

CHAPTER 15

GLOBAL GOVERNANCE AND INTERNATIONAL MIGRATION: A BRIDGE TOO FAR?

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INTRODUCTION

Countries do not look to the use of multilateral governance instruments to manage migration on a global level. Irregular migration remains a significant issue, and improvements to the conditions faced by migrants remains mostly ad-hoc and anecdotal. As a whole, states have been unwilling to integrate migration policy globally for a variety of reasons, ranging from not wanting to affect the competitiveness of its citizens seeking work abroad to concerns about empowering multilateral institutions and the impact on sovereignty and national-level policy development. This paper will analyze migration policies from the angle of domestic and global governance.

The objective of this article is twofold. The first is to explain why bilateral agreements remain by far the most popular way to manage labor migration between countries and how this effectively diminishes the bargaining power of the labor sending country. The second is to understand the different supranational, national, and subnational structures and the critical role they have in advocacy, policy development, and enforcement. Each forum has different strengths and weaknesses and is used to bolster or isolate the advocacy positions of respective states, all of which make decisions based on protection requirements of citizens and domestic politics but also on the need to remain competitive in the global marketplace.

With a focus on Asia, this chapter reviews current existing global and regional governance structures that address international migration. Based on

¹ The analyses presented in this chapter are the views of the author and do not reflect the views of the International Organization for Migration (IOM).

the information from this field research, analysis was made in regard to labor migration policies in Nepal. They were made from the angle of government achievements and gaps and challenges in current migration policies. Recognizing the limitations inherent to global governance, the chapter also examines how international migration is addressed internally. International migration is often viewed through the prism of complex governance structures and nuanced bilateral relations, which detracts from the key issue of protecting the rights of migrants on both a policy and a practical level. How can administrative costs for remittance transfer be reduced? How can minimum safety and wage standards be agreed to, applied, and policed? How can returning migrants apply the knowledge learned and resources earned to create sustainable livelihoods in their place of origin? Theoretical framework from Kjær will be used in order to evaluate the existing situation of global governance. In addition, six sub-components of governance concepts in measuring governance from the World Governance Survey (WGS) are used to analyze the status of domestic governance.

The chapter also examines how domestic governance has benefitted from global migration as many labor-sending countries adopt policies, legislation, and structures to promote foreign employment as an integral component of their economy and earn revenue through remittances. Although the key function of national policy is to provide safeguards for nationals working abroad, the impact of migration policies on labor migration has been inadequately researched to date. A convergence of a strong national policy and the administrative capacity to enforce the policy and diplomatic initiatives is required to more adequately protect the rights of migrants, particularly those filling semi-skilled and unskilled labor positions.

1. INTERNATIONAL MIGRATION IN THE GLOBAL WORLD

International migration² from developing countries has dramatically increased over the past 50 years. The push/pull theories of economic migration explain that such movement is a by-product of relative disparities; these are disparities of opportunity and/or disparities of real wages (Rudolph, 2009: 14). The number of international migrants is estimated as 214 million (United Nations, 2009: 1). Out of these 214 million, developed countries

² This paper uses the term “international migration” in order to distinguish from “internal migration,” which is a movement of people observed domestically due to urbanization.

accommodate 96 million international migrants, aged 20 to 64, which represent 62 percent of all international migrants of working age. A large number of youth in many developing countries express a strong desire to migrate, especially for short durations: 91 percent of Albanians, 88 percent of Romanians, 80 percent of Ethiopians, 78 percent of Bangladeshis, 76 percent of Iraqis, 60 percent of Tajiks, and 57 percent of Malaysians say they would migrate if they had the legal opportunity (World Bank, 2006: 196). It is important to note that fewer than 23 percent of those seeking overseas employment would move permanently (*ibid.*). The circular nature of labor migration needs to be better explained, especially to the constituencies of labor-receiving countries where migration is often politicized and labor migrants are looked upon unfavorably.

Remittances, a key by-product of international migration, bring significant impact for developing countries. In 2009, remittance flows were the second largest source, after foreign direct investment (FDI) of external funding for developing countries (Ratha *et al.*, 2009: 3). States recognize the importance of reducing remittance transfer costs and motivating migrants to remit through a formal banking system that will allow those deposits to be available for private sector development.

Based on current trends, remittances will soon surpass FDI as well as overseas development assistance (ODA) as the largest creator of external funding. Officially recorded remittance flows to developing countries reached \$338 billion in 2008 (*ibid.*: 2). Between 1995 and 2003, whereas migrant remittances to developing countries almost tripled from \$58 billion to US\$160 billion, FDI grew only by half, from \$107 billion to just \$166 billion, while ODA only had a relatively marginal increase, from \$59 billion to \$79 billion (Ahortor and Adenutsi, 2009). Due to the recent global economic crisis, many economists predict decreases in remittance flow. However, despite these risks, remittances are expected to remain more resilient than private capital flows and will become even more important as a source of external financing in many developing countries (*ibid.*: 1). In light of the exponential growth of remittances coming into developing countries, more focus needs to be brought to bear within both a national and multilateral level on increasing the attractiveness and efficiency of formal banking structures to manage these flows.

The global economy attracts highly skilled migrants, leading to international discussions about brain drain, brain gain, or brain circulation. Brain gain and brain circulation are often overlooked and need to be discussed within the context of the migration of highly skilled individuals

from developing countries. This is done by analyzing positive benefits of highly skilled migration. This migration currently is often solely viewed through the prism of brain drain.

The labor market for professionals and highly skilled persons is becoming more directly integrated at the global level (Lucas, 2008: 15). For example, there were estimated to be some 250,000 foreign experts working in China in 2001 (Ma, 2004: 415; Skeldon, 2005: 166). The same source estimated that by 2002, some 520,000 Chinese workers were engaged in labor contracts abroad (ibid: 166). Highly skilled migrants from Taiwan and India returned to their own countries and contributed to the economic growth and development of their countries (Castles *et al.*, 2009: 65).

According to the United Nations (UN) International Migration Facts and Figures, between 33 and 55 percent of the highly educated people of Angola, Burundi, Ghana, Kenya, Mauritius, Mozambique, Sierra Leone, Uganda, and the United Republic of Tanzania live in Organization for Economic Co-operation and Development (OECD) countries. The percentage increases to almost 60 percent for those from Guyana, Haiti, Fiji, Jamaica, and Trinidad and Tobago (United Nations: 2005). According to the World Development Report 2009, poor and middle-income countries now send the most emigrants, led by Bangladesh, China, the Arab Republic of Egypt, India, Mexico, Morocco, Pakistan, the Philippines, and Turkey (World Bank, 2009: 150). On the other hand, Italy, Germany, and the United Kingdom still rank near the top, each accounting for between three million and four million emigrants (ibid: 150). Many migrants come back to their home countries with new skills and accumulated income.

Chinese who studied abroad have contributed significantly to the economic development of their country. Roughly 80 percent of the presidents of universities under the direct administration of the Ministry of Education, 81 percent of the academicians of the Chinese Academy of Sciences and the Chinese Academy of Engineering, 95 percent of the Yangtze River Scholars, and 80 percent of the chief scientists of the National 863 Program have studied overseas. In addition, more and more students have been returning to China and starting their own businesses. In Shanghai, students returning from abroad have founded over 3,800 enterprises, with a total investment of nearly 500 million yuan (*People's Daily Online*, January, 2009). This brain gain accelerates the development of the country and clearly demonstrates the circular nature of the migration phenomenon.

