law [fn 50]” (Human Rights Watch 2008c:26-27).

“The Saudi Ministry of Labor and the Saudi Human Rights Commission have informed Human Rights Watch that the sponsorship system is under review, and that alternatives are being researched [fn 51]. One proposal is to create three or four large recruitment agencies that would act as sponsors for all migrant workers in the country. This proposal would purportedly address the control that employers have over workers when they also act as immigration sponsors” (Human Rights Watch 2008c:27). However “one official from a labor-sending country pointed out that a similar system is implemented in Kuwait with poor results” ... [fn 53] (Human Rights Watch 2008c:27).

“In practice, these positive steps tend to focus on other types of migrant workers, and do not address the particular situation of domestic workers. For example, the foreign workers’ care department, housed in the Ministry of Labor, does not have the specific mandate to deal with domestic workers [fn 65]. The exemption from the requirement to obtain an employer’s permission for an exit visa applies primarily to other migrant workers, since domestic workers in dispute with their employers are referred to the Ministry of Social Affairs .... There is no advice guide specifically for domestic workers, who confront a different regulatory framework than other migrants since they are not included in the labor law. However, the government did conduct a media campaign targeted toward employers in late 2007 about decent treatment of domestic workers [fn 66]” (Human Rights Watch 2008c:32).

## Thailand

“The migrant registration system directly facilitates employer control by severely restricting migrant workers’ right to change employers. Registered migrant workers can request to change the type of work or location of work, but must remain working for the employer that registered them. Under the system, registered migrant workers can only change employers if an employer has gone bankrupt, has violated the worker’s rights according to the labor law, or the employer agrees to terminate the worker and sign a transfer form allowing him to go to another employer. In the case of rights violations, the worker must prove the violations to the satisfaction of a labor inspector from the Department of Labor Protection and Welfare. In case of termination, the rules provide a migrant worker only seven days to transfer – making it virtually impossible for workers to transfer unless they have the active cooperation of their former employer” (Human Rights Watch 2010a:74).

## United Kingdom

“57. Reports suggest that approximately 17,000 visas are granted yearly to domestic workers, the vast majority of whom are women from non-European Union countries accompanying their employers and employed to undertake a range of activities in private households, including house-keeping and care work. These workers come from a variety of countries such as India, Indonesia, the Philippines and Sri Lanka, while their employers are mainly Middle Eastern, Indian or British nationals [fn 45].

58. Regular migrant domestic workers enjoy employment law protection, including the right to the national minimum wage, adequate rest breaks, remunerated holidays and maternity-related rights, including leave. Information received suggests that challenges remain in the monitoring of living and working conditions, as the workplace of domestic workers is the home of their employers.

59. Stakeholders drew the Special Rapporteur’s attention to reports documenting a wide range of abuses encountered by migrant domestic workers in their workplaces, including poor working and living conditions, psychological and physical abuse, forced labour, sexual aggression, withholding of identity and travel documents, low or no wages and excessive working hours sometimes without meal or rest breaks. Allegations of threats and intimidation or physical violence and threats not to renew the workers’ visa, to have the worker deported, to make spurious allegations to the police about a domestic worker stealing or to throw domestic workers out onto the streets were also mentioned during the visit.

62. According to information received, migrant domestic workers who accompany diplomats to the United Kingdom encounter the same level of abuse and exploitation as those suffered by migrant domestic workers who work for other employers. However, migrant domestic workers who accompany diplomats are currently not able to change employers outside of the diplomatic mission with which they came. This situation places them in a more vulnerable situation; hence they often feel unable to leave exploitative and abusive situations as usually their families are reliant on their remittances. These workers also often feel unable to seek redress and access justice because their immigration status is linked to that of their employers, who enjoy diplomatic status” (Bustamante 2010:15f).

## Curtailed freedom of movement

### Ecuador

“(21) The Committee notes that, according to article 37 (d) of the Migration Law, Ecuadorians wishing to leave the country need an “exit permit” issued by the Migration Service of the National Police even if the country of destination does not require any visa for Ecuadorian citizens. In this respect, the Committee welcomes the information provided by the delegation that the Constitutional Court is currently assessing the constitutionality of this provision” (Committee 2008:8).

## Israel

Among “97 complaints of various criminal offences filed by foreign workers in 2008” reported on in a “publication by Kav La’Oved [fn 103]”, “withholding of passports” was named first (Kemp 2010:26).

## Malaysia

“In February 2007, for example, Malaysia proposed that migrant workers be confined to their *kongsi* (work areas) even when they are not working and that their travel in the country be carefully monitored by authorities [fn 99]” (Crush/Ramachandran 2009:24).

## Syria

“(31) While noting the State party’s explanation that passports of migrant workers are neither withheld by the authorities nor allowed to be withheld by private employers, the Committee is concerned about the State party’s acknowledgement that, in practice, some private employers, including those of domestic workers, do not comply with this rule. The Committee is also concerned about the acknowledgement by the State party that passports of non-Syrian female artists are in fact being withheld by the authorities during the period of their stay in the Syrian Arab Republic” (Committee 2008:16f).

## Thailand

... “a ‘Provincial Decree on Migrant Workers’ adopted by the government of Phuket in December 2006 has severely inhibited the movement and basic rights of migrant workers from Myanmar, Cambodia and Laos [fn 134]. They are no longer permitted to own cell phones, drive motor bikes or cars or to leave their residences between 8 pm and 6 am. Since mid-2007, the decree has been adopted by seven other Thai provinces on grounds of ‘national security’” (Crush/Ramachandran 2009:31).

## Violence, abuse, intimidation

Violence against migrant workers is not new at all. Abuse could be at the hands of employers, the mob, enforcement agencies, recruiters or traffickers. It could include extortion. Domestic workers may be particularly prone to violence and intimidation, though certainly not exclusively.

In early 2009, there were numerous media reports of attacks on migrant workers and action taken against their employment from countries around the globe (Taran 2009a:5). In part these reports may have reflected intensified media attention due to expectations that this would happen in the crisis without any actual change in occurrences, in part the actions may have been true results of the crisis. In as far as they were results of the crisis they may have been triggered by exaggerated expectations about the hardship the crisis would bring.

Early in the recession, based on media reports, the ILO’s Ibrahim Awad outlined the expectations for the immediate future (Awad 2009:37). Caution must be exercised in linking the media reports to the recession. The recession may only have triggered the timing of the reports not the incidents being reported on, which could have been persisting for considerable time.

## Austria

“In Austria, home health care is a rapidly growing area of employment for women of the new EU Member States of southern and eastern Europe, who have now been granted easier access to the labour market by the Aliens’ Employment Regulation [fn 117]. A number of administrative penal provisions have been suspended temporarily [fn 118] (until June 2008) in order to give individual employers the chance of legalising the employment relationship. However, commentators argued that the public debate focuses on the necessity of affordable home health care rather than on the risks and stress the women are exposed to in this highly precarious field of work [fn 119]. Working

in private households is not covered by adequate legislation protecting employees from abuse and exploitation [fn 120]" (FRA 2008:47).

#### Greece

"Female migrant workers in Greece are often subjected to poverty wages, harsh working conditions and discrimination. Constantina Kuneva, the General Secretary of PEKOP, the Athens-based 'All Attica Union of Cleaners and Domestic Workers', was the victim of a murderous attack with sulphuric acid in December 2008 because she exerted her trade union rights in practice. She has lost the use of one eye, her vocal chords and is still hospitalised. She had previously warned in an interview with the ITUC that she felt in grave danger owing to her trade union activities. The investigation procedure into the ferocious attack has been delayed and inadequate and no one has been brought to justice yet" (ITUC 2008f:17).

#### Israel

"Kav La'Oved also reports a phenomenon of Chinese 'sub-agents' who serve as middlemen between the workers and employers, and who use criminal means to cover violations of rights, such as extortion and severe violence. The organisation reports that there have been improvements in cooperation between them and the Immigration Administration with regard to complaints and the investigation of such offences [fn 97]" (Kemp 2010:23).

#### Mexico

"36. The clandestine abuse of domestic migrant workers (especially from Central America) is also a major issue, but there are few programmes to protect them and little data on their numbers and nationality. As such, they may go largely unprotected and remain especially vulnerable to abuse. The Special Rapporteur received reports of wealthier Mexican families employing 'servants' from Guatemala, El Salvador and Honduras. Vague estimates state that, for example, there may be 1,000 El Salvadoran female domestic workers in Mexico City alone and hundreds of Guatemalan domestic workers in the Tapachula area, many of them below the age of 18 and from indigenous communities. 37. But these numbers are not substantiated with recent data, and the precise locations of most of these workers are unknown" (Bustamante 2009b:11f).

#### Russia

"Employers may threaten or use violence to intimidate workers who take action such as protesting against non-payment of wages or attempt to exercise their right to strike. Employers or their representatives, such as foremen, have threatened or beat workers themselves or have threatened or instructed construction site guards, police, or hired thugs to beat workers. Employers also threatened to denounce workers who did not have residency registration or work permits to the police" (Human Rights Watch 2009a:67).

"Human Rights Watch documented numerous cases of police extorting money from and physically abusing and humiliating migrant workers. In some egregious cases, police forced migrant workers to perform forced labor at police stations or other locations. Many migrants also stated that they were forced to pay bribes, often multiple bribes, to border guards, customs officials, police or other authorities, at the numerous border crossings in Central Asia and to enter Russia" (Human Rights Watch 2009a:69).

"The majority of migrant workers told Human Rights Watch that during a document inspection on the street or other encounter, police would typically demand a bribe of 100-200 rubles (USD 4.22-8.44), although some migrant workers reported paying up to 1,000 rubles (USD 42). In most cases, if migrants simply paid the bribe, the police would release them without further incident. Some migrant workers told Human Rights Watch that, so long as their documents were in order, they did not have to pay any bribes to police during these 'inspections.' However, some migrant workers also suffered beatings, humiliation, and forced work at the hands of police. ... Migrant workers also

stated that they believed filing a complaint to a government agency regarding ill-treatment by police would at best be ineffective and at worst would do further harm” (Human Rights Watch 2009a:70).

#### Saudi Arabia

“We documented several cases of physical and psychological abuse by employers, and in some cases by agents. Examples of abuse included beatings, deliberate burnings with hot irons, threats, insults, and forms of humiliation such as shaving a domestic worker’s head. Food deprivation was a common abuse. We interviewed women who reported rape, attempted rape, and sexual harassment, typically by male employers or their sons, and in some instances, by other foreign workers whom they had approached for assistance” (Human Rights Watch 2008c:4-5).

“Saudi Arabia’s criminal justice system can also be a serious problem for migrant domestic workers. Some find themselves facing spurious charges of theft or witchcraft from their employers against whom they may have lodged complaints of mistreatment, or discriminatory and harsh morality laws that criminalize mingling with unrelated men and engaging in consensual sexual relationships. Domestic workers who have been victims of rape or sexual harassment may also be subject to prosecution for immoral conduct, adultery, or fornication. Punishments for this range of crimes include imprisonment, lashes, and, in some cases, death. Within the justice system, they are likely to experience uneven or severely delayed access to interpretation, legal aid, and access to their consulates” (Human Rights Watch 2008c:83).

#### South Africa

“From 11 to 26 May 2008, foreign nationals and ethnic minorities were attacked in at least 138 sites across South Africa. This resulted in 62 reported deaths. At least a third of those killed (21) were South African citizens from ethnic minorities. In addition to the murders, over a hundred thousand people were displaced and millions of Rand of property were damaged or stolen. Since then, almost every month there has been at least one attack on groups of foreign nationals. Organisations working with migrants regularly report threats of renewed large-scale: ‘Xenophobic’ violence is a serious ongoing concern” (Polzer 2010:3). Serious research has gone into understanding the causes (Misago et al 2010) and discovered a number of important points:

- “The key trigger of violence against foreign nationals and outsiders in specific locations is localised competition for political (formal and informal) and economic power. Leaders, and aspirant leaders, often mobilise residents to attack and evict foreign nationals as a means of strengthening their personal political or economic power within the local community. In many instances, violence has been organised by business owners intent on eliminating competitors.
- Violence against foreign nationals typically occurs in locales with high (but not the highest) levels of economic deprivation, high percentages of male residents, high levels of informal housing, and high levels of language diversity (including many South African and foreign languages). These areas often have a relatively low percentages of residents in the lowest income bracket.” They are also not the “sites with the highest percentage of residents in absolute poverty, the highest rates of unemployment, the highest percentage of youth, the highest percentage of residents with low education, or the highest percentage of foreign residents.”
- Violence against foreign nationals and ethnic minority ‘outsiders’ is a symptom of broader challenges of legitimate and accountable local governance, especially in informal settlements” and “is likely to continue without concerted efforts to address impunity and scapegoating” (Polzer 2010:2).