However, even though the above figures sound impressive and validate the circular migration concept, China still has not found the

requisite balance between “brain gain” and “brain drain.” According to statistics from the Ministry of Human Resources and Social Security, the number of Chinese students who studied abroad between 1978 and 2010 totaled 1.91 million. Only 632,000 chose to return to China over the same period (*China Daily*, May, 2011), meaning that over 67 percent did not return to China. Despite the booming economy and government incentives to return, an increasing number of the country’s brightest minds are relocating to wealthier nations, where they can usually benefit from higher living standards, brighter career opportunities, and the freedom to have as many children as they wish (*The Guardian*, February, 2007). This statistic may and probably will change, with more educated Chinese returning home as economic growth continues in China at a significantly higher pace than other industrialized nations.

Multiple countries try to encourage the return of highly qualified migrants. Afghanistan has been implementing programs in encouraging temporary returns of highly educated and experienced nationals who reside abroad. To date, 846 Afghan experts living abroad have returned to Afghanistan from 32 countries, with the International Organization for Migration (IOM)’s assistance, in order to participate in the rebuilding of their nation (*IOM* 2008a). However, small numbers of these Afghans stay in Afghanistan due to the political and security instability.

The fact that prospective migrants seek economic opportunities globally rather than solely within their existing community produces such global challenges as irregular migration, including trafficking and exploitation of individuals and violations of human rights. As a result, the concept of migration governance has emerged in order to address these issues multilaterally. There are an estimated 5 to 10 million irregular migrants within Europe and nations such as Japan and Saudi Arabia are reported to have significant numbers of undocumented workers (Lucas, 2008: 2). Up to one in four migrant workers in Asia may not have legal status (Castles and Miller, 2009a: 2). Malaysia is one country with a significant number of irregular migrants. There are an estimated 700,000 in peninsular Malaysia and 150,000 to 200,000 in Sabah (Kanapathy, 2008: 5). Migration in Sarawak is a relatively new phenomenon, and irregular migration is insignificant.

Migrants fulfilling temporary unskilled labor are more likely to be exploited. Asian workers in the entertainment and construction industries in Japan during the 1980s suffered from exploitation by employers and recruitment agencies. The recent crisis in Northern Africa demonstrates that migrants suffer significantly and have access to few protection mechanisms

during an emergency. A large numbers of migrants who have left Libya still claim unpaid salaries, and many left without any prospect of employment in their home countries.

Governments at both ends of the labor migration spectrum are increasing their regulatory capacities to manage labor mobility to the mutual benefit of society, migrants, and the state (ibid: 1). Many labor-sending countries adopt policies, legislation, and structures to promote foreign employment as part of their workforce and earn revenue through remittances. At the same time, the key function of national policies is to provide safeguards to protect their nationals working abroad. Between 1990 and 2005, at least 35 programs were undertaken in both developed and developing countries to bring the status of migrants who were in an irregular situation into conformity with national regulations (United Nations, 2006: 1). Overall, these programs regularized the status of at least 5.3 million migrants (ibid: 1). Balancing the need to protect one's citizens while not creating conditions that would decrease their competitiveness in the global marketplace is a difficult endeavor.

Increasing international cooperation among nations is an important issue. Different conventions and protocols have been created to establish mechanisms to assist migrants.³ International conferences are also held to strategize the best ways to promote and protect migrants' rights, as well as maximize migration benefits. Labor-sending countries are also keen to establish bilateral labor arrangements with labor-receiving countries, which could become the means to provide protection mechanisms but not at the expense of competitiveness. Unfortunately, bilateral rather than multilateral agreements between labor-sending and labor-receiving countries do not allow for collective bargaining principles to help increase protection mechanisms. Again, balancing between global competitiveness, protection of one's citizens, and perceived infringements upon sovereignty all weigh heavily in developing, approving, and enforcing global migration standards.

³ Contravention of the UN and ILO Fundamental Rights and Principles at Work; the widely ratified UN Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the UN protocols on human trafficking and people smuggling, both supplementing the United Nations Convention against Transnational Organized Crime (UNTOC).

2. GOVERNANCE AND INTERNATIONAL MIGRATION

International migration studies encompass economic theories presented as neoclassical economics —macrotheory and microtheory. One economic behavioral model created by economist Todaro considers realistic modification and extension of the simple wage differential by recognizing that a large pool of unemployed and underemployed urban workers affects a prospective migrant's "probability" of finding a job in the modern sector (1969: 140). New theories have subsequently been proposed in order to conceptualize migration from different perspectives, such as a historical/structural approach, world systems theory, migration systems, and networks theory.⁴

Recently, international migration has been placed within the context of global governance by international bodies but little work has been done by academics. The result of this is that international migration is not viewed as an academic discipline. New terminologies not uniformly applied or agreed to have emerged, such as "managing migration," "regulating migration," and "facilitating migration." These terms ultimately reflect that nations and multinational bodies need to define and subsequently govern migration, defined in this paper as migration governance.

In the field of international development studies, international migration is considered a subject of global governance. Up to now, the international society has piled various international consensuses in order to solve global challenges. Recently, the international society has urged using consolidated correspondence to give solutions to increasing common challenges in the world (Kimura, 2009: 271). International migration literatures highlight a growing concern that international migration lacks coherent global governance. The rationale for this concern is that globalization requires a global mechanism to address global issues. Yet conceptualizing international migration from the angle of global governance is premature, as multiple preconditions must occur first. "Big powers have joined international organizations, such as the UN with their national interest. If they are pressed from the outside by international opinions, they will go out from international

⁴ The new economics of migration theory views migration as a household decision and feels that emigration contributes to the diversification of income sources and remittances as a steady source of income. Dual labor market theory and world system theory are examined as macrolevel factors in economic and political elements. Network theory, institutional theory, cumulative causation, and migration systems theory look, instead, at the impact of migration.

organizations, which connect directly with the weakening of global governance”⁵ (ibid: 277). There is no institution with overall responsibilities for global cooperation and migration management, except for the International Organization for Migration, which is not UN body (Castles and Miller, 2009b: 13). Additionally, no major destination country for migrants is party to the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. Sovereign states generally decide their own immigration policies, which are, in democracies, heavily shaped by the needs and perceptions of domestic constituencies. The current system is designed to be fractured.

Role of local governance was often neglected, while more attention was paid to global governance. Countries design policies that are based on national priorities and strategies for migration. A comprehensive policy framework for international migration requires an explicit national policy on migration, plans, and a regulatory framework. How international migration is administered and policies are implemented is a key to good governance at the local level. Increasing numbers of irregular migration and increasing migration costs due to exploitation by recruitment agencies are key factors that show lack of good governance at the domestic level.

Recognizing these limitations, this chapter explores the current international framework that global governance proponents envision in the field of international migration. Second, the achievements of global governance will be reviewed. To achieve this, a theoretical framework suggested by prominent governance scholar Anne Mette Kjær will be applied to the international migration phenomena. Six governance concepts from the UN University-based World Governance Survey (WGS) also will be utilized to measure national governance.

2.1 Theoretical Framework 1: Kjær’s Views on Global Governance

Kjær gathered analysis of global governance that evaluated existing situations and categorized what global governance envisioned. The table below describes four different views. Kjær challenged the traditional “*neo-realist model of international relations*” by comparing three different views on global governance: pluralism, liberalism/solidarism, and global democracy.

⁵ Translation from Japanese.

Table 15.1. Kjær's Views on Global Governance

	Neorealism	Pluralism	Liberalism/solidarism	Global democracy
Proponents	Mearsheimer, Krasner, Waltz	Bull, Jackson	Rosenau, Annan, Commission on Global Governance, Wheeler	Held, Archibugi, Falk
Evaluation of exiting global governance	There is no global governance; the international system is anarchic in spite of increasing globalization.	International law upholds the principles of sovereignty and nonintervention.	International regimes are an important part of global governance; governance at the subnational and supranational levels dampens the effects of anarchy.	The existence of global civil society and a global citizenry calls for more democratic global governance.
Vision of global governance	Achieving a stable balance of power through alliances is the only realistic characteristic of global governance.	A legal framework based on pluralist norms; a world of dialogue between separate but recognized political others.	Global governance in many areas, not only the military, is required; a legal framework based on solidarist norms places individual rights as high as sovereignty rights.	Cosmopolitan democracy involves a global constitution and the recasting of territorial boundaries.

Source: Kjær 2004: 83.

This table proposes a measurement of good global governance, which sets, applies, and enforces rules in international communities. Global governance, in the liberalist view, refers to more than just the norms of sovereignty and nonintervention; it covers political activities on the subnational, national, and supranational levels (Kjær: 86). This forms international regimes that can be defined based on principles, norms, rules, and decision-making procedures, around which actor expectations converge on a given issue (Krasner, 1992: *ibid*).

The author explains that “global democracy” should be considered a measurement for good governance in international migration. The global democracy involves four layers of actors: 1) civil society, 2) government, 3) forums where multiple governments gather, and 4) international organizations.

2.2. Theoretical Framework: Domestic Governance

The World Governance Survey (WGS) is a response to the need to collect focused governance data. It was built on new data gathered entirely for the purpose of measuring governance (Kjær: 169).

Figure 15.1. Six Sub-components of Governance Concepts in Measuring Governance

1. Rules that shape the way citizens raise and become aware of public issues (civil society).
2. Rules that shape the way issues are combined into policy by political institutions (political society).
3. Rules that shape the way policies are made by government institutions (government).
4. Rules that shape the way policies are administered and implemented by public servants (bureaucracy).
5. Rules that shape the way state and market interact to promote development (economic society).
6. Rules that shape the setting for resolution of disputes and conflicts.

Source: Kjær: 169

The WGS still needs improvement. The UN University pointed out its methodological challenges: 1) How do we best meaningfully measure governance? Many believe current indicators provide poor measures of key governance processes; 2) There remains a lack of agreement over who is best placed to provide insights as to the quality of governance in a particular country and how it compares to the situation in other countries (Court *et al.*, 2002: 1). UN agencies have determined a governance indicator, but the same challenges remain in measuring governance. Despite these challenges, the WGS is attempting to take the political pulse of systems without assuming that the overall direction is toward liberal democracy (opt. cit: 170).

Furthermore, this measurement should be applied in the context of international migration. As of this writing, there have been no trials to test the WGS in the field of international migration. This paper will then develop specific indicators and apply them for a national case study.

3. STATUS OF GLOBAL GOVERNANCE IN INTERNATIONAL MIGRATION

Global governance in international migration has three different dimensions: international legal framework, regional framework, and non-binding initiatives. These dimensions are a product of globalization to bring solutions to global challenges that arise in international migration. Different legal instruments have tried to set rules to protect human rights. Regional grouping has been formalized to reflect a region's interest in global governance. Recognizing the strong will of nations to protect sovereignty, non-binding initiatives emerged as an alternative solution to global governance. Ironically, global governance is achieving its objectives (as defined by nations) by not being very effective.

This section first explains the existing international legal framework that global governance envisioned as it was proposed in the Kjær's theoretical framework. Then, it will closely look into how regional legal framework is followed by other ways of protecting migrants' rights.

3.1 International Legal Instruments

There are three main legal instruments that set rules in pursuing protection of migrants' rights: the international human rights law, the International Labor Organization (ILO)'s international labor standards, and the UN Convention on Migrant Workers.

The 1948 Universal Declaration of Human Rights refers to rights that are particularly relevant to migrants and their families. A specific component most relevant to migrants is Article 13 (2).⁶

The 1949 ILO No. 97 Migration for Employment Convention was ratified by 48 states. It recommends orderly recruitment and migration of foreign workers and that they should be given equal treatment with nationals

⁶ Article 13 (2): Everyone has the right to leave any country, including his own, and to return to his country. Article 20: Everyone has the right to freedom of peaceful assembly and association. Article 23 (1): Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and join trade unions for the protection of his interests (IOM 2007: 252).

in respect to wages and working conditions, trade union rights, social security, accommodation, and access to courts. ILO Convention No. 143, revised in 1975 and ratified by 23 states, promotes the protection of basic human rights of all migrant workers, including irregular migrants. It specifically focuses on safeguarding the rights of irregular migrants that arise from past employment.

Additionally, the ILO Multilateral Framework on Labor Migration was initiated at the 92nd session of the International Labor Conference (ILC) in 2004. This was formulated by a Tripartite Meeting of Experts in November 2005 and is composed of a set of non-binding principles, guidelines, and best practices on the development, improvement, strengthening, implementation, and evaluation of national and international labor migration policies. This framework aims to foster cooperation to assist in the implementation of effective policies on labor migration.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the UN General Assembly in 1990 (U.N.G.A Res. 45/158). It provides instruments that cover the entire migration process; regulate the legal status of migrant workers and their families; protect the basic rights of all migrant workers and their families, including lawfully residing and irregular migrants on the basis of equality with nationals; and grant regular migrants a number of additional rights on the basis of equity.

As of April 2011, 45 states had ratified and 14 states had signed the convention, although this includes no industrialized country. According to informal interviews conducted with government officials from labor-receiving and labor-sending countries, there are three reasons for the lack of participation. First, labor-sending countries fear that ratifying the convention will decrease their competitiveness in the global labor marketplace because the convention creates benchmarks upon which labor-receiving nations do not wish to be measured. Second, labor-receiving countries do not believe that by implementing the convention, irregular migration will be reduced, which would make the convention politically more acceptable for domestic constituencies. Third, there are concerns about the convention opening a Pandora's box of migration, as the convention includes a clause on family unification. This convention attempted to strike a balance between global

governance and state sovereignty but made clear that the ultimate decision-making body was the state, not any multilateral body.⁷

Consequently, these international frameworks are what global governance international migration envisions, as opposed to reality. Little progress will be made when it is believed that “cosmopolitan democracy involves a global constitution and the recasting of territorial boundaries,” which was described in Kjær’s *Views on Global Governance*. This is too easily perceived as a threat to state sovereignty.

3.2 Regional Framework

Following the creation of the European Union (EU) in 1993,⁸ regional organizations emerged throughout the world. States surrendered parts of their capacities to transnational systems of institutions, such as the EU, the North American Free Trade Agreement (NAFTA), the World Trade Organization (WTO), and the Association of Southeast Asian Nations (ASEAN) in order to help develop public control, albeit at a higher institutional level (Pierre and Peters, 2009: 9). Under the auspices of the WTO, the General Agreement on Trade in Services (GATS) also operates. Mode IV of the agreement⁹ contains rules for facilitating the mobility of service providers. The challenge of GATS, mode IV, is that there are limitations to the practical impact of the rules, as well as difficulties in negotiations in the implementation stage.