## United States

One purpose of intimidation can be to preclude unionisation or the use of complaints bodies. New York: “More common than retaliation, however, is intimidation before the fact, aimed at preventing any collective initiative by workers. Such intimidation – e.g. threatening to report workers to immigration authorities or to fire workers who contact the Department of Labor – is prevalent in precisely those workplaces where employers are committing the most violations. Workers often voiced the same concern: ‘You can’t organize. Who do you voice those concerns to? Everyone is at risk of losing their job’” (Bernhardt et al 2008:143).

### Racism, stigmatisation, stereotyping

#### Bolivia

“(21) While noting the actions undertaken by the State party to combat discrimination, the Committee is concerned that some migrants and members of their families, including Peruvians, have allegedly suffered from discrimination and stigmatization resulting from the behaviour of State authorities, including the National Migration Service (SENAMIG) and police. In particular, the Committee is concerned by reports that some individual cases have been politicized by the media, and have contributed to the continued stigmatization of migrants” (Committee 2008:22).

#### Ecuador

“(19) The Committee is concerned at the information that migrant workers and members of their families may suffer from discriminatory attitudes and social stigmatization. Furthermore, while taking note of the State party’s explanation in this respect, the Committee is concerned that the practice of asking for the certificate of criminal record (*pasado judicial*) exclusively from Colombian migrants, may contribute to their stigmatization and stereotyping” (Committee 2008:7).

#### United States

“96. Furthermore, pre- and post-Katrina policies and practices of local, state and federal government agencies have had a grossly disproportionate impact on migrants of colour, in violation of the United States Government’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and other human rights norms that the United States has ratified” (Bustamante 2008:22).

## **Social conditions**

### Support in unemployment

#### China

“Started as a pilot programme in Shanghai in 1993, the Dibao programme was implemented in all Chinese cities in 1997, and progressively extended to the whole country until 2007. The aim was to provide some assistance to workers laid off by state-owned enterprises in their restructuring process and avoid social unrest related to rapid economic transformation. The amount of the benefit equals the households size times the gap between per capita household income and a locally determined minimum living standard. ... The very rapid increase in coverage is a significant achievement, but a majority of poor households remains uncovered. Rural migrants are explicitly excluded, due to the urban registration system (*hukou*)” (OECD 2010c:144).

#### OECD

“Since mid-2009, additional PES [Public Employment Service] resources have been allocated to provide job-search assistance to particular groups such as youth (Finland, Austria, Japan, New

Zealand), immigrants (Finland), people with short-term contracts (Belgium) or people not receiving benefits (France)” (OECD 2010c:53).

### Health and illness

... “some countries still require a negative HIV test result as a condition for entry or to secure extensions of a visa. This is contrary to human rights and good practice identified by the ILO’s Code of Practice on HIV/AIDS and the World of Work, and does not help to prevent the spread of the disease” (ACTRAV 2008:25).

#### China

“While urban residents holding permits in China have long been entitled to state-sponsored social welfare benefits, individuals without hukou (a form of registration with local authorities that is often time-consuming, expensive, or difficult for internal migrants to obtain) are unable to access basic public services such as education and health care, and therefore are forced to pay all costs [fn 35]. The vast majority of internal migrants are uninsured, and rarely visit doctors or hospitals [fn 36]. Furthermore, lack of health care coverage for sick migrants has, in the past, been compounded by additional, harsh consequences: For example, internal migrant workers have been returned to their home province under armed guard after being found to be HIV-positive [fn 37]” (Human Rights Watch 2009c:8).

#### Ecuador

“(39) The Committee notes that under the State party’s public health system, every person is entitled to health services, irrespective of migratory status. However, the Committee is concerned about information that in practice migrant workers in an irregular situation and members of their families face difficulties in accessing the public health system” (Committee 2008:11).

#### South Africa

“Migration heightens both risks and vulnerabilities of exposure to HIV/AIDS. One example is migrant mine workers in South Africa, who have had high levels of infection as a result of the poor living and working conditions provided by mining companies” (ACTRAV 2008:24).

### Insufficient protection of family and social life

#### Israel

“Israel does not allow family reunification for foreign workers staying lengthy periods of time. Further, having a first-degree relative in Israel is grounds for permit loss and deportability”, a rule that also applies in case of giving birth (Kemp 2010:23).

### Cultural expression

#### Thailand

“In November 2007, [advocacy groups] expressed their dismay over the ‘cultural insensitivities and prejudice against foreign workers’ exhibited by Veerayuth Yeamampur, then governor of Samut Sakhon province in an official letter [fn 137]. The communiqué issued to employers of factories in the province described migrant workers from the Greater Mekong Region as ‘problems,’ causing ‘criminal problems’ and ‘security problems’: “They [migrant workers from Myanmar, Cambodia and Laos] are also now trying to organize cultural performances at social occasions and fairs, which is not suitable. These activities are not to be supported because it will make the community feel that these people are the owners of the community and it could also create security problems ... We

should not allow them to organize cultural ceremonies at all” [fn 138]” (Crush/Ramachandran 2009:32).

### Dysfunctional legislation and organisation

In 2008-2009, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families noted in regard to Azerbaijan, Bolivia, Bosnia-Herzegovina, and Ecuador that the status of the Convention in national (and subnational) law was insufficiently defined thus possibly hindering its effectiveness.

None of the seven countries reviewed in 2008 and 2009 was deemed to have adequate migration statistics.

#### Azerbaijan

“(14) The Committee notes the measures undertaken by the State party to simplify migration procedures, such as the Presidential Decree of 4 March 2009 on the application of the “single window” principle that will be applied as of 1 July 2009. However, the Committee remains concerned that, in spite of the “single window” policy, the migration procedures, in particular to obtain an individual permit of work, continue to be burdensome and complex, and may as a consequence encourage irregular migration ...” (Committee 2009:6).

#### Bolivia

“(35) The Committee takes note of the institutions created to deal with migration matters, as the National Migration Service (SENAMIG), the National Council of Migrations, the Department for Aliens, the Department of Legal Affairs, the Department of Inspections and Settlement, and the Departmental Migration Authorities. It is nevertheless concerned that some of them are not yet operational and that there seems to be a lack of coordination among these institutions and services” (Committee 2008:24).

#### Bosnia-Herzegovina

“(11) The Committee welcomes the State party’s efforts to address rights related generally to employment, including the rights of non-citizens, through the promulgation of a number of laws at the national and Entity levels. It is concerned, however, that the proliferation of legislation at the national and Entity levels has resulted in a lack of consistency between the respective laws and regulations at national and Entity level which, in turn, undermines the State party’s ability to protect the rights of migrant workers as envisaged by the Convention. In particular, the Committee is concerned that the different laws in the Entities regulating the issuing of work and residence permits may not be in compliance with national law and the Convention” (Committee 2009:13).

“(35) The Committee notes that several agencies are responsible for the implementation of laws and policies relating to labour migration and is concerned that there may be areas of overlap and duplication in the planning and coordination of activities and responsibilities relating to the rights of migrant workers among agencies and ministries at the national and Entity levels” (Committee 2009:17).

#### Philippines

“(13) The Committee notes with interest the multitude of initiatives and programmes undertaken by the State party in response to challenges faced in its labour migration policy. At the same time, the Committee is concerned that implementation, follow-up and evaluation of these programmes are Insufficient” (Committee 2009:34).

“(49) The Committee notes the large number of government departments and attached agencies as well as legislation dedicated to migration issues, including RA 8042, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers’ Welfare Administration (OWWA).

Nevertheless, the Committee is concerned that institutional responsibilities are spread among different ministries without a coordinating entity and about their limited means and capacity to fulfil their mandate in a proper manner and little coordination in the effective implementation of the promotion and protection of the rights of migrant workers” (Committee 2009:42).

### Remittances

#### Syria

“(35) The Committee regrets that, under the current monetary policy in the Syrian Arab Republic, migrant workers are entitled to remit only a portion not to exceed 60 per cent of their wages in foreign currency” (Committee 2008:17)

### Franchise

#### Azerbaijan

“(36) The Committee notes with interest the information according to which Azerbaijani nationals abroad have the right to vote in the elections of Azerbaijan, through registration at the consulates in the country where they reside. The Committee also notes that according to information provided by the delegation, foreigners who have resided in Azerbaijan for at least five years, have the right to vote in elections of the municipality in which they reside, if his/her State of origin grants the same right to foreigners” (Committee 2009:9).

#### Bolivia

“(8) The Committee welcomes the fact that, pursuant to Electoral Code, art. 93 (b), foreigners have the right to vote in municipal elections” (Committee 2008:20).

“(33) The Committee is concerned that Bolivian migrant workers abroad are not able to exercise their right to vote” (Committee 2008:23).

#### Bosnia-Herzegovina

“(29) The Committee notes the fact that the electoral laws of the State party make it possible for citizens of Bosnia and Herzegovina who reside temporarily abroad to participate in elections through the consulate or other diplomatic representation of the country where they are residing or by mail. The Committee, however, notes the significant reduction in the number of State party nationals abroad who participate in elections and regrets the lack of clarity in relation to the implementation of this right” (Committee 2009:16).

#### Colombia

“(33) The Committee notes the progress made by the State party in its efforts to guarantee the right of Colombian workers resident abroad to vote in Colombia’s presidential and Senate elections. However, the Committee has received no detailed information on how the right to vote is implemented in practice and what measures the State party is taking to facilitate the exercise of the right to vote by Colombian workers abroad” (Committee 2009:24).

#### El Salvador

“(33) The Committee is concerned that Salvadoran migrant workers abroad are not able to exercise their right to vote” (Committee 2009:30).

#### Philippines

“(35) The Committee appreciates that the Filipino migrant workers’ right to participate in democratic decision-making processes is recognized under RA 8042. While also noting the efforts undertaken

by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice-President, Senators and Party-list representatives, the Committee is concerned that the pre-required “affidavit of Intent to Return to the Philippines within three years” for immigrants/permanent residents abroad may limit the exercise of their right to vote. Further, the Committee is concerned at the very small percentage of Filipino workers abroad that have registered to vote in elections” (Committee 2009:39).

### Services to workers abroad

#### Azerbaijan

“(32) The Committee regrets that it has not received sufficient information on the measures taken by the State party to protect the rights of Azerbaijani migrant workers abroad” (Committee 2009:9).

#### Bolivia

“(6) The Committee appreciates the programme implemented to assist migrants abroad (*Programa de Atención al Boliviano en el Exterior*), the “mobile consulates”, which provide direct assistance to migrants, and the programme *Matrícula Consular* implemented in one country of destination of Bolivian migrants, facilitating the registration of migrants” (Committee 2008:19).

“(27) While taking into account the efforts undertaken by the State party to improve and extend its consular services, the Committee is concerned at the long delays that Bolivians have to endure to obtain documents which could assist them in the full enjoyment of their rights” (Committee 2008:23).

#### Bosnia-Herzegovina

“(31) In light of the high percentage of citizens of Bosnia and Herzegovina abroad, the Committee is concerned that no information has been provided regarding procedures or institutions through which account may be taken of the special needs, aspirations and obligations of the State party’s migrant workers and members of their families abroad” (Committee 2009:16).

#### Colombia

“(25) The Committee notes that responsibility for providing migrant workers with the information required under article 33 of the Convention is shared between various government bodies, and welcomes the establishment of the Migrant Information and Support Centre (CIAMI) for the purpose of providing information on work outside the country. However, the Committee has received no information on how Colombian migrant workers can obtain this information, and whether this type of service also exists for foreign immigrants in Colombia” (Committee 2009:22).

### Children left behind

#### Bolivia

“(39) The Committee is concerned about the situation of children staying in Bolivia, whose mothers have migrated abroad, and the lack of information in this regard. As recognized by the State party, this situation has a very negative impact on their social development” (Committee 2008:24).

#### El Salvador

“(45) The Committee notes that the State party, through its Vice-Ministry of Foreign Relations for Salvadorans Abroad, is conducting a study on the impact of migration on children. The Committee nevertheless remains concerned at the situation of children in El Salvador, whose parents have migrated abroad, and the lack of information in this regard” (Committee 2009:31).

## Philippines

“(45) The Committee expresses concern over the situation of children and the negative impact on children whose parents have migrated abroad. Information presented before the Committee points to children with at least one parent working overseas living with loose family ties and performing worse in school, notably in the case of an absent mother. This is of concern to the Committee given that 50 per cent of all Filipino migrant workers are women” (Committee 2009:41).

## Voluntary return and reintegration

### Azerbaijan

“(38) While the Committee notes information according to which formal programmes of assistance to migrants who are returning to Azerbaijan are in the process of being drafted, it remains concerned at the absence of mechanisms to assist the voluntary return of Azerbaijani workers and members of their families to Azerbaijan although according to the State party migration flows have reversed and many Azerbaijanis who previously left the country are returning” (Committee 2009:9f).

### Bolivia

“(43) Aware of the needs of Bolivians abroad, the Committee is concerned at the absence of mechanisms to assist the voluntary return of Bolivian workers and members of their families to Bolivia” (Committee 2008:25).

### El Salvador

“(41) The Committee notes with satisfaction the existence of the “Welcome Home” (*Bienvenido a casa*) programme as well as a reception centre (*Centro de Atención a Migrantes Salvadoreños*) for Salvadoran migrants returning to their country” (Committee 2009:31).

### Philippines

“(43) The Committee notes with interest information given by the delegation on the State party’s strategic reintegration programme for migrant workers returnees, including family members. Nevertheless, the Committee notes the lack of information available to the Committee on this Programme” (Committee 2009:40).

## Practices, lessons, and gaps

The review shows there are few overlaps between sources. Each one adds new evidence of the situation of migrant workers. Extensive overviews compiled by independent observers permanently based in the country can be a very good source on the actual situation. Reports originating from experts flying in for a few days tend to be helpful, too, but not as encompassing or as rewarding. Where civil society cannot operate freely, they may however be without alternative.

One obvious second result is that few observers make any connection between the recession and discrimination. They were more likely to do so at the onset of the crisis expressing expectations, partly their own and partly those of governments and the media. In the course of time it became clear that in some places the crisis could not well have made things worse, in many places it was felt too briefly or too weakly to have an impact, and in some places it added but an excuse for policy projects that would have been started or continued anyway.

Thirdly, there is nothing new under the sun, but attention is broadening to include a fuller set of rights issues in relation to migrant workers and their families, and a more differentiated picture is emerging showing the diversity of situations migrant workers can be in depending on conditions in

the origin and the destination country, the industry and occupation they are active in, the kind of employer, and of course the regulatory conditions.

Fourth, the law frequently places non-citizen workers at the mercy of employers, brokers, or agents. Often this appears to be an unintended consequence of deficient legislation as when the intent is to protect non-migrant workers and results in regulations that effectively make migrant workers a desirable because either cheaper or more tractable workforce. Bad intent, however, appears to provide for poorer rights outcomes than poor legislation. Rarely are the gaps as glaring as in the varieties of 'sponsorship' system that keep being exercised in the Middle East.

Fifth, passing regulations is the easy part, but mere regulation achieves little and may be detrimental when left without adequate procedure and implementation. Decent implementation is unlikely to be achieved without consultation with all parties affected by the regulation.

It must be acknowledged that almost all states remain beginners in rights-based diversity policies. The same is true of private parties. "Towards the end of 2008 a new EU report on diversity management was published, surveying companies across all 27 Member States, and providing new information on the benefits and challenges of a diversity approach. The study came to the conclusion that although the majority of European companies are aware of diversity issues, "most have yet to embark upon their diversity journeys [fn 74: Continuing the Diversity Journey: Business practices, perspectives and benefits, European Commission 2008, available at: <http://ec.europa.eu/social/main.jsp?catId=88&langId=en&eventId=125>]" (FRA 2009:39). International instruments may not be ahead of needs but are far ahead of most public and private agents' level of understanding. It will take considerably more public debate to establish human rights based practice at the centre of regulatory activity.

Sustainability is coming to the fore as a central tenet of economic thinking (Stiglitz/Sen/Fitoussi 2009; European Commission 2009b) there will be a need to reinforce the effort to make employment practices and labour market processes contribute to the effort (Kulke 2007:436). There is a potential need here for greater coordination between states and for greater internationalisation of social partner activity. The latter, in particular, would be desirable, if it also involved the lower rungs in the organisations, but may be hindered by monolingualism

Origin country governments are often reluctant to take up the plight of migrant workers with host country governments. They are sometimes in a weak position to do so, sometimes they believe other aspects of their international relations have greater priority, sometimes they are simply poor service providers. There is a research gap here, too. Migrants may often originate from parts of the population origin country governments do not feel equally responsible for either because they are low class, ethnically distinct, or regarded opposition supporters. There is insufficient knowledge of the frequency of stigmatisation before migration and of labour migration to escape stigmatisation, although this has obviously been playing a role.

## Recommendations

Migrants will be less likely to tell of any infringements of their rights as long as their residence status is precarious. Status regularization is therefore of eminent importance and ought to be an integral part of all trade union efforts.

In a similar review of the situation of (women) migrant workers a number of points were raised (Ghosh 2009:41-42):

- Ensure access to information about rights and legal redress to migrants in the destination areas. These include information about access to all public services as well as availability of legal assistance and translation when required.
- Ensure equal access to all legal and other rights to migrants in destination areas. States must ensure that the laws and labour codes provide the same rights and protection to migrant work-

ers that are extended to all workers in the country, including the right to organize and freely associate. This includes ensuring the legal validity of contracts of migrant workers. Special attention must be paid to creating and implementing labour laws in occupations dominated by women migrants such as domestic work and entertainment. Freedom of association is important also so migrant workers can express their own political agency and shed the dominant representations as 'victims'.

- Reduce the isolation of workers in particular occupations, such as domestic work. This includes making sure that passports are not confiscated by employers, that all labour laws and regulations are upheld and that migrants have access to support groups and networks.
- Ensure full legal rights of migrant workers in destination countries. This involves repealing laws and rules that prevent women migrant workers from using the courts and other systems of redress. Such laws can include loss of work permit that result in loss of earnings and possible deportation by immigration authorities when a worker files a complaint of exploitation or abuse and while pending investigation. Free legal aid should be provided to ensure that poor migrants have access to legal assistance.
- Encourage international recognition of degrees and qualifications earned in sending countries, so as to ensure that migration does not involve a de-skilling process.

## Chapter 3: Legal developments

### Introduction

An own analysis of legal provisions was beyond the scope of the review. We needed to depend on changes and analyses reported in good quality sources.

It seemed important not to mix up legal change with change in implementation, enforcement practices and judicial practices.

### Conditions of employment

#### Argentina

“In 2002 an Agreement on Residency for Nationals of the MERCOSUR [fn 33: MERCOSUR means Common Market of the South, which includes Argentina, Brazil, Paraguay, and Uruguay] member countries was signed. According to this agreement immigrants from a country of the region who acquire a temporary or a permanent residence visa in another MERCOSUR country will receive the same treatment as the country nationals, including in the labor field. At the same time, the Agreement on Regulating the Migration of MERCOSUR Citizens was concluded making possible to regularize immigrants without their having to return to their countries of origin. Immigrants with a resident visa and their families will have the same civil, social, cultural and economic rights and freedoms as the nationals of the receiving country. They will receive the same treatment as the nationals in all matters related to the application of labor legislation, wages, working conditions and social security” (Cerrutti 2009:18-19).

#### China

“A new law on Employment Promotion was issued and became effective on 1 January 2008 along with supporting regulations on employment services and employment management. The law is aimed at ending discrimination against migrant workers and people living with Hepatitis B as well as at regulating employment recruitment agencies. For the first time the law states that migrant workers should have the same rights to employment as urban workers, and workers that have been in the city for more than 6 months will be entitled to unemployment benefits and services from the local government” (ICTU 2008:12).

#### Israel

“In November 2008, the Knesset passed a first call for a bill that will exclude foreign workers from the protection of [the Manpower Agencies Law], which seeks to protect workers from the ravages of flexibilisation upon completing 9 months of employment [fn 87]. Excluding foreign workers from the law would mean that under the law they would be continuously employed by, and therefore bound to, the manpower agency, and not by the actual employer. Under these conditions, foreign workers will be entitled to fewer rights than Israeli workers” (Kemp 2010:23).

#### Jordan

“Jordan stands out as a country that, after introducing a standard contract in 2003, amended its labor laws to include domestic workers in 2008 and issued the associated implementing regulations in 2009 [fn 12]. This reform is an important model in the region and includes provisions such as requiring employers to pay monthly salaries directly into workers’ bank accounts, buy the worker health insurance, and limit work to ten hours per day. While these amendments are an advancement, the true test of this reform will be the government’s commitment to publicizing and enforcing the new standards” (Human Rights Watch 2010b:14).

## Lebanon

“Q: What has been done to improve the situation of women migrant domestic workers in Lebanon?”

A: Although Lebanon has not ratified the 1990 International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, it has ratified several human rights conventions and international labour standards that include specific provisions for migrant workers in general and migrant domestic workers in particular. In the fall of 2005, the Minister of Labour requested technical support from ILO ROAS in raising awareness toward policy action on the issue of women migrant domestic workers. To date, the policy and regulatory changes that have come about as a result of this process include:

- A decree on monitoring and regulating private placement agencies has been passed by the Ministry of Labour in early 2009;
- A unified standard labour contract has been adopted and put into effect across Lebanon in early 2009 through a Ministerial decree from the Ministry of Labour;
- A draft law specific to all domestic workers in the country has been drafted and being discussed among the relevant ministries.

To date, several awareness-raising and multi-media materials have been developed and disseminated, including:

- Booklet on the rights and duties of women migrant domestic workers in Lebanon’, which has been translated into nine languages (Amharic, Arabic, English, French, Nepali, Sinhalese, Tagalog, Tamil, Vietnamese, Bengali, Indonesian Bahasa, Malagasy). The booklets will be distributed through orientation sessions for workers conducted by social workers and volunteers from different communities; and
- Second documentary film following “Maid in Lebanon I” entitled “Maid in Lebanon II: Voices from Home” targeting Lebanese employers, media, students and general public.

Q: What is the current situation?

A: The ministerial decrees mentioned above have now been in effect since early 2009, and these legal efforts need to be monitored for their effective implementation. Labour inspectors from the Ministry of Labour’s need to be trained in inspecting private placement agencies. Social workers from the Ministry of Social Affairs need to be trained in labour mediation between employers and migrant domestic workers. A code of conduct needs to be developed for private placement agencies and their syndicate to follow.

Despite increasing media interest, more rights-based information needs to be made available for the general public accompanied by national debates on TV and radio as well as schools and cultural clubs. These efforts need to be complemented with a national awareness raising campaign on the rights of migrant domestic workers. Information materials already developed in several languages will need to be disseminated both in the sending countries and in Lebanon through several venues such as community churches, prayer groups, internet cafes, facebook, blogs, and within the communities” (ILO ROAS 2009a:4-5).

## Malaysia

“Malaysia and Saudi Arabia are considering amendments to labor laws that would improve protections for domestic workers but fall short of providing equal protections as those accorded other workers. For example Malaysia in 2009 proposed amending the Employment Act of 1955 to extend a weekly rest day to domestic workers, but did not announce plans to remove the exclusions of domestic workers from other protections, such as limits to working hours, public holidays, annual

and sick leave, maternity protection, and fair termination of contracts [fn 14]” (Human Rights Watch 2010b:15).

“Malaysia and Indonesia in April 2010 planned to sign a [memorandum of understanding] aimed at increasing protections for Indonesian migrants in Malaysia. ... Migrants [from Indonesia] will have at least one day off a week, employers will pay migrant worker transportation costs, but there was no agreement on a minimum wage for Indonesian migrants. Indonesia demanded a minimum wage of M\$800 (\$240) a month; average wages for Indonesian migrants were M\$500 (\$130) a month early in 2010. Indonesians headed for Malaysia to work are to have at least 200 hours of training before departure” (Migration News 17/2, April 2010, [http://migration.ucdavis.edu/mn/more.php?id=3600\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3600_0_3_0), 2010-06-30).

#### Saudi Arabia

“Malaysia and Saudi Arabia are considering amendments to labor laws that would improve protections for domestic workers but fall short of providing equal protections as those accorded other workers. ... Saudi Arabia’s Shura Council, after years of discussion, passed an annex to the labor code on domestic workers in 2009 that greatly improved existing protections but stopped short of regulating fair working hours. According to news reports, a clause requiring employers to provide domestic workers rest between 10 p.m. and 5 a.m. was dropped because it “contradicted” the needs and traditions of Saudi families” (Human Rights Watch 2010b:15).

#### Workers tied to employers

#### Bahrain

“In 2009, Bahrain adopted the strongest sponsorship reform in the region by permitting migrant workers to change employment without their employer’s consent and in the absence of allegations of nonpayment of wages or abuse. Majeed al Alawi, the minister of labor in Bahrain, likened the kafala (sponsorship) system to slavery when justifying the reform [fn 19]. The 2009 legal reform allows migrant workers to change employment after meeting certain notice requirements and provides a 30-day grace period to remain legally in the country while they seek new employment [fn 20]. These positive changes do not apply to domestic workers; moreover some human rights advocates in Bahrain are concerned that the law’s requirements are so burdensome that they undermine the reform’s intent [fn 21]. Further investigation is needed to determine the reform’s full impact” (Human Rights Watch 2010b:16f).