In addition to ASEAN, the South Asian Association for Regional Cooperation (SAARC) and the Asia-Pacific Economic Cooperation (APEC) are additional regional frameworks in Asia and in the Pacific. These are categorized as liberalists/solidarists. Liberalists generally believe there are

⁷ Part VIII, Article 79: Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, State Parties shall be subject to the limitations set forth in the present Convention (ibid: 258).

⁸ Its origin is traced back in 1953 with the formation of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC).

⁹ IV. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment (WTO: 309).

plenty of global governance processes underway that go beyond the exchanges between governments, according to Kjær's Views on Global Governance.

SAARC¹⁰ is one of the key regional bodies in South Asia. The focus of SAARC is economic, technological, social, and cultural development. Even with SAARC, South Asia is the least integrated region in the world. Cross-border investments and the flow of ideas, crudely measured by the cross-border movement of people or the number of telephone calls, are low for South Asia (World Bank, 2006: 4).

SAARC does not have a concrete international migration policy and framework. The only effort in this respect was when SAARC members adopted the Convention on Preventing and Combating Trafficking of Women and Children for Prostitution in January 2002 at the Kathmandu SAARC Summit. Following its ratification by all seven member-states, the convention went into effect in 2006. Afghanistan subsequently signed the convention in 2007 (ADB/IOM, 2009: ix). The convention is primarily a criminal justice instrument that aims to achieve the dual objectives of ensuring its states parties to nationally criminalize and punish trafficking offenses while also promoting regional law-enforcement cooperation to achieve this end (ibid: ix). The Asian Development Bank and IOM jointly assessed the status of this implementation by identifying gaps in Nepal (ibid: 92). Gaps exist between the convention and the actual implementation at the national level, which indicates that the convention does not have strong enforcement influence over the national level.

There are multiple reasons why this convention lacks "teeth." First, the institutional capacity of SAARC is weak. This is due to lack of political will to institutionalize the organization. The political relationships among some member-states of the organization are unstable, although the majority of countries share cultural and historical roots. For instance, India and Pakistan have fought three wars since partition. This friction between members is a significant obstacle to developing collective positions and policies, much less approving and implementing them. Second, the political and economic situations of most of the member-states do not have the level of stability necessary to make the types of concessions that are required for

¹⁰ This contiguous block of countries, starting with seven countries —Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka— when it was established in 1985, was extended to include Afghanistan as the eighth member in 2006.

creating any consensually made policy that involves multiple nations, each with its own interests and agendas.

The benefits of engagement are also not clear, based on the lack of precedents that are considered to be mutually beneficial. Intra-regional trade is less than 2 percent of GDP, compared to more than 20 percent for East Asia (opt. cit.: 9). The overall poverty head-count rate for Afghanistan is estimated at 36 percent of the total population and indicates that some nine million Afghans are not able to meet their basic needs (World Bank, 2010b: 24). When a country faces this level of internal challenges, it is difficult to engage in a multilateral process from a position of strength, which increases the likelihood that engagement will not occur or be substantive when it does.

If the political will to strengthen SAARC exists, they could follow examples from other regional organizations, such as ASEAN. There are increasing voices from civil societies in South Asia that SAARC should develop a similar human rights instrument as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Furthermore, more South Asian countries have expressed that SAARC could learn lessons about managing the migration process from ASEAN. ASEAN has a closer collaboration between member-states, as well as a clearer vision about the organizational objectives and limitations. For instance, ASEAN governments have opted to support removing the barriers to the movement of professional and skilled workers, as a first and less-controversial move toward greater intra-regional labor market integration (Nonnenmacher, 2010: 24). The rapid economic growth that ASEAN recently has achieved contributes to South Asians' favorable attitude towards ASEAN.

It appears that having a collectively agreed-upon regional framework on international migration is a precondition to developing global standards and protocols to which all will adhere. Yet their institutional capacities to administer the common challenges addressed by their members are weak.

3.3 Non-Binding Initiatives

Since there is little appetite for binding international legal frameworks to regulate migration, and there is reticence from member-states to have even regionally binding laws govern this issue, alternative solutions to global governance are being used. Today, promoting dialogue and establishing non-binding recommendations are considered acceptable measures. These non-binding initiatives can be regarded as an alternative to rigid global governance of migration. This section gives some examples of these initiatives

and examines their functions in view of the proposed theoretical framework proposed in section 2.

The Global Forum on Migration and Development (GFMD)¹¹ is an international forum to address migration and development. Initiated at the UN General Assembly's High-Level Dialogue on Migration and Development in September 2006, it meets annually. GFMD is a state-driven process that operates outside the UN system and coordinates through the UN Secretary General's Special Representative for Migration. To date, there have been four GFMD conferences. Each year, GFMD builds upon the achievements of the previous year and introduces new means of promoting more effective dialogue and partnership between and among governments, international organizations, the civil society, and other nongovernmental actors (GFMD: <http://gfmd-fmmd.org/>; accessed May 1, 2011).

The International Dialogue on Migration (IDM), coordinated by the IOM, aims to contribute to a better understanding of migration and to strengthen cooperative intergovernmental mechanisms. The IDM's activities are composed of annual sessions and two or three intersessional workshops organized each year. These dialogues give different partners opportunities to increase their knowledge and share ideas but have not proven to be action-oriented.

Another unique non-binding initiative is the regional consultative process, which emerged globally in the 1990s. Designed to further enhance regional cooperation, common migration challenges in a geographic location are discussed. The regional consultative process has three key characteristics that contribute to global migration governance:

i. agenda-setting (the development of sufficient common ground among states that are prepared to talk about migration in a regional context) and *issue definition* (an understanding of the different types of migration and the issues at stake in them and the emergence of a common set of terms and concepts used to understand migration);

ii. consensus-building through communication (often to the point where communication and coordination with other states becomes a more natural part of the governance process) and, eventually, *position convergence* (on a particular aspect of migration or an issue of particular concern); and

iii. changes in concrete laws, policies, or practices that govern how migration is managed at the national and regional level (Hansen, 2010: 9).

¹¹ IOM acts as secretariat.

The regional consultative process first sets common goals among participants. It then provides an open forum to discuss issues in order to achieve the common goal, which hopefully results in concrete action plans to bring change. Participating governments respect that a multilateral forum results in divergent opinions, so the group tries to focus on common issues that create synergies, rather than on divisive ones. In Asia, the following regional consultative processes play an important role in terms of labor migration:

1. The Ministerial Consultations on Overseas Employment and Contractual Labor for Countries of Origin in Asia (Colombo Process)
2. The Ministerial Consultations on Overseas Employment and Contractual Labor for Countries of Origin and Destination in Asia (Abu Dhabi Dialogue)

The Colombo Process was established in 2003 and is a ministerial consultation of labor-sending countries. Six of the 11 Colombo Process member-states are from South Asia, and Bangladesh acts as the chair. The third consultation, held in 2003, was attended by multiple observers as well, such as the Republic of Korea, Malaysia, Bahrain, Italy, Kuwait, Malaysia, Qatar, Saudi Arabia, and United Arab Emirates (IOM 2008b: 1). Colombo Process meetings have offered multiple sub-regional meetings¹² and multiple research opportunities with regard to the agenda that was discussed in the high-level meetings.