#### Cyprus

... “in Cyprus, in June 2007, the Ministry of the Interior announced a new policy [fn 124] which constitutes a worsening in the terms of employment of female migrant domestic workers, which will constrain their right to change employers even further [fn 125]. This is despite a study [fn 126] describing the restrictive conditions and poverty of domestic migrant workers, and the Cyprus equality body decision of 2005 that female migrant domestic workers face direct discrimination on the ground of race/ethnic origin and indirect discrimination manifested in the low salaries paid to them [fn 127]” (FRA 2008:48).

#### Israel

“Until 2005, the foreign workers system was based on the ‘binding policy’, which makes the work visa of foreign workers valid only for a single employer. As a result of any change in work relations, such as dismissal, resignation, or employer bankruptcy, foreign workers lost their residence permit and became subject to arrest and deportation” (Kemp 2010:19). In 2006, “the Court repealed the binding policy and ordered the government to devise a new employment system by October 2006” (Kemp 2010:20). Even before the repeal, from May 2005, in the construction sector “a new method

that involved issuing employment permits to licensed employment agencies, or corporations, rather than to single employers came into effect [fn 64]" with further revisions effective from January 2007. "Under the new system, contractors hire the services of workers from 43 licensed employment agencies, which serve as the employers. Employees are allowed to change corporations once every 4 months, and have 30 days to find a new corporation to hire them. The corporations need to deposit high fees for each worker in order to achieve two goals: ensure the workers' rights, and increase the costs of hiring foreign workers in order to reduce their desirability in the sector (and replace them by Israeli workers, mainly Israeli-Arab citizens)" (Kemp 2010:20). "Some evaluations indicate that the new method improves the supervision of employment conditions and thus improves their situation. Others point out that the workers are still "bound" to the corporations and still exploited by employers. Although the new system led to a rise in foreign construction workers' wages, as intended, workers are now also paying higher fees and commissions to work in Israel. In addition, deposits are not confiscated from corporations that violate workers' rights [fn 67] [fn 68]" (Kemp 2010:20). A similar system is being extended to agriculture and care-giving (Kemp 2010:30).

#### Kuwait

"In August 2009, Kuwait's labor ministry issued a decree permitting workers to change employers without sponsor consent at the end of their contract term, providing they had completed three continuous years of service with the same employer. However, this decree excluded domestic workers" (Human Rights Watch 2010b:16).

#### Malaysia / Indonesia

"Malaysia and Indonesia in April 2010 planned to sign a [memorandum of understanding] aimed at increasing protections for Indonesian migrants in Malaysia. Indonesia banned migrants from going legally to Malaysia after domestic helper Siti Hajar fled her abusive Malaysian employer in June 2009. The new agreement allows migrants to keep their passports, ending the current system under which many Malaysian employers keep worker passports and instead arrange for identity cards issued by the Malaysian government" (Migration News 17/2, April 2010, [http://migration.ucdavis.edu/mn/more.php?id=3600\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3600_0_3_0), 2010-06-30).

#### United Arab Emirates

"The Government of the United Arab Emirates has responded to this situation allowing any worker who has not been paid for more than two months to change jobs without a No-Objection Certificate [fn 5]. According to anecdotal reports, many migrant workers are shifting within the UAE, moving from Dubai to oil-rich Abu Dhabi, which is less affected by the crisis" (UNESCAP 2009:3).

### Recruitment

#### Israel

"In response to the deficiencies found in the recruitment process, in July 2005 the government introduced a new method, which would include the signature of bilateral agreements with sending countries and using the services of the International Organization for Migration (IOM) in the recruitment process" (Kemp 2010:19). "Recent efforts to eliminate the exploitation of workers led to a series of government decisions aimed at designing a different recruitment method, the latest of which was Decision 3996 in August 2008 [fn116]. Under the new arrangements, the Israeli government will sign bilateral agreements with sending countries, allowing the IOM to perform and supervise the recruitment process, instead of private agencies. In addition, the Israeli Consulate in the sending country will have comprehensive guidelines to perform the screening process abroad and will give potential workers extensive information about their rights and duties once in Israel [fn 117]. The NGOs that participated in the meeting at the Knesset Committee on Foreign Workers on

20 January 2009 also suggested appointing a special representative who will be in charge of the new procedure and will collect information about recruitment fees charged workers in agencies abroad [fn 118]” (Kemp 2010:29).

## Illegalisation

### Russia

“Russian government laws and policies related to migration and employment for foreigners are generally complex and have changed frequently in recent years. In January 2007, amendments to the Law on the Legal Status of Foreign Citizens and a new Law on Recording the Migration of Foreign Nationals and Stateless Persons (hereafter, the 2007 laws), simplified the procedures for temporary residents to register on the migration registry, as is required for all non-Russian nationals entering Russia, and for obtaining work permits for migrants entering Russia under the non-visa regime” (Human Rights Watch 2009a:17-18).

## Forced return

### European Union

“The recent European Union directive on the procedures for return appears to be a step towards transparency and harmonization of regulations, with an emphasis on standard procedures either to expel people with irregular status or to grant them definite legal status. The directive has, however, been criticized as inadequate in guaranteeing respect for human rights [fn 12]” (UNDP 2009:99).

The EU is pressuring states between the Mediterranean and the Sahara to stop migrants and return them forcibly to where they came from (Amnesty International 2008b, 2008c, 2010d).

## Social conditions

### European Union

“In July 2008 the European Commission published a Proposal for a Council Directive [fn 290: COM(2008)426 final, 2 July 2008] to extend the protection against discrimination (on grounds of religion, belief, disability, age, and sexual orientation) currently covered by the Employment Framework Directive to areas of social security, healthcare, education and access to and supply of goods and services. This would level up protection to match the Racial Equality Directive. By providing the same level of protection, the Directive, once adopted, will make it possible to challenge discrimination which takes place outside the workplace and is based on several grounds, which was not the case previously. The Gender (Recast) Equality Directive [fn 291] was to be transposed by 15 August 2008 and largely reproduces pre-existing provisions from earlier instruments which Member States had already transposed” (FRA 2009:70).

“A ‘progress report’ on the proposed Directive was discussed at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 8 and 9 June 2009. In its meeting of 30 November 2009, the Employment, Social Policy, Health and Consumer Affairs Council reviewed the state of play in the discussions and noted that some progress had been made under the Swedish presidency. However, it noted that extensive work was still required so as to guarantee legal certainty and ensure that the consequences of the draft Directive were fully understood. No agreement has yet been reached on this instrument” (FRA 2010b:96f).

By early April, 2010, Amnesty International, partly attributing the words to Nicolas Beger, director of their EU Office, wrote: “We acknowledge the efforts the Spanish Presidency has made on securing success for the new anti-discrimination directive which aims to end discrimination on the grounds of sexual and gender identity, race or ethnicity, diversity of opinions and religious beliefs or for reasons of age or disability. It is, however, crucial for Amnesty International that the Spanish Presi-

gency now remains firmly committed to the adoption of the Anti-Discrimination Directive and follows through with its strong stance despite Germany's resounding refusal. Amnesty International cannot accept a lowering of standards and / or areas of protection covered by the directive just to ensure Germany's support. Germany's opposition effectively means that it denies protection it grants its own citizens to millions of people in Europe who suffer severely from discrimination as all the reports of the EU Fundamental Rights Agency and our own reports show" (Amnesty International 2010a).

"The German government has argued that existing EU anti-discrimination legislation has been ineffective and that there is no legal basis for the EU to act in some of the areas the directive covers. Neither of these claims stand up to scrutiny. Independent studies have shown that the existing EU Racial Equality Directive has significantly improved the protection against race-based discrimination in many EU countries. Article 19 of the Lisbon Treaty also gives the Council of the EU a clear mandate to take appropriate action when it comes to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Amnesty International 2010b).

"On 7 July, Amnesty International Germany's Director, Monika Lüke handed over more than 55,000 signatures in support of a new EU Equality Directive to the Human Rights Commissioner of the German Federal government, Markus Löning. Amnesty International had gathered the signatures throughout the Spanish EU presidency in an attempt to change Germany's opposition to the directive currently with the Council of the EU" (Amnesty International 2010e, 2010c).

### Cooperation between countries of origin and of employment

#### African Union

The African Union's Heads of State and Government adopted at the Banjul Summit in July 2006 a position statement on migration (Gnisci 2008:97) that also included a series of items on migrants' rights:

"Migrants' rights:

#### Policies and legislation

- Strengthening of national systems, including through the harmonisation of national policies with the international migrants' protection system;
- fair treatment of detained migrants;
- equal access to justice;
- integration strategies;
- information campaigns;
- facilitation for the establishment of migrants' associations; etc.

#### Non-discrimination

- Ratification and implementation of ad hoc international instruments;
- raising awareness of personnel concerned with migrants' rights and gender issues; etc.

#### Integration and reintegration

- Fair treatment of migrants;

- equal access to education, training and economic opportunities for migrants' children, their naturalisation and facilitation of family reunification;
- bilateral programmes between countries of origin and destination; etc.

#### Stateless persons

- Reform of nationality laws; etc." (Gnisci 2008:100).

The relation to employment in this list is mostly through the international instruments the AU members are being exhorted to adopt.

#### EU and ACP countries

Article 13 of the Cotonou Agreement (2000) between the EU and 77 countries in Africa, the Caribbean and the Pacific (ACP) contains, among others, the following provisions:

"§2. The Parties agree to consider that a partnership implies, with relation to migration, fair treatment of third country nationals who reside legally on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia.

§3. The treatment accorded by each Member State to workers of ACP countries legally employed in its territory shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP State shall accord comparable non-discriminatory treatment to workers who are nationals of a Member State" (Gnisci 2008:73).

#### Debate on a numbers vs. rights trade-off

In the migration policy debate a position has emerged arguing that low-skilled migrant workers could become more acceptable in rich country labour markets if only their cost to employers were lower and/or they were less of a financial burden to the community.

"In recent years, a lively discussion has emerged in academic and policy circles regarding the relationship between the magnitude of immigration flows and the expansiveness of the welfare state. A position that has emerged in the literature postulates the existence of a negative relationship between the number of migrants and the rights that can be accorded to them (see, among others, Ruhs 2009, Ruhs and Martin 2008, Carens 2008, Bell and Piper 2005, and Martin 2004). This conclusion is usually justified by an appeal to either rudimentary economics or a basic political economy argument. The main proponents of the numbers versus rights hypothesis emphasize the former: more rights for migrants typically mean higher costs (Ruhs and Martin 2008, p. 251). In other words, the rising labor costs associated with increasing entitlements lower employer demand for unskilled labor. Supporters of the political economy position, in contrast, assert that the contributions of unskilled migrants to the welfare system are unlikely to cover their costs. As a result, voters and/or policymakers are less willing to pay for the fiscal burden generated by high entitlements to migrants if their numbers are large [fn 1: The political economy form of the hypothesis seems intuitively more plausible. Given the magnitude of international differences in wages between developed and developing countries, which appear to be on the order of three to one after controlling for selection bias (see Clemens, Montenegro and Pritchett, 2008), entry restrictions rather than entitlements would appear to be the primary determinant of the price of immigrant labor. In other words, policymakers can choose almost any level of immigration by lowering entry barriers while guaranteeing migrants a regime of rights and entitlements which is at least as generous as that accorded to natives. That they may not do so in practice appears to be an issue of the determination of political economy equilibria]" (Cummins/Rodriguez 2009).

The “rudimentary economics” version accords no influence on migration policy to workers. Trade unions would hardly support the immigration of a labour force being paid lower wages for the same work as this would clearly constitute unfair competition. Likewise, workers would be unlikely to honour such a policy come ballot day. Only if fairly severe occupational segregation between migrant and non-migrant workers could be obtained, so that they would be non-competing, might the latter accept the pay difference. Such occupational segregation, where one part of the population is largely channelled into low paying, another into higher paying occupations, as between the sexes, can be maintained for considerable periods of time. The struggle to remove legal and informal channelling devices is proving to take several generations. To maintain occupational segregation is easier if the minority is non-citizen. The trend in recent decades has been to increasingly try and rotate non-citizen workers in and out of the country and also to tie them to a given job while they are in the country precisely in order to obtain the strict occupational segregation needed to minimize trade union resistance against the presence of migrant workers. This does not usually but can extend also to skilled and to highly skilled migrant workers.

“If there does indeed exist a numbers versus rights trade-off, there are significant normative implications that arise for policymaking. In particular, such a trade-off can be used to justify the imposition of severe restrictions on migrants’ rights in developed countries in order to significantly improve the capabilities of very large numbers of individuals. By accepting regimes in which migrants have few rights, it can be argued, developed countries could accept much larger inflows of migrants, offering them significantly higher levels of income, health and education than they have in their home countries. It is possibly even the case that the restricted rights of migrants in such a regime would still be superior to those that they would have in their country of origin. This reasoning is indeed implicit in the argument made by many scholars in favor of an expansion of temporary worker programs in the United States (see, for example, Pritchett 2006 and Portes 2007)” (Cummins/Rodriguez 2009).

Empirically no such trade off does currently exist. In the only test so far the basic finding is that greater migrant rights currently go along with larger shares of non-citizens and that “any pattern of negative correlation between migrant rights and numbers is completely driven by the GCC [Gulf Cooperation Council] observations” (Cummins/Rodriguez 2009). As summarized elsewhere, “in general, across many measures, developing countries have lower median shares of foreign-born workers and lower protection of migrant rights. Developed countries, which have more migrants, also tend to have rules that provide for better treatment of migrants” (Klugman/Pereira 2009:6).

### Practices, lessons, and gaps

The impression from the scant material in this chapter is that there has been relatively little change, and that some of it has not been enhancing the rights of migrant workers. Since this is not a systematic review, and since good news is said to be no news, turns for the worse are likely to be overrepresented in the material that is readily available. On balance, it would seem, there has been progress in a desirable direction, though not always at the desirable pace. It also seems that at times the administrations preparing bills are willing to go farther than the lawmakers in assembly. This may not be much of a surprise, since on average administrators are probably more educated than lawmakers.

Contrary to expectations, the recession has had some positive effects, too, at least in the Gulf States, and has apparently not impinged on previously existing agendas of favourable change. In reasonably democratic or bureaucratic settings legal change takes its time. On the one hand plans made during the recession may have fallen into abeyance as the recession was overcome, but on the other hand time may simply have been too short yet to bring them to fruition. If a more comprehensive overview were undertaken in a few years, it should investigate the hypothesis that the recession, where it was felt, made employers temporarily loosen their grip on migrants’ rights policy and thus allowed for change.

There is reason for concern that practices frequently associated with the Gulf States may soon be spreading to countries in the eastern Mediterranean. To take up the situation of domestic workers at the 2010 ILC was timely and will hopefully have contributed to prodding governments, social partners, and civil organisations farther along the path of effective reform. The issue is urgent, indeed, and requires serious involvement also from the origin countries of migrant workers. Its interlinkage with gender relations in, both, the destination and the origin society will be evident to everybody. The pace of change will likely be similar in both of them.

### Recommendations

The slow adoption of ILO and UN Conventions protecting migrant workers' rights has triggered few recent attempts at understanding the reasons (see Iredale et al 2005 for a rare case). This should be changed. The diplomatic ways should be complemented by research bringing news from a broader set of stakeholders. Some attention should be paid to structural obstacles, some to how items are packaged together in Conventions, some to constraints of capacity, etc.

There are processes of transferring internationally set standards to national law, but there may be a need to transfer them (a) to regional agreements, and (b) to allow regional bodies to take some form of ownership in them. This could ever only be a transitory step to globally uniform standards but it could help to develop regional activity and creativity in raising standards and seeing to their implementation at national level. The regional level is important because governments tend to see their economies in competition with each other thus shying away from unilaterally raising standards. In the Asia-Pacific region there already is a degree of movement in this direction: "31. Countries of destination needed to share the responsibility for the protection of migrants with countries of origin. It was desirable that regional benchmarks be developed in order to ensure the application of basic labour standards for migrant workers. All relevant stakeholders needed to be included in this process. ... 33. Regional agreements were needed to develop standards for the protection of the rights of migrants. Bilateral agreements between countries of origin and destination could also play a role in regulating labour migration flows. Some participants noted that these two processes can be pursued in parallel" (UN-DESA 2008:6). Strongly competing economies may not always all be in the same world region. It may then be useful to create groups or tiers of economies to work out a pledge to meet certain rights benchmarks together.

Apart from regional and global competition migration itself has also been creating new policy-relevant regions that seem yet to struggle with the new reality. One such region comprises Europe, North and West Africa. Because of the protracted history of dominance and because of the enormous differences in wealth and capacity this policy region is particularly hard to shape in a way permitting joint ownership of regulations and standards. Currently the Cotonou context is being stretched to somewhat serve the purpose. There may also be a particular need to develop partnership across the northern Indian Ocean.

A related issue is that migration should never be discussed without first clarifying the situation the migrants will be in both in the destination country and relative to the country of origin. At either end the impacts of migration depend very largely on the difference in "substantive freedoms" – to borrow Sen's (1999:36-40) term – between migrants and non-migrants. "Substantive freedoms" are the rights, opportunities, facilities, guarantees, and securities persons actually enjoy and/or are actually able to exercise. It should become an intellectual reflex to immediately add questions on rights to any question on numbers. The view that standards raise costs more than benefits is widespread but probably wrong in most cases. More effort to investigate the merits of the claim is desperately needed.

There is a need to acknowledge that "as long as poverty drives migration, legal status will not be a priority for migrants. Migrants will be willing to endure short to medium term hardship and the undermining of a range of capabilities and rights (such as education, social assets, rights and personal welfare) to provide economic safety nets for their families and future improvements to their

(and their families) livelihoods and wellbeing. As long as migrants on average achieve a positive increase in income and assets through the migration experience (which they do) they will sacrifice a whole range of freedoms and rights. It is therefore imperative that policy makers make active steps to protect migrants with regard to basic human rights and facilitate positive outcomes from their migration experiences” (Sabates-Wheeler 2009, abstract).

## Chapter 4: Policies and measures against discrimination

### Measuring discrimination is a starting point of measures against discrimination

Among labour market processes access to employment belongs to the few that can empirically be tested for discrimination. The results often deviate from perceptions not only of enterprises but also of job seekers. “Victims of discrimination often do not recognise the problem, not least because discrimination at the recruitment stage is often invisible to the victim. Discrimination testing is a method designed to expose this problem” (FRA 2009:38f).

The ILO’s situation testing methodology (Bovenkerk 1992, 2000) has proven an enduring and adaptable tool in facilitating the measurement of discrimination in labour markets (Peucker 2009; Wrench 2007). Between 1993 and 2006 it was used under ILO supervision in Italy (Allasino et al 2004), Belgium (Arrijn et al 1998), Sweden (Attström 2007), France (Cediey/Foroni 2007), Spain (Colectivo IOE/Pérez Molina 1996), and Germany’s most populous state (Goldberg et al 1996). Independently it was also applied in Switzerland (Fibbi et al 2003) and Denmark (Hjarnø/Jensen 1997), and reference to it was made in a great many other testing studies undertaken since the mid-1990s. The method originated in Britain, in the mid-1960s, and may have been reinvented independently in the U.S. in the late 1970s. For overviews of the wide-ranging U.S. use of audit testing, as the method is called there, see Pager & Shepherd (2008) and Bendick (1996, 2007). The basic idea is that a pair of testers that have been trained to appear alike in all respects relevant to employment differ slightly on the one aspect that is suspected to be relevant for discrimination, for instance, a slight accent, the name, religious affiliation, gender, sexual orientation, or age, inquire about the same position within a short interval of, say, 10 minutes. If one gets preferred over the other the test stops here. If both are shown interest, they send in equivalent CVs. Again the test ends, if one gets a response and the other does not. If both get a favourable response they go to the job interview. The result is the share of cases in which the majority tester was preferred somewhere along the way minus the share of cases in which the minority tester was preferred (net discrimination rate). Few others, except the ILO, have included face-to-face interviews in the application of the method. For a number of reasons the most widespread has become the mere sending in of CVs, either unsolicited or in response to advertised job openings, to see which of the purported job applicants gets a favourable reply (correspondence tests). Net discrimination rates in Europe have tended to be considerably greater than in North America, i.e. closer to 40 percentage points than to 20. When they were lower, then often not because the minority tester got preference in a greater share of the cases than usual but because the majority tester did more poorly than usual.

Recent examples in Europe include several references to the ILO handbook and experience:

1. “In Greece, for example, matched pair experiments based on the ILO model of testing showed that Albanian applicants have a much lower chance of employment than Greeks, and that when they are offered a job, they are offered greatly inferior terms and conditions of employment [fn 141].
2. In Hungary the research centre TÁRKI tested discrimination in different recruitment situations, concluding that discrimination against Roma applicants was significant, especially in ‘front-desk’ jobs [fn 142].
3. A regional Hungarian newspaper sent applications twice in response to ten advertisements for jobs, the first time the applicant introducing him/herself under a typical Roma surname, the second time under a non-Roma name. In three out of the ten cases the ‘Roma’ applicant was refused while the Hungarian was invited to a personal interview for the same job. According to a representative of the Equal Treatment Authority (ETA) this proportion is about ‘average’ [fn 143].

4. Also in Hungary NEKI was approached by a complainant who applied for a vacancy by phone, and although he met the job requirements, he was refused because he revealed his Roma origin. NEKI carried out a testing in the case and found that the tester who used a Roma family name was not given any information about the job while the other one got a full job description. The Equal Treatment Authority stated that the company violated the principle of equal treatment and imposed a fine of HUF 700,000 (approx. EUR 2,700) [fn 144].
5. In France in 2007 a report was published on the testing carried out by the ILO in conjunction with the Direction de l'Animation de la Recherche, des Etudes et des Statistiques (DARES) in several major cities [fn 145]. It identified significant discrimination against test candidates of non-European origin, indicating that only 11 per cent of the employers responded equally to the candidates without taking into account their origin or supposed origin [fn 146]" (FRA 2008:50).
6. In 2008, Animo-Antwerp, the youth section of the Flemish socialist party in Belgium, published the results of a test it had carried out, sending pairs of similar CVs to 50 employers. Each employer received two CVs that were identical in every aspect except the ethnic origin of the job applicant. Native Belgian applicants were invited to an interview in 60 per cent of the cases, whereas ethnic minority applicants had a probability of success of 25 per cent [fn 73: One can consult the results at: <http://www.minderhedenforum.be/2pers/200801opinieanoniemsolliciteren.htm> (10.09.2008)]" (FRA 2009:38f).
7. "In Ireland, a testing experiment directly compared employers' responses to job applications from candidates who are identical on all relevant characteristics other than their ethnic or national origin. Job applicants with Irish names were over twice as likely to be invited to interview as candidates with identifiably non-Irish names, although both submitted equivalent curricula vitae (CVs) [fn 101: The Equality Authority; Frances McGinnity, Jacqueline Nelson, Pete Lunn, Emma Quinn; 2009; Discrimination in Recruitment: evidence from a field experiment; available at: <http://www.equality.ie/index.asp?docID=794> (23.10.2009)]" (FRA 2010b:52).
8. "Researchers commissioned by the UK Department for Work and Pensions sent three different applications, each application under a British, African and Asian name, to 987 advertised jobs in cities in England and Scotland. They found that whilst the 'white' applicant would send on average nine applications before receiving a positive response, the 'minority' applicants needed 16 applications for a similar response. The report, released in October 2009, concluded that there was no plausible explanation for the difference in treatment found between white British and ethnic minority applicants other than racial discrimination. It also found that public sector employers were less likely to have discriminated against applicants than those in the private sector" (FRA 2010b:52; see Wood et al 2009 for the original report).
9. "In the UK, a local London newspaper decided to test responses to discriminatory instructions. Posing as a window cleaning business, it contacted local recruitment agencies, saying it wanted to recruit temporary staff, but that it did not want to be sent any ethnic minorities. The newspaper found that 54 per cent of the agencies agreed to supply only workers from a majority background [fn 84: <http://www.rec.uk.com/press/news/730>]" (FRA 2010b:50). Notable in this instance was the trade association's reaction. In a press release "Tom Hadley, the REC's Director of External Relations said despite the results of this investigation, the industry's record on discrimination had definitely improved. He stressed that agencies should turn away business if it was offered on discriminatory terms and that even in the current economic climate, there is no excuse for taking such instructions or for cutting corners" (REC 2009). He added, "We know the media is always keen to mount such undercover investigations especially when there are so many jobseekers desperate to find new employment in a tough economic climate.

So it is in the interests of the recruitment industry that we rise above this by remaining scrupulous and doing the right thing”, and also that “Strong leadership and training are the two elements that can provide frontline staff with the confidence to challenge discriminatory instructions. The REC is rigorous in the way we deal with complaints from jobseekers who feel they have not been treated fairly. Our current Serious About Standards campaign makes a strong business case for recruiters to demonstrate to employers the importance of using an agency which operates in an entirely fair and ethical manner” (REC 2009).

Numbers 3, 6, and 9 in the above list are experiments with small samples and poor documentation of the method and its application. This is not uncommon and has been done in various countries, sometimes by private agents who wanted to test their own chances in the labour market with their real name or photograph as opposed to an assumed one. The others were done very well and reported very conscientiously (see Drydakis/Vlassis 2010; Cediey/Foroni 2007, 2008; McGinnity et al 2009; Wood et al 2009). Number 4 is an example of the judicial use of discrimination testing that is explicitly permissible in a number of countries, though not in all.

Very recent tests at an academic level of quality were carried out in labour markets in Australia (Booth et al 2010), Germany (Kaas/Manger 2010), and the Netherlands (Andriessen et al 2010). These were all correspondence tests, as was also true of several other recent studies in the U.S., Scandinavia, and New Zealand (Bertrand/Mullainathan 2004; Bursell 2007; Ward/Masgoret 2007; Carlsson/Rooth 2007, 2008).