Another forum is the Abu Dhabi Dialogue, which works to complement the Colombo Process by bringing labor-receiving countries¹³ to the table in order to enhance cooperation on contractual labor mobility. The purpose of the Abu Dhabi Dialogue is to promote discussion on the development of a comprehensive and practical framework for the management of temporary contractual labor mobility in Asia, with a focus on promoting the welfare and well-being of workers, the development of both origin and destination countries through labor mobility, and fostering greater intergovernmental cooperation and collaboration, with the active support of international and regional partners (ibid).

¹² EU dialogue on labor migration was held February 2011 as part of Colombo Process-initiated events.

¹³ The Gulf Cooperation Council states: Yemen, Malaysia, and Singapore.

Table 15.2. Participants of the Colombo Process

Category of participation	Nature of countries	Country
Participants	Labor-sending countries	Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam
Participants	Labor-receiving countries	Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, Singapore, United Arab Emirates, and Yemen
Observers	Labor-receiving countries from Africa, Europe, East Asia, and America	France, Germany, Japan, Republic of Korea, Mauritius, Poland, and United States
Observers	Regional and international organizations	Arab Labor Organization, European Commission, Gulf Cooperation Council, International Labor Organization, UN Development Fund for Women, and UN Development Program

Source: IOM 2008: 1.

The outcome of the Abu Dhabi Dialogue 2008¹⁴ saw the following four partnerships through its declaration:

Partnership 1: Enhancing knowledge in the areas of labor market trends, skills profiles, temporary contractual workers, and remittances policies and flows and their interplay with development in the region.

Partnership 2: Building the capacity for effectively matching labor demand and supply.

Partnership 3: Preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers that supports their well-being and prevent their exploitation in the origin and destination countries.

Partnership 4: Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual mobility that fosters the mutual interests of countries of origin and destination.

The Abu Dhabi Dialogue is notable as the first ministerial dialogue that brought both labor-sending and labor-receiving countries to the migration dialogues in the region. Although it sounds intuitive and logical that

¹⁴ Abu Dhabi Dialogue was planned for 2010, but it was postponed until 2011.

both labor-sending and labor-receiving countries should collectively and simultaneously engage to create standards, political and economic realities often preclude this from happening.

These regional consultative processes have not brought immediate changes. Their capacity to organize follow-up activities is therefore an important criterion for assessing their effectiveness (Köhler, 2011: 87). However, their informal setting makes the processes come up with strong achievements.

4. DOMESTIC GOVERNANCE OVER INTERNATIONAL MIGRATION (A CASE OF NEPAL)

Traditional agendas for domestic governance relating to international migration are maximizing the economic and social development benefits of migration and increasing the social protection of migrants. This section examines gaps and challenges that domestic governance faces, through reviewing two governance concepts mentioned in section 2 of this chapter. These are rules that shape the way policies are made by government institutions and rules that shape the way policies are administered and implemented by public servants (bureaucracy).

Nepal is one of the least developed countries in Asia, and migration is an important element of the economy and society. How does Nepal benefit from global governance, as its economic status means that it is more shaped by it than shaping it? Global governance structures propose international legal framework to protect migrants' rights, but a country is limited by how hard it advocates application of those rights, based upon its own situation. Nepal, as a labor-sending country, does not have much leverage in the international system, as compared to labor-receiving countries or, for that matter, labor-sending countries with more organized migration management systems, such as Malaysia or the Philippines.

Global governance events invited every nation to participate in multiple conferences and meetings in order to discuss different migration issues. Furthermore, nations that are similar geographically have started to engage around common interests, develop action plans, and create traction on an issue. What are the realities on the national level? What efforts are made on the national level to govern international migration?

4.1 International Migration in Nepal

Since at least the first quarter of the nineteenth century, temporary and permanent labor migration has occurred out of Nepal. Poverty, unemployment, declining natural resources, and multi-decade-long political instability are the main causes of the current high rate of migration flow from Nepal (Gartaula, 2009: 2). The difficult conditions in which the Nepalese found themselves within Nepal allowed for a high degree of tolerance for the conditions they faced as international migrants. Furthermore, deforestation due to overuse of wood for fuel and lack of alternatives decreased the ability for certain rural environments to sustain populations, which then decreased the likelihood of successful reintegration to place of origin.

Rural-to-urban migration within the country is also significant. Significant population expansion after World War II was a primary factor in both overseas and internal migration. The 8.4 million Nepalese at the time of the 1954 census became 18.5 million by 1991 (Whelpton, 2008: 122) and 29 million in 2009. Due to this sudden expansion, it became difficult for poor families to feed themselves.

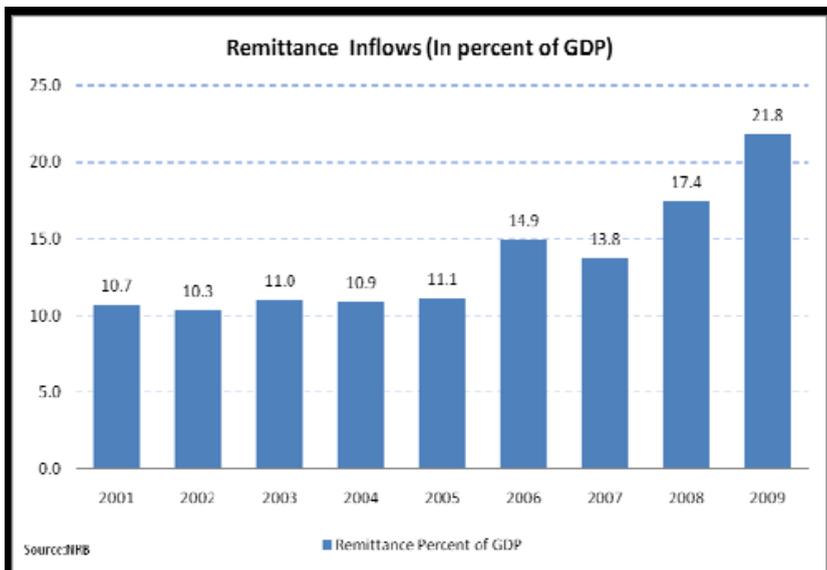
Foreign policies and diplomacy with neighboring countries further incentivized outward migration. For instance, emigration was made easier by the 1950 treaty that allowed Nepalese citizens full freedom to live and work in India (ibid: 124). A large number of Nepalese moved to India to perform agricultural labor after this treaty allowed these movements. In 1991, some 1.5 million Nepalese were believed to be in India, in addition to several million more people of Nepalese descent who had moved across the border earlier (ibid: 123).

Migration from Nepal shifted from being regional (i.e., to neighboring countries, including India, Myanmar, and Bhutan) to including other labor-importing countries, such as the Persian Gulf states and more developed economies in Southeast and East Asia. Nepal's major export is labor, and most households now depend on at least one member's earnings from employment away from home and often from abroad (Seddon, 2005: 1). Approximately 700,000 Nepalese work overseas, with 5 percent of those being women (ibid: 1). Migration to India remains strong, due to the open borders between the two countries.

With political instability fairly entrenched due to long conflict in the region, the economic situation within Nepal remains bleak. The high unemployment levels continue to motivate Nepalese to seek overseas employment. Naturally, remittances have subsequently become more critical in

sustaining Nepal's social and economic structures. According to the World Bank, officially recorded remittances rose to \$2.7 billion, representing 22 percent of the GDP in fiscal year 2009. This is a significant increase from \$900 million, which was 11 percent of the GDP in fiscal year 2005 (World Bank 2010a: 15). Imports have risen fast, from \$1.6 billion (26 percent of GDP) in fiscal year 2001 to \$3.6 billion (30 percent of GDP) in fiscal year 2009, largely due to the thriving consumption made possible by remittances. Exports have remained under \$1 billion and, as a share of GDP, have continuously declined from 13 percent to 7 percent. Exports of ready-made garments, carpets, and pashmina—the erstwhile main exports—have declined (ibid: 11). FDI net inflows¹⁵ were zero in 2008, and FDI inward stock in 2008 was 1 percent of GDP (United Nations 2009). As the Nepalese economy continues to contract and atrophy, remittances play an increasingly critical role in ensuring a modicum of stability within the country.

Figure 15.2. Remittance Inflows (in percent of GDP)



Source: World Bank 2010a.

¹⁵ FDI *inflows* comprise capital provided (either directly or through other related enterprises) by a foreign direct investor to an FDI enterprise in the reporting economy (ESCAP definition).

4.2 Administering Migration in Nepal Context

Similar to other countries in South Asia, Nepal's government expanded the role of the Ministry of Labor and Transport Management to include overseas employment. The ministry has five departments, including foreign employment, labor, transport management, skill and vocational training development, and an employment promotion board. It also has labor management offices, 15 skill-development training institutes, 14 labor information-center offices, and 15 transport management offices. The following tables describe the ministry's core functions in terms of overseas employment.

Overseas employment of Nepalese has resulted in the creation of more than 1,000 government jobs in order to manage the process. Additionally, approximately 800 jobs have been created within the migration management-related private sector in Nepal to address the logistical, administrative, financial, and social needs of labor migrants.

Government functions are categorized in five main areas,¹⁶ and the government of Nepal has passed legislation to describe how the overseas employment process is facilitated and administered. Interestingly, each function falls under the sub-component of the governance concept that was proposed by Kjær. This signifies that structures are in place to govern international migration. However, qualities of these functions should be examined by analyzing the implementation status. What appear to be missing are rules that shape the way issues are combined into policy by political institutions (political society). One of the main challenges of this Ministry of Labor and Transport Management is that the ministry has four main mandates of domestic labor, overseas employment, and skill training, whereas other nations in South Asia have independent ministries according to each function. It is a challenge for the ministry to effectively administer four different areas of functions.

¹⁶ Foreign employment, labor, transport management, skills and vocational training development, and employment promotion board.

Table 15.3. Functions of Nepal's Labor Migration Policies

Government function	Details	Sub-components of governance concept
Laws and rules	Foreign Employment (Second Amendment) Act, 1998; Foreign Employment Rules, 1999; Foreign Employment Regulations, 2007	Rules that shape the way policies are made by government institutions (government)
Organizations responsible for regulating emigration	Labor and Transportation Management Ministry; Ministry of Law, Justice, and Parliamentary Affairs	Rules that shape the way policies are administered and implemented by public servants (bureaucracy)
Field offices	Government offices, government bodies, or an institution fully owned by the Nepalese government	Rules that shape the way policies are administered and implemented by public servants (bureaucracy)
Mode of recruitment	Foreign employment enterprises	Rules that shape the way policies are administered and implemented by public servants (bureaucracy)
Procedure/method for granting a license	Must be a citizen of good character; have proof of deposit of Rs 20,000 or bank guarantee; pay Rs 10,000 annually to renew license	Rules that shape the way citizens raise and become aware of public issues (civil society)
Procedure/method/authority responsible for granting permission to deploy workers	Directive Committee	Rules that shape the way state and market interact to promote development (economic society)
Procedure/mechanism for payment of compensation to migrant worker	The department orders the license-holder to pay compensation	Rules that shape the setting for resolution of disputes and conflicts
Power to try offenses	The Department of Foreign Employment; three members the Foreign Employment Tribunal	Rules that shape the setting for resolution of disputes and conflicts

Source: Hamada

Protection issues, including the provision of social services, should be arranged through bilateral agreements with destination countries. The Ministry of Foreign Affairs, in coordination with the Ministry of Labor, Manpower, and Transport, should be the focal point in communicating with labor-receiving countries and negotiate terms and conditions of the labor migration agreement. To date, Nepal has made bilateral arrangements with Qatar, the United Arab Emirates, South Korea, and Bahrain, as well as bilateral agreement with the Japan International Training Cooperation Organization (JITCO) for sending industrial trainees/intern workers to Japan. Nepal is currently in negotiations with Lebanon, and it aims to engage other destination countries, such as Malaysia and Jordan. Nepal introduced its employment permit system to facilitate labor migration to Korea. This system consists of various components, including information-sharing, provision of applications, and liaison with the Korean government.

However, these arrangements are made in a form of the Memorandum of Understanding, which is rather informal and does not create legally binding obligations or processes for any party. In analyzing these documents, none has enforceable mechanisms to protect migrants. These non-binding initiatives remain the primary tool for bilateral engagement relating to international migration.

4.3 Measuring Migration Governance in Nepal

Nepal established structures within the government to administer international migration. However, the manner in which functions under the governance are working becomes important in measuring the level of government capacities. To measure the efficacy of domestic governance, it is critical to understand how government policies are implemented at the national and local level. Table 15.4 analyzes the status of government functions, according to the World Governance Survey (WGS)'s Sub-components of Governance Concepts in Measuring Governance. Four categories were made, according to the WGS. A support system is applied under the rules that shape the way policies are administered and implemented by public servants (bureaucracy). A remittance system applies to rules that shape the way state and market interact to promote development (economic society). A recruitment system is categorized under the rules that shape the way citizens raise and become aware of public issues (civil society). And return and reintegration applies to rules that shape the way state and market interact to promote development (economic society) and rules that shape the way citizens raise and become aware of public issues (civil society).

Table 15.4. Implementation of Administering International Migration

System/WGS measurement	Category	Implementation status/caps identified
Support system/rules that shape the way policies are administered and implemented by public servants (bureaucracy)	Protection	There should be adequate protection mechanisms in place in destination countries. The role of the labor attaché is unclear, and the attaché does not have enough resources to support migrants.
	Negotiation with employer	During their stays overseas, migrants received little assistance from the government when they needed it. Migrant workers are generally put into weak positions, and they do not have negotiation power.
	Health	In case of exploitation by employers or health issues, there are not enough support mechanisms in place.
	Social network	Migrant workers need space and the option to gather to maintain cultural and religious identities, which are difficult in some destination countries.
Remittance system/rules that shape the way state and market interact to promote development (economic society)		The hawala/hundi system, which does not go through the banking system, is much cheaper and more convenient. For government, unrecorded remittance became a security concern, particularly after September 11. Banks in both labor-sending and -receiving countries take too much commission. There is little incentive for migrant workers to use the official channel of remittance.

(continued)

Table 15.4. Implementation of Administering International Migration (*continued*)

System/WGS measurement	Category	Implementation status/caps identified
Recruitment system/ rules that shape the way citizens raise and become aware of public issues (civil society)	Market information	It is difficult to obtain sufficient information about job markets while in Nepal. The main information sources of many migrant workers are friends and relatives who have experience working in the destination countries.
	Migration costs	There are cases of recruitment agencies charging additional money from migrant workers. Competition among migrants for employment with better benefits is high. Some countries, such as Malaysia, charge the equivalent of 10–11 months' salary from migrant workers.
	Pre-departure orientation	Migrant workers normally leave the country with little information on or understanding of the culture, language, and legal aspects of destination countries. They are not sufficiently aware of possible risks.
Return and reintegration/rules that shape the way state and market interact to promote development (economic society) and rules that shape the way citizens raise and become aware of public issues (civil society)		There are not enough jobs when migrants return home. Money that they earned is used for the family and relatives and is not contributed to the productive investment of their home country. There should be innovative ways to encourage migrants to invest. Gaining migrants' and their families' trust in financial systems is a big challenge for the government. In addition, the government should support migrants' families in their home countries.