Computerisation of correspondence tests has been reducing the work effort in producing the letters and has permitted testing large samples by individual researchers (Oreopoulos 2009; Lahay/Beasley 2007). Important methodological advances were made in such areas as randomisation of tested vacancies or firms, randomisation of CV contents, and in the analysis of testing data (for instance, Bertrand/Mullainathan 2004; Duguet/Petit 2005; Pager et al 2009). Together with increased sample sizes this has been making possible much more accurate estimates of the actual level of discrimination faced by job seekers with varying characteristics. Further improvements on all these technical and methodological fronts are very likely in the next several years.

### What might be called “good practice”?

At one level adopting and implementing human rights standards is good practice as such. At the level of implementation, adherence, and awareness however there is considerable demand for examples of good practice, and if not good at least best practice. There are no agreed criteria for “good practice”, though. “Whereas there has been a great deal of research on the sources of inequality, there has been little on the efficacy of different programs for countering it. At best, ‘best practices’ are best guesses. We know a lot about the disease of workplace inequality, but not much about the cure” (Kalev et al 2006:590), and if the activity does not fit the circumstances it could end up enhancing discrimination and prejudice (Kalev et al 2006:595). It is therefore of considerable importance to set guidelines and to support empirical research showing what’s right in which situation.

As part of the project “Promoting Equality in Diversity: Integration in Europe” funded by the EU and coordinated by the ILO (Patrick Taran) a start was made on the elaboration of quality criteria for anti-discrimination practices. The Irish social partners were involved in the effort along with experts and practitioners from around Europe. Some of the findings may seem obvious but are not when viewed against the backdrop of real world projects. In a nutshell, and relying on unpublished project reports, the final proposals may be sketched in the following four points:

1. A measure needs to start with an explicit diagnosis, and not with anything else. The diagnosis needs to be, both, carefully evidence-based and stakeholder-based; not one or the other but both. Stakeholders include both, those discriminated – who are meant to be the beneficiaries of the measure – and those discriminating – who will usually be the target group. In the world of

work the social partners should also be among the stakeholders along with one or the other level of government. Any shortcuts will entail grave danger of the diagnosis but reproducing current prejudice in well set words.

2. From the diagnosis must be derived a set of goals to be achieved. The goals must be formulated in terms of impact, not mere output. They must be formulated with sufficient precision to be measurable in some form. This entails that the status quo is likewise measurable and the difference between it and the envisaged goals can be stated with considerable precision. To be able to do so is helpful in setting realistic impact goals. Here, too, the evidence base must be complemented by stakeholder participation in deriving the necessary goals from the diagnosis and in precisely defining them. The debate on the goals could feed back to the diagnosis and modify it, hopefully for the better. Assuming a satisfactory diagnosis maintaining stringency between them is key to keeping the measure on the road to good practice.
3. The planning of activities and their contents must follow stringently from the goals set and from the size of the gap between the status quo and the goals. Expert knowledge on the kinds of activities, their preconditions for success, and what to expect from them, must be taken into account. Once again the participation of stakeholders is advisable in order to complement and assess expert ideas. The participation of the target group in the activities will be central to making the measure a success and its involvement in planning and designing the activities is therefore important.
4. Not a moot but a particularly weak point is evaluation. Few measures, in the past, were evaluated for their impact. Often it was only the congruence of planned and actual activity that was checked. Evaluation must focus on the measure's impact rather than its output. It must also help stakeholders to learn from the experience by reflecting on innovations and challenges based on the evidence, not just (selective) personal recollection, in order to improve their practice. This may be best achieved if they are actively involved in the evaluation. Evaluation should also relate impact to cost.

Points 1 and 2 cover the content of the practice by asking about the adequacy of the diagnosis and the goals, point 3 covers execution, and point 4 concerns learning. The plain message is that goodness cannot be assessed ad hoc. Finding out is actual work. The EU/ILO project set the criteria but did not progress to scales for each of the four points or to an overall scale. So, difficult work remains outstanding. It should be resumed and put on solid methodological footing. This would have to include meticulous empirical work, i.e. a series of painstaking trial applications of the criteria to a variety of given programmes and projects by way of on-site visits and interviews with stakeholders and participants in order to develop practical advice on handling the criteria.

At company level there has been some research, not much, to evaluate the effectiveness of anti-discrimination activities. Distinguishing seven kinds a recent U.S. study of diversity in management found "a clear pattern in the data. Structures establishing responsibility (affirmative action plans, diversity committees, and diversity staff positions) are followed by significant increases in managerial diversity. Programs that target managerial stereotyping through education and feedback (diversity training and diversity evaluations) are not followed by increases in diversity. Programs that address social isolation among women and minorities (networking and mentoring programs) are followed by modest changes. The effects of these initiatives vary across groups, with white women benefiting most, followed by black women. Black men benefit least. We also find that responsibility structures make training, performance evaluations, networking, and mentoring programs more effective. Federal affirmative action requirements, which typically lead to assignment of responsibility for compliance, also catalyze certain programs" (Kalev et al 2006:590). Diversity was here conceptualised as between black and white, female and male, and did therefore not touch on migrant worker presence in management ranks. The data used for the study also contain the category

'Hispanic' which would be more likely to include a large share of migrants and children of migrants. This was not analysed in the study, and it made reference to Hispanics only once: "Between 1971 and 2002, management jobs held by white men decline from 81 to 61 percent in the average establishment. Management jobs held by white women rise from 16 to 26 percent, whereas those held by black women rise from 0.4 to 2 percent, and those held by black men rise from 1 to 3.1 percent. There also is a significant rise in the representation of other groups, notably Hispanics, during this period" (Kalev et al 2006:598). Hopefully the 'Hispanic' analysis will yet be performed.

Earlier and less comprehensive evaluations in Europe include those of training activities in the Netherlands (Abell et al 1997) and the UK (Taylor et al 1997). They remained somewhat inconclusive but tended to cast doubt on the goal-effectiveness of anti-discrimination training. This scepticism is now being corroborated by the U.S. study.

The EU/ILO project looked at measures. These are limited in scope and in time, leave gaps, and are never really coordinated. Thus their impact is limited. A long term strategy against discrimination cannot rely on them solely. It needs to alter the rules of interaction be it in the market place, in organisations, or elsewhere. The empowerment of the discriminated is likely to be a key element. This can be aided by lending them simple and effective means of resistance, such as a dense and competent complaints infrastructure that can inflict damage on discriminators. It is helpful, if in addition the complaints data are collected in a useful manner and complemented with other establishment level data that, if analysed cogently, help to understand what sort of constellations produce complaints and, separately, what sort of constellations produce inequities but not complaints.

### The ethnic monitoring approach against discrimination

There are only few countries in which enterprises are required to keep a record of their staff's 'ethnic' and/or 'racial' composition and to report on it, most notably the United States. In the UK there is an obligation for the public sector covering not just staffing but also service delivery, and in the Netherlands there was an obligation for ten years until the end of 2003. In practice 'ethnic' tagging has been the same as 'racial' tagging the aim being to have data on what people are perceived to look like ('black', 'white', 'Asian', 'Hispanic' etc). Recent criticism in the U.S. emphasised that discrimination may (now) not be triggered by visual classification as much as by manners of speech (Massey/Lundy 2001). The ILO's situation testing reported above has been pointing in the same direction. Combined with scattered evidence of employer discrimination against job applicants with non-immigrant names suggestive of lower class origin attention may gradually be shifting to class-based discrimination in the labour market.

In a number of countries central registers would enable the authorities to track company workforce composition by citizenship or place of birth, if they wanted to. Since citizenship can be changed registers are not always a perfectly reliable source on current citizenship. The larger problem is that registers usually either lack an occupation variable or the data are unreliable. Without a reliable occupation – and an education – variable the data would be of limited use.

#### United States

In the U.S. data collection to monitor minority employment and occupational chances at establishment level began in 1966 and has since continued on a yearly basis. The designated government agency is the Equal Employment Opportunity Commission (EEOC).

"Title VII of the U.S. Civil Rights Act of 1964 mandates that private employers submit yearly reports on the sex and race or ethnic makeup of their employees to the EEOC. Reports include Employer Information Reports (EEO-1), Apprenticeship Information Reports (EEO-2&2E), Local Union Reports (EEO-3), State and Local Government Information Reports (EEO-4), Elementary-Secondary Staff Information Reports (EEO-5), and Higher Education Staff Information Reports (EEO-6)" (Robinson et al 2005:12).

EEO-1 reports are the system's central element. "All employers with 15 or more employees are covered by Title VII and are required to keep employment records as specified by Commission regulations. Based on the number of employees and federal contract activities, certain large employers are required to file an EEO-1 report on an annual basis" (EEO-1 Joint Reporting Committee 2007:1). Thus they cover all employment in private enterprises with at least 100 employees and also in private enterprises that "have 50 or more employees; and (a) are prime contractors or first-tier subcontractors, and have a contract, subcontract, or purchase order amounting to \$50,000 or more; or (b) serve as a depository of government funds in any amount, or (c) is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Notes" (EEO-1 Joint Reporting Committee 2007:1). "EEO-1 reports contain establishment employment counts of sex by five race or ethnic groups (White, Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native) distributed across nine occupational categories (officials and managers, professionals, technicians, sales workers, office and clerical workers, craft workers, operatives, laborers, and service workers) [fn 2]. These reports also include information on the establishment's parent company, industry, and geographic location. Each record states whether or not the parent company is a federal contractor. Federal contractors must prepare affirmative action plans and are at risk for Office of Federal Contract Compliance Programs (OFCCP) audits" (Robinson et al 2005:13). From 2007, there were seven instead of merely five "race or ethnic groups" (Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino), Asian (Not Hispanic or Latino), American Indian or Alaska Native (Not Hispanic or Latino), Two or More Races (Not Hispanic or Latino)) (EEO-1 Joint Reporting Committee 2007:4f), and one of the nine occupational categories was split in two: "officials and managers" became "Executive/Senior Level Officials and Managers" and "First/Mid Level Officials and Managers" (EEO-1 Joint Reporting Committee 2007:5). "Self-identification is the preferred method of identifying the race and ethnic information necessary for the EEO-1 report. Employers are required to attempt to allow employees to use self-identification to complete the EEO-1 report. If an employee declines to self-identify, employment records or observer identification may be used" (EEO-1 Joint Reporting Committee 2007:4).

There is a snag. Migrant workers are often not included in the data because "Firms are instructed not to include temporary or casual employees but to include leased employees as well as both part-time and full-time employees" (Robinson et al 2005:13; EEO-1 Joint Reporting Committee 2007:3).

From about the year 2000, EEO-1 and other EEOC data became available for research (Robinson et al 2005; Tomaskovic-Devey et al 2006; Kalev et al 2006; Hirsh 2008, 2009; Hirsh/Kmec 2009). This research is still developing. So far it has shown how occupational segregation developed over time, what kinds of influences it may be affected by, what kinds of interventions and structures may or may not work at enterprise level, and influences on the probability of complaints.

## United Kingdom

The UK Equality and Human Rights Commission advises private organisations to "monitor workers and applicants for employment, promotion and training, by racial group" (CRE 2005:32, 10) in order to make sure they do not discriminate on racial grounds. Only for public authorities is there a duty to monitor (see box). Contrary to the U.S., there is no central authority collecting the monitoring data, not even for the public sector, but there is a duty to annually publish the data.

### "Public authorities and monitoring

3.32 Most of the public authorities bound by the statutory general duty to promote race equality also have a specific duty to monitor, by racial group, all their workers, and all applicants for jobs, promotion and training. Public authorities with 150 or more full-time-equivalent workers must also monitor the number of workers from each racial group who:

- a. receive training;
- b. benefit or suffer detriment from performance assessment;
- c. are involved in grievances;
- d. are subject to disciplinary action; and
- e. end employment with the organisation (for whatever reason).

3.33 Public authorities must publish the results of this monitoring each year.

3.34 Educational institutions are not bound by the specific duty for public authorities as employers. However, schools do have to give their local education authorities (education authorities in Scotland) information about staff, so that the authorities can meet their duty to monitor, by racial group, employment in the schools they manage, and publish a report on it each year. Further and higher education institutions have a specific duty to monitor, by racial group, the recruitment of staff and their career progress. They are also expected to take reasonable and practicable steps to publish the results of their monitoring each year" (CRE 2005:36f).

The Commission advises employers "to ask workers and applicants for jobs, training and promotion to select the racial group they want to be associated with from a list of categories" and to use those of the 2001 census because in this ways they will be able to compare their data with those for the population (CRE 2005:35f). First introduced in the 1991 census, in the 2001 census 16 categories were used in England and Wales, 14 in Scotland, and 12 in Northern Ireland (ONS 2003:27-29). The Commission also shows how to analyse the data. For the public service detailed guidelines on monitoring were provided at about the time of the 2001 census (CRE n.d.).