Source: Hamada

The following analysis can be made using the WGS measurement. First, under the support system that is categorized under rules that shape the way policies are administered and implemented by public servants (bureaucracy), policy-makers recognize government's efforts to take action toward migrant laborers but feel the following problems remain: (1) Comprehensive migration policies are needed to ensure the protection and welfare of migrants for the whole migration cycle and to ensure both the economic and non-economic¹⁷ development of Nepal. (2) Although the government tries to promote bilateral labor arrangements with labor-receiving countries, the positions of labor-sending countries are still weak (e.g., in the Memorandum of Understanding, which is a bilateral or multilateral agreement between governments with Qatar and Bahrain, migrants do not have access to social benefits, nor do they participate in religious activities, and they do not have collective bargaining rights through trade union membership). In addition, most Memorandum of Understanding's dispute settlements and terms and conditions are in the receiving countries' jurisdiction, and the sending countries are not aware of them. Furthermore, the protections of Nepalese migrant workers are not explicitly detailed, some Memorandum of Understandings are not in effect, and destination countries may lack interest in fulfilling the intent behind Nepal's policies. (3) Despite the contribution of remittances to the economy, official channels of remittance need to increase the likelihood that remittances can benefit core elements of the Nepalese economic infrastructure.

Furthermore, Nepal set laws to prohibit female labor migration to avoid exploitation similar to other nations in the region. However, this government effort to set safeguards for women did not work; the government could not stop women who wished to go overseas. Hence, some women try to migrate overseas through illegal means, which further increases their vulnerability to exploitation. (4) It is impossible to deny remittance's role in the economy. Nevertheless, Nepal needs to compete with other labor-sending countries. Although, there is a concern among the Nepalese with regard to promoting labor migration, current government policy is to promote migration. Moreover, the government should make its laborers more attractive to labor-receiving countries by, among other things, enhancing skills development in its laborers.

¹⁷ Such as Political System/Political Unrest, Education Levels, Infrastructure, and Health and Nutrition

Second, the remittance system falls under the rules that shape the way state and market interact to promote development (economic society). Many migrants think that there has been enough effort by the government to motivate them to utilize the official remittance channel. The government officials, sympathetic to migrants on this issue, recognize that the government does not have strong banking mechanisms to provide alternative solutions. In countries like Pakistan, on the other hand, the government has come up with initiatives to promote migrants to remit money through banks. A government official said, "In particular, remittance is one of the key aspects on migration, since the official channel contributes 23 percent to GDP in Nepal. The study shows that remittances reduce the poverty level; 11 percent drop in the last five years. Those remittances are spent for education and health in receiving households. Thus, it is significant to know how we can effectively encourage the remittance-receiving households and harness the benefits of labor migration through remittance management."¹⁸ Therefore, the remittance system can be considered premature and still needing improvement.

Third, return and reintegration, which applies under the rules that shape the way state and market interact to promote development (economic society) and rules that shape the way citizens raise and become aware of public issues (civil society), also can be measured as premature and needing improvement. The recent crisis in Libya also revealed that there are very few tools for migrants to return and reintegrate into origin countries, Nepal being one of them. Those who evacuated from the crisis left without plans for the future, as well as little to no knowledge or opportunity for receiving employment opportunities back at home. In addition to being unpaid due to the crisis, some still have to contend with sizeable debts to the recruitment agencies that subsidized the initial journey, based upon an assumed attractive return on the investment.

Overall, migration governance in Nepal can be measured as relatively strong in formulating policy but weak in implementing it. This can be represented by the achievements in policy formulation and the challenges that the government faces. The Nepalese government's efforts regarding labor migration can be analyzed over three main areas: (1) the government's prioritization of establishing different agencies for labor migration, (2) the government's support in facilitating remittances that benefit the Nepalese economy, and (3) promoting a positive image of migrant workers, who have

¹⁸ Direct quotation from interview.

made the sacrifice of separating from their families to support them. Moreover, the table identifies four areas that require change: (1) It is true that remittance contributes to the Nepalese economy, but the nation needs to realize that this is a temporary solution and does not provide a sustainable development solution. (2) Laborers migrating out of Nepal who are highly educated and skilled normally get jobs for which they are overqualified, and Nepal loses the highly skilled professionals it needs for its core industries and for society. (3) There are not enough measures to protect vulnerable populations, such as women and children. For instance, labor exploitation or the trafficking of women and children is a serious problem, yet there are not enough safeguards to assist them. (4) Some migration policies have negative effects.

4.4 Limitation of Local Governance and Benefits from Global Governance

Migration has significant economic and social effects within Nepal. However, their governance reached limitations, as identified in the issue of migration and the position of the government, which promote overseas employment. Nepal has adopted policy structures from other nations in the region to deal with labor migration. There are large differences of opinion between government officials and migrants themselves about how functional and efficient the current structure is. There are certain key areas on which Nepali migration policy-makers should focus. These are how to best protect their nationals and how to best enhance the impact of migration.

Policy-makers and migrants are eager to learn about the experiences of other countries. The lack of any substantial foundation in migration governance, which could help streamline regular emigration, is an impediment to sharing experiences and developing context. At the same time, providing their citizens with safeguards, including access to information, social protection mechanisms, and return and reintegration policies, should be ensured; this will increase the importance of international exchange and information flow.

It is critical to understand the perceptions of policy-makers as well as migrants about the different issues facing Nepalese migration, as well as achievements made in this area in recent years. With the political and economic instability in Nepal, it is difficult to apply migration policies systematically. A few policy-makers, however, do understand that migration policy itself cannot change the unemployment rate or national sustainability.

It is important to develop innovative approaches to use migrants' human and financial resources to aid their original communities while the government works to improve basic political, social, and economic structures.

In many developing countries, remittance contributions from migrant workers are inefficiently managed and utilized. Determining innovative ways to use remittances to invest in a country's development is a significant challenge and with the sums of money increasing considerably, governments and the private sector that invest in more efficient manners to channel this money will provide an excellent return on the investment.

In general, government officials who deal with migrants' issues have positive views of the government's efforts and, while sympathetic to the complaints from migrants, feel current service levels are relatively adequate, although they recognize the limitations of the current government structures and resources available. The major government achievements included regulating private employment agencies by promoting an ethical code of conduct, securing a labor attaché in major labor-receiving countries, and banning female labor migration to the Persian Gulf countries to avoid exploitation and abuse, and making bilateral agreements in the form of the Memorandum of Understanding with labor-receiving countries to encourage orderly emigration.

Although there has been progress in instituting national policies to regulate international migration, there are still gaps in applying them at the operational level. Areas of limitations are categorized as follows:

1. Government policy does not have enough resources and capital to provide protection and support services to migrant workers.
2. There are high migration costs in the recruitment process. Migrant workers often pay extra money for traveling and a visa fee, as well as commission.
3. There is a strong will to encourage labor migration from a revenue-generation perspective, but there is little research and few strategies to improve the market research system and skill development to enable competition with other labor-sending countries.
4. The government has opened positions to negotiate openly with labor-sending countries. However, political positions in bringing nationals' interests into agreement are difficult, as labor-receiving countries are in stronger positions at the negotiation table.
5. Nations wish to maximize the benefits of remittance through subsequent investment in the core economic drivers of the country. However, there

- are not enough incentives and channels for migrants to utilize the official banking system in the country as opposed to the traditional *hundi* system.
6. There is little incentive for highly educated and skilled workers to remain in the country. Those who were educated with professional skills tend to go overseas. Consequently, there is a shortage of professional personnel in the country's core areas, in professions such as education, health care, and technical industries. This phenomenon will ultimately cause brain drain. Nations need to implement strategic policies to keep the vital resources (i.e., skilled workers) they need for sustainable development, rather than encouraging them to work in other countries. Proactive brain-gain policies need to be developed to encourage circular migration.
 7. There needs to be social and community mechanisms to encourage the return and reintegration of migrants and the utilization of skills that were developed overseas. Many migrants who return to their own communities find it difficult to find a role in the communities and find suitable jobs. This triggers repeated temporary migration, which leads to more dependence on remittance.
 8. There should be ways to utilize remitted money for investment purposes, rather than consumption. Particularly, remittance should promote middle and small companies in order to promote local industry.

These limitations signify that governance in Nepal faces difficulties in creating policies to effectively manage migration. International migration is complex and requires the engagement of multiple ministries, as well as a unified political will to adapt certain ideas and recommendations from different global governance forums and convert them into national legislation. Ensuring the convergence of a solid administrative and legislative structure, while concurrently handling multiple diplomatic negotiations, is a key challenge for developing and developed countries.

Nepal is a founding member of the South Asia Association for Regional Cooperation. Nepal and other countries in South Asia actively participate in regional dialogues on international migration and development forums and labor ministerial meetings, such as the Colombo Process. These regional efforts help improve migration governance through the sharing of experiences and development of policy recommendations. There appears to be an insufficient level of resources and political will to make changes on the national level, however, due to a variety of factors already described. Additionally, the instability of the political situation results in insufficient attention and a lack of leadership in structuring migration policies across

multiple ministries. There is an expectation of international solidarity, and there are pressures, which could guide national policies in Nepal.

CONCLUSION

Our increasingly globalized world is a competitive one, and the perceived benefits of current global governance structures do not outweigh the desire to be more competitive than one's neighbors, more attractive in the marketplace, and more independent, particularly in the eyes of one's domestic constituency. These are the primary reasons why nations do not enforce international legal instruments and recommendations that comprise the majority of global governance initiatives.

This chapter has examined some different dimensions of global governance within international migration by analyzing current existing global and regional governance structures that address international migration through theoretical framework. Kjær was used in order to evaluate existing situation of global governance. To date, few countries in Asia have adopted any international instruments to protect migrant workers and their families against smuggling and trafficking or the 1951 Refugee Conventions. Being part of global discussions on migration can become a tool to raise the awareness of policy-makers in the region about certain important binding agreements.

Governance should build a foundation that can systemically absorb emerging migration challenges that are not only created from labor demands born of globalization but also are born of natural disasters and conflict. Good governance in labor migration can respond to emerging issues of migration through streamlined administration, as well as having a solid working relationship with other nations and the private sector. The circular nature of the migration phenomena needs to be better understood and explained. Governments on both the labor-sending and labor-receiving ends need to ensure that effective instruments and support structures are established—from streamlined remittance procedures, to contingency planning for migrants returning during conflict, to skills development during overseas postings and employment opportunities to apply to those skills back in the country of origin, and regular updating to reflect the complex and shifting nature of international migration.

Furthermore, domestic governance was examined in how international migration is addressed internally. Six sub-components of Governance Con-

cepts in Measuring Governance from the World Governance Survey (WGS) became a tool in measuring the status of domestic governance. Many nations are trying to regulate migration by strengthening their border controls and promoting migration that would benefit receiving and sending countries, as well as migrants themselves. This phenomenon can be seen in the increased numbers of bilateral, multilateral, and regional agreements. It is important to promote the mutually beneficial aspects of international migration, due to its circular nature, as opposed to the zero-sum-game mentality that the brain drain concept conjures up. At the same time, there are emerging concepts of the free movement of people in integrated regional systems, such as European countries.

The chapter also examined how domestic governance has benefitted from global migration, as many labor-sending countries adopt policies, legislation, and structures to promote foreign employment as an integral component of their economy and earn revenue through remittances. Encouragingly, bilateral, multilateral, and regional cooperation is emerging and is resulting in international migration policies, albeit primarily non-binding ones. This has not resulted in significant levels of implementation on the national level, however; as migration for employment grows, international cooperation has increased at the multilateral and regional levels. The formulation of a policy that establishes and/or strengthens good migration governance requires cooperation between more than two countries to strengthen relationships to achieve common objectives. Encouraging this cooperation can result in appropriate national-level policy formulation. Enforcement remains a strong challenge.

This increasing complexity renders bilateral negotiations less effective and more tilted toward labor-receiving countries, which can seek different “suppliers” if the terms are not favorable. As a result, many more actors at the supranational or regional and global levels have joined in (Pannizon 2010: 3), even though there is little consensus to create legal instruments that could raise domestic alarms about ceding sovereignty.

With many different aspects to this phenomenon, identifying a comprehensive migration management strategy that can deliver a “three wins” situation remains elusive (*ibid*). At the international level, framework for managing the accelerating, globalizing, and diversifying migratory flows are few and remain highly fragmented, despite calls for more coherence (Betts 2008; *ibid*: 5). Major migration studies highlight the need for international communities to work in order to assist states in dealing with migration challenges through regional and international forums.

Receiving and sending countries have created numerous forms of bilateral and multilateral agreement to regulate labor migration. In South Asia alone, more than 47 Memorandum of Understandings were signed. However, problems in international migration, including a fear of losing competitiveness, prevent the “implementation” of social and protection services for migrants. This decreases the likelihood that migration will be a tool for international development.

International migration policy is fragmented and will remain so in the foreseeable future. A nation has to strike a delicate balance between competitiveness within the global market and the needs of migrants who enter or leave the country, as well as domestic constituencies. It is clear that global governance structures do not trump national sovereignty within the context of international migration. This is self-evident, as the global governance instrument most enthusiastically embraced by different governments is the non-binding initiative that ensures that bilateral agreements remain the norm, as opposed to binding standards created through a multilateral process. Global governance will only be a tool to encourage positive change in the way in which labor-receiving countries treat migrants if labor-sending countries are able to find common standards, which they demand be applied. As long as the labor-sending countries remain fragmented, it will remain easy to keep them divided and focused on competing against each other, rather than raising standards collectively.

Although multiple venues are utilized, the regional consultative processes allow different states to freely suggest different solutions to migration challenges without setting inflexible precedents, which may not be domestically palatable or perceived as reducing the competitiveness of one’s labor force. The declarations that follow these initiatives tend to lack any regulatory framework to measure implementation. More important, effectively building off the policy recommendations produced from these processes requires a domestic consensus to create legislation and a capacity to enforce the legislation. A convergence of strong national policy and an administrative capacity to enforce the policy, with diplomatic initiatives to shape the bilateral agreements, is required to more adequately protect the rights of migrants, particularly those filling semi-skilled and unskilled labor positions.

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