#### Netherlands

From 1994 to the end of 2003 private companies were obliged to keep track of the 'ethnic' composition of their workforce. 'Ethnic' in the Netherlands merely stands for country of birth and parents' countries of birth. It is therefore very different from UK and US practice. Companies with more than 35 staff had to produce an annual report on their numbers and on the efforts taken to improve the match with the local labour pool. There was no penalty if they refused to do so except the risk of getting sued by interest groups. 70 percent of employers are thought to have complied (Guiraudon et al 2005:78-79; Doomernik 1998:64).

#### Short of U.S. comprehensiveness ...

In all other countries legislators and governments have been setting norms for corporate and individual agents, sometimes stringent ones, but to various degrees lag in enforcing them, and have instituted few means if any to track the effects. Thus a key ingredient to good practice is missing almost everywhere. The usual means is to rely on statistics showing the employment success of parts of the population in comparison to each other. The diverse levels of education are rarely taken into account, and success in the occupational hierarchy is also rarely shown. Unlike the U.S., the performance of each individual establishment is not being monitored. Interventions are thus much harder to target and even to motivate as claims about the causes of unequal success can rarely be tested empirically in a sufficiently comprehensive manner. Below a number of examples recently highlighted in the literature are pointed out without comment or commendation.

## Belgium

The government of the Flemish part of the country has been handing out small sums to enterprises voluntarily drawing up diversity plans. Nothing is known about their effects in the enterprise.

## European Union

In most member countries targeting the minority still remains the automatic reflex, although it is the majority that is the problem.

Data collection is done by a network of organisations coordinated by FRA. The network merely collects what there is but does not interfere in the production of data. Accordingly, although an issue in the beginning, comparability between countries and over time has been abandoned as unfeasible. Neither can completeness be a serious aim.

“Article 13 of Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment on grounds of racial and ethnic origin (OJ L 180 of 19.07.2000) obliges all member states of the European Union to create equality bodies that function as complaints mechanisms. Some member states have been extremely slow to implement this provision. Poland still had not done so by the end of 2009, the one created in Malta “does not have jurisdiction to act in relation to racial discrimination in employment” (FRA 2010b:28), in the Czech Republic there was one in place as of 1 December 2009, while “in Luxembourg the equality body became operational only in late 2008 and in Spain in early 2009” (FRA 2010b:27). In Romania there were concerns about sufficient independence of the equality body (FRA 2010b:28). “If the Commission after a period of negotiation is unable to press for correct transposition of the legislation at the national level voluntarily, it may ultimately resort to judicial proceedings before the Court of Justice of the European Union (through the Lisbon Treaty, previously the European Court of Justice (ECJ)” (FRA 2010b:27). This had to be done in regard to Austria and to Italy. When it became clear to the two governments that their cases would not be upheld by the Court, they acted to forego conviction: “in October 2009, the Court of Justice of the European Union closed infringement proceedings against Austria and Italy after national legislation had been changed. Problems in Austria had concerned the definition of harassment, lack of appropriate sanctions in cases of discriminatory dismissals, and failure to transpose rules on victimisation. Italy had problems with two of these aspects, harassment and victimisation, and in addition with the burden of proof” (FRA 2010b:28). Both countries along with a several others continue to provide only inadequate human and financial resources to their equality bodies. In Ireland the Equality Authority’s 2009 budget was cut by 43 per cent (FRA 2010b:28).

Excerpt from the European Union Agency for Fundamental Rights’ Annual Report 2008, pages 53 to 57, covering the year 2007. This shows the range of points to start from. It also demonstrates that every country has something to show if somebody takes the time to find it. There is no similar listing in the agency’s more recent reports.

### “4.1.5. Preventing employment discrimination

The section looks at examples of various kinds of policies to prevent and combat this kind of discrimination, over and above those actions required by law. These positive initiatives come from national or local governments, employers, trade unions or NGOs. The examples are categorised under a number of headings.

#### 4.1.5.1. Training and counselling of migrants and minorities

New programmes for training, counselling and assistance for minorities to succeed in the labour market could be found in the Czech Republic primarily for Roma [fn 164], in Estonia for the non-Estonian speaking unemployed [fn 165], and in Hungary for refugees [fn 166].

#### 4.1.5.2. Cultural awareness/anti-discrimination training of the majority

In 2007 programmes to raise the awareness within the majority population included network projects in Bulgaria aiming to increase the society's sensitivity to discrimination issues and encourage social debate [fn 167] and a programme in Romania for NGOs and trade unions providing training on combating discrimination, and on anti-discrimination litigation [fn 168].

In Poland the Krajowy Ośrodek Wsparcia Edukacji Zawodowej i Ustawicznej [National Centre for Professional and Continuing Education] organised training [fn 169] on multiculturalism for counsellors in Labour Offices, and in Ireland the National Consultative Committee on Racism and Interculturalism (NCCRI) organised training sessions on promoting interculturalism in the workplace for members of the taxi industry as part of a drive to combat racist comments made towards black taxi drivers [fn 170].

#### 4.1.5.3. Combating discrimination

In Belgium, Federgon, the federation organisation of interim agencies, has adopted measures to reinforce anti-discrimination policy in the sector, after finding that interim consultants were regularly confronted with employers who specifically asked them not to send them ethnic minority workers [fn 171]. Henceforth, when confronted with such employers, interim agencies are requested to contact Federgon, which will keep a register of these companies. Ombudsmen trained in discrimination issues will be designated by Federgon in each agency, in order to assist staff who face pressure from clients inciting agencies to carry out discriminatory practices.

In the UK, the Southern and Eastern Trades Union Congress and Unionlearn have produced a pamphlet to assist in campaigning against racism. It provides information on ethnic minority discrimination and disadvantage in the labour market and provides practical advice to union organisers for identifying and combating racist behaviour and practices in the workplace [fn 172].

#### 4.1.5.4. Positive action in recruitment

Several cases of positive action in recruitment came to notice in 2007. In Romania the Ministry of Internal Affairs and Administrative Reform continued to allocate special places in the police forces for Roma and other national minorities [fn 173]. In Bulgaria and the Czech Republic, measures were introduced to encourage minorities to join the police force. In France the state transportation company, SNCF, announced it was seeking applications from low-income neighbourhoods principally inhabited by immigrants [fn 174], and the Defence Minister unveiled an action plan to give priority to the entry of working class young people, therefore including young people of immigrant descent, into the military academies [fn 175]. In Germany the North-Rhine Westphalia (NRW) State Ministry of Education developed a policy consisting of a range of awareness-raising and encouragement measures aiming to increase the number of teachers with a migration background [fn 176].

#### 4.1.5.5. Mentoring

In Denmark one mentoring programme is the 'Kvinfo mentorship programme' to bring immigrant women, in particular refugees, together with native born women who have experiences in the labour market. Since the programme started in 2003, in total 235 women have gained employment or traineeships through the network [fn 177].

#### 4.1.5.6. Contract compliance

Last year's FRA report on racism and xenophobia reported experiments with contract compliance in Austria, Finland, Sweden and the UK [fn 178]. In 2007 it was reported that in Germany, the independent European Anti-Discrimination Council (EAC) and the German Anti-Discrimination Association (DADV) had started to lobby that public procurement and subsidies should be given only to discrimination-free companies. To prove freedom from discrimination companies should have to comply with the newly developed quality management norm EAC-30000, which demands full proof of discrimination-free business conduct and

workplace practices; the norm can be integrated into common quality management systems (e.g. ISO 9000; ISO 14011). The certificate is valid for a period of three years; annual check-ups are mandatory. The first certification in compliance with the EAC 30000 norm was granted in August 2007 to the association A-BIS [fn 179].

#### 4.1.5.7. Anonymous applications

In 2007, in Nijmegen, the Netherlands, an experiment started with anonymous job applications to counter discrimination in recruitment and encourage a more diverse workforce [fn 180]. The Sociaal Economische Raad (SER) [The Social and Economic Council of the Netherlands (SER)], an independent advisory council on social economical issues for the government, recommends employers to try the system, but advises against their compulsory use [fn 181]. Also in Sweden the government initiated a trial project with unidentified job applications in seven government authorities, with an evaluation that was to be carried out by the end of 2007 [fn 182]. In the Netherlands a trial with anonymous job applications was completed by the employment agency Manpower in 2007. The outcome of the test was in fact that there was no significant difference between the chances for job applicants whose name was known and those whose name had been left out of the CV [fn 183], whereas at the beginning of the test, Manpower had expected there to be a difference. The company decided not to include this strategy in its recruitment and selection policy [fn 184]. (An example of the kinds of problems such strategies are trying to avoid came in 2007 from the Czech Republic, where a chain store which asked for photographs to be attached to CVs rejected ten out of ten applications from Roma, Roma ethnicity being obvious from the photographs [fn 185]).

#### 4.1.5.8. Diversity polices

In the area of diversity management, a greater variety of information and encouragement measures, as well as awards, prizes and certificates of achievement are reported each year. For example, in Belgium, a federal project was started to encourage employers in diversity practices [fn 186], with a certificate of achievement awarded to ten companies in March 2007. Also the Flemish government implements guidelines which include the implementation of diversity plans [fn 187] and in Wallonia, an annual prize of 25,000 euros rewarding initiatives in diversity management has been created by the Walloon Minister of Economy and Employment [fn 188]. Five companies were awarded a prize, in four different categories, in autumn 2007 [fn 189].

In Flanders, the results of agreements signed by the Flemish authorities and 24 economic sectors one year earlier in 2006 were published by the Flemish Minister of Employment [fn 190]. The results were deemed to be encouraging in that 83 new diversity plans were signed during the first year of the agreements.

In Cyprus the Employers and Industrialists Federation [fn 191] (OEV) has published a 'Guide to employers for the promotion of equality and diversity at the workplace'.

In Germany the campaign 'Diversity as an Opportunity' was launched by the Beauftragte für Migration, Flüchtlinge und Integration [Federal Government Commissioner for Migration, Refugees and Integration] [fn 192]. At the end of 2007, one year after it had been launched, the Charter had been signed by 212 companies [fn 193] and 22 public institutions and administrations, among those the municipal administrations of Frankfurt/Main, Augsburg, Cologne, Munich, Stuttgart and Berlin.

In Ireland a joint venture between the Irish Management Institute (IMI), National Action Plan Against Racism (NPAR), and the Equality Authority offers diversity training for managers, and in Romania two NGOs [fn 194] developed a guide of good practices for companies and organised pilot training for 20 human resources managers on diversity management [fn 195].

In France in 2007, there was a significant increase in the numbers of companies signing up to the Diversity Charter [fn 196], mentioned in earlier Annual Reports. L'Oréal, one of the

early signatories of the Charter, in 2007 funded the first Diversity and Performance Chair at the ESSEC (École Supérieure des Sciences Économiques et Commerciales) in partnership with AirFrance and Deloitte [fn 197]. Also in France in March 2007 an agreement was signed in the Nord Pas de Calais region between the trade union CFDT and the CGPME (General Confederation of the Leaders of Small and Medium-Sized Companies) to put in place concrete actions fighting against discrimination and promoting diversity in small and medium-sized companies [fn 198].

In Malta, as part of the 'Mosaic – One in Diversity' project, the Mosaic Network, led by the National Commission for the Promotion of Equality [NCPE] organised training sessions on diversity to human resources managers. Workshops were held covering all six grounds of discrimination (race or ethnicity, sexual orientation, gender, age, religion or belief, and disability), and also the positive role of diversity [fn 199].

In Portugal the seminar 'O Papel de Responsabilidade Social das Empresas na Integração dos Imigrantes' [fn 200] (The Role of Social Responsibility of Companies in the Integration of Immigrants), organised by a partnership between ACIDI [fn 201] and GRACE [fn 202], was held in Lisbon in December 2007. The seminar gathered representatives of companies, immigrants' associations and public organisations to discuss immigrants' integration in the labour market and, particularly, diversity management in the Portuguese entrepreneurial context.

In Sweden the project 'Mångfald.nu' [Diversity.now], started during 2006 with six government authorities and companies, and aims to help organisations to develop their awareness of diversity and anti-discrimination [fn 203]. Also in Sweden the project 'Samspela – om mångfald i arbetslivet' [Work Together – About Diversity in the Work Place] is run by Svenskt Näringsliv [the Confederation of Swedish Enterprise], the Swedish Trade Union Confederation and Förhandlings- och samverkansrådet (PTK) [the Council for Negotiation and Cooperation]. It consists of an Internet site which aims to highlight issues of diversity in the work place [fn 204].

In the UK, during 2007 the various departments within the British Civil Service have been implementing a number of diversity initiatives to increase the representation of people from minority ethnic groups within their workforces [fn 205]" (FRA 2008:54-57).

## France

"France is an example of worker rights for migrants: all workers have minimal protection even if they are undocumented, namely: decent salary (minimum wage), payment for overtime, allowances foreseen by the collective agreement applicable to the business, compensation for annual paid holidays, and fixed compensation if the employment ends. Also, all workers, regardless of their residence permit situation, have the right to organize and be a member of a trade union" (Klugman/Pereira 2009:16).

## Japan

Enlightened self-interest can play a role in reform: "... in Japan, the voluntary return program [set up in spring 2009] is merely one component of a slew of measures aimed at helping immigrants, such as offering free Japanese-language courses, vocational training, and job counseling for foreigners who wish to continue working in Japan. The backdrop for these immigrant-assistance programs is an increasing understanding among certain legislators, employers, and business associations that immigrants will continue to be a key component of the economic landscape and will help to address Japan's demographic woes" (McCabe et al 2009).

## Mexico

“35. ... There have been efforts between the Government of Mexico and the International Labour Organization to regularize the flow of seasonal workers, but many of the labour practices still occur without official involvement or oversight. The state of Chiapas is in the process of developing new programmes for assistance, including for medical care and education of families of agricultural workers, but there is much left to be done in the way of regularizing labour practices and providing recourse for abuses of migrant workers” (Bustamante 2009b:11).

## Singapore

“The authorities fined or imprisoned employers who abused their domestic workers. The ministry also regularly distributes pamphlets making domestic workers aware of their rights. In September 2006 the Employment Agencies Singapore, a nongovernment agency that accredits the country’s approximately 500 domestic workers agencies, implemented a new standard employment contract providing a minimum of one compulsory day off each month or cash compensation. Foreign workers seeking to enter the Singapore labour market to engage in domestic work must comply with certain requirements such as being 23 years of age and having passed an exam. In 2006 the Ministry of Manpower launched a new system through which employment agencies violating government regulations can be penalised. All new domestic workers and their new employers must undergo mandatory training on workers’ rights and responsibilities” (ITUC 2008c:6-7).

“The Employment Act protects foreign workers such as the many employed in the construction industry. However, domestic servants (both local and foreign) are not covered by this Act. Foreign domestic workers are covered by the Employment of Foreign Manpower Act, which applies to foreign workers’ basic terms and conditions of employment; Chapter 91A (revised 1991 edition) governs recruitment and deployment in Singapore. The labour inspectorate in the Ministry of Manpower is mandated to enforce the Employment of Foreign Manpower Act, carrying out inspections in all types of establishments. All foreign workers who feel that they have not been treated according to these statutory provisions can seek the Ministry of Manpower’s assistance to take it up with their employer, while individual dispute settlement through conciliation and adjudication by the Labour Court provides another potential recourse” (ITUC 2008c:7).

## Spain

“... in Spain foreigners can vote in local elections as long as they are registered as residents with their local authority” (Klugman/Pereira 2009:16).

## Sweden

“In Sweden any legal resident who has lived in the country for three years can vote in regional and local elections and stand for local elections” (Klugman/Pereira 2009:16).

## United Kingdom

“41. The Special Rapporteur commends the agreement signed in 2001 between the national Trades Union Congress and the General Confederation of Portuguese Workers aimed at promoting membership in Trade Union Congress unions of Portuguese migrant workers who are Confederation members. He especially welcomes the information campaigns undertaken in the migrant workers’ own language on their rights” (Bustamante 2010:11).

“60. The Special Rapporteur notes with appreciation that the right to change employer has been instrumental in facilitating the escape of migrant domestic workers from exploitative and abusive situations. This is because they know they can receive support and assistance and still seek work with another employer without facing the risk of being removed from the United Kingdom.

61. The Special Rapporteur welcomes the decision of the Government to continue this visa scheme for migrant domestic workers for at least two years, notwithstanding the introduction of the

points-based system for nationals who apply to work in the United Kingdom from outside the European Economic Area. As highlighted by certain stakeholders and the Home Affairs Committee, migrant domestic workers warrant the special status afforded by the current scheme, so that they have access to labour rights recognized as for all workers and may change employers in case of abuse or exploitation” (Bustamante 2010:15).

#### United States

Research findings suggest that U.S. enterprises tend not to react to occupational desegregation pressure brought to bear on them individually, i.e. by charges against them. Partly this is probably due to the scarcity of convictions (Hirsh 2009:248). If, however, the pressure is on the entire industry in a jurisdiction, they do tend to amend their practices somewhat. “... results suggest that attention to race politics in the business press facilitates racial desegregation. This finding points to the importance of sustained political pressure for promoting racial equity. Aside from this media effect, however, employers are largely indifferent to race charges, settlements, regulatory efforts, and legal environments” (Hirsh 2009:266f), where ‘Race’ was conceptualised as ‘white’ and ‘non-white’ (black, Hispanic, Asian). This lack of effect of legal pressures for change appears to be partly due to the concentration of ‘non-white’ workers in occupational levels that are relatively distant from those of ‘white’ males (Hirsh 2009:267). The distance is larger for Hispanics, i.e. the population containing more migrant workers, than for Asians or blacks (Hirsh 2009:257). A greater share of women in a company’s management and company size also tend to lower white-nonwhite segregation (Hirsh 2009:267). These findings are important because they show that in the U.S. sanctions at the individual level are effective mostly through their demonstration effects. If they were not reported on, they would not have much impact at all.

#### Practices, lessons, and gaps

The existence of discrimination is often being denied. One reason is a lack of understanding of what discrimination is, how, where and when it occurs. A second reason is a lack of measurement. Both these lacunae can be fixed, because the tools and methods are there, but not at zero cost.

There is a large gap in implementation of existing legislation. “Ensuring the rights of migrants has been a recurrent cry in all global forums, as exemplified by the statements made by civil society organizations at the 2008 Global Forum on Migration and Development in Manila. Yet it is also clear that the main challenge is not the lack of a legal framework for the protection of rights – as a series of conventions, treaties and customary law provisions already exist – but rather their effective implementation” (UNDP 2009:101). The two reasons for denial also apply to the lack of implementation. A third reason is that the benefits to be gained from equal opportunities have been hard to quantify, and, fourthly, some of them may not accrue to those in a position to institute equal opportunity legislation, enforcement, and training. A more equal society, even if everybody also got richer, healthier, happier, etc in the transition, is not everybody’s aim.

Judging by the hesitancy to install meaningful complaints bodies governments and legislators apparently often feel a need to protect the discriminators. Sometimes this is linked to an ill-conceived sense of national pride where uncovering discrimination is regarded as tarnishing the nation’s image rather than as part of cleaning it. Regarding discrimination the evidence of its pervasiveness is so encompassing that by now the automatic assumption must always be that no news is bad news. Another potential cause is that those with enough power to be able to discriminate are, of course, also more powerful in the state than those that are being discriminated. As a number of examples show, enlightened self-interest can overcome this structural obstacle. The conditions under which it does have not been researched sufficiently.

A very obvious gap is the lack of project and programme evaluations. These often appear to be regarded as taking resources from the activities. Since there is no reason to assume that activities are self-evidently beneficial, especially also to an extent commensurate with their cost, evaluation must always be an integral part of planning and execution preferably conducted in an ongoing

manner to assure the goals are not being lost sight of. This also goes for the impact of legislative projects. Monitoring of key outcome variables is a useful way of keeping track of the situation. It becomes manifold more useful if done at an establishment level while also collecting data on the kinds and amounts of inputs made in order to improve the situation.

There is also a gap in highlighting and appreciating the antidiscrimination efforts actually being made by employers, especially also where they run counter to public sentiment.

### Recommendations

There has been considerable activity against discrimination of migrant workers but more needs to be done to understand which measures are the most beneficial.

Work is needed to show how the impact of adopting and implementing human rights instruments can be measured at a national level. Proposed measures should be included with instruments when they are being drawn up.

A definition of goodness of practice and approved ways of measuring it should be developed internationally. An initial proposal would not need to be perfected but could be perfected over a few years of application.

The measurement of discrimination should be elevated to the UN agenda. At the ILO there is experience with it but progress in the academic community in last few years has been considerable. The topic is important enough to call a technical conference bringing together the practitioners in the field – who are diverse in every respect – to delimit best and most financially efficient practice. FRA might also be interested, and the 20<sup>th</sup> anniversary of the ILO's widely referred to testing handbook (Bovenkerk 1992), in 2012, would offer a perfect opportunity.

## Chapter 5: Next steps on the way forward

### Introduction

In conclusion the report attempts to provide a summary of the progress made and remaining challenges to eliminate discrimination against migrant workers in employment and occupation.

The way forward has been sketched by UN treaties, conventions, and compacts, amongst them the ILO Conventions and the 2004 non-binding framework, and by World Conferences, especially the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance with its Action Programme (Taran 2009b:2). The road to meeting the full set of norms laid out in international agreements is bumpy. This report is about some of the bumps and about the progress being made in getting beyond them.

A special question of interest was how crisis developments, since 2008, may have interacted with other properties of migrant worker host and also origin countries to produce differential outcomes for migrant workers.

### Do international standards lag behind?

Cholewinski (2005), although using other words, argued the heterogeneity of migrant workers had increased and left UN, ILO, and national legal provisions lagging one step behind: “Despite their comprehensive nature, these instruments provide inadequate protection because the labor migration landscape has changed since they were first adopted. These changes include

- the decreasing significance of the state in recruiting migrant labor and the increasing importance of private agents and intermediaries;
- the feminization of migrant labor with women migrant workers predominant in the sex sector and domestic work – areas characterized by a strong bond of subordination between the employer and employee, and usually beyond the protection of labor law;
- the increasing short-term nature of labor migration;
- the considerable growth in irregular migration and the need for states to balance control measures with measures that facilitate labor migration and protect migrant workers.

In particular, feminization of the migrant labor force and states’ increasing reliance on temporary workers are not adequately reflected in ILO instruments or in the ICMW. Another major obstacle is the chronic reluctance of states to agree to legally binding, multilateral instruments that regulate international labor migration and protect the rights of migrant workers” (Cholewinski 2005).

Not all of these assertions seem to hold up equally well. The state’s decreasing significance in recruiting appears debatable. The feminisation should not automatically be equated with growth of the sex industry and work in households. There are other jobs, too, and employment there might be growing faster. We don’t know. At the same time it is clear that inordinate employer control over workers clearly remains a problem. The increase in short-termism is also uncertain, and ups and downs have occurred in the past too. The growth of irregular migration is not general but limited to specific constellations, the U.S. forming a very large part of it.

In the short term, rather than into new standards ingenuity might best be invested into smoothing the path to regional and national adoption and implementation of existing standards and into capacity building in trade unions and enterprises.

### Shift attention

Migrant workers are only a few percent of the world's working age population. This is testimony to the difficulty of migration and settlement. It stands in sharp contrast to the effort being made at containing migration.

Individual governments and their cooperation ought to shift attention from warding off and minimising migration to ensuring the maximum benefits for all, both, between and within countries. The empirically proven record of standards in achieving best outcomes should feature centrally. The facile assumption that the fewer migration the better needs to be overcome. Most OECD receiving countries have been having more immigration than they claimed to desire and yet their wealth has kept growing apace. A more constructive approach to migration is feasible.

### More cooperation

More and closer cooperation might help in adopting standards and in furthering their implementation. This should include cooperation between origin and destination countries and especially between competing economies.

### Monitor impacts

Under human rights standard setting is an important activity in its own right. In addition we urgently need a better, empirically grounded understanding of their effects. This can only be gained with meaningful data and appropriate statistical techniques. The introduction of standards or of their implementation to jurisdictions should be used for studies.

The academic research literature in recent years has been producing many useful insights into processes of discrimination. At the same time the capacity of intergovernmental organisations to take note of the advances and to further them appears to have dwindled.

### Effective listening, guidance, and support

Since parts of the labour market are hardly accessible to regulation, inviting complaints from workers is the only feasible approach. Considerably more urgency needs to be put into listening to migrant workers. Currently, governments are dependent on NGOs and the media in order to hear from migrant workers. NGOs are underfunded and the media's attention is opportunistic. This is not a satisfactory situation if the aim is to design policies that benefit all concerned. A greater effort needs to be put into devising effective ways for migrant workers to complain about their working conditions without jeopardizing their own and fellow workers' employment, income or residence (Bernhardt et al 2008). Not enough has been done in this respect. Too often the authorities either protect employers from workers or mix the issue of immigration status with inspection of the employment relationship. A wiser approach should be made mandatory. It is important for countries to maintain pressure on employers not to pursue cheap labour strategies and to replace them with strategies of continuously raising productivity. This is the only way forward. Employers by themselves may not always be able to make the switch. They may need effective but not necessarily monetary support from the government, from employer organisations, from other companies they trade with, especially if in a value chain, and also from trade unions. Complaints from workers are the single best way of localizing the need for public intervention into the development process in rich and poor nations.

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