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Martin Ruhs

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Ruhs, Martin

ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford

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# Migrant rights, immigration policy and human development

Martin Ruhs\*

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Martin Ruhs is Senior Researcher for the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. E-mail: [martin.ruhs@compas.ox.ac.uk](mailto:martin.ruhs@compas.ox.ac.uk).

Comments should be addressed by email to the author(s).

# Abstract

This paper explores the potential impacts of the rights of migrant workers (“migrant rights”) on the human development of actual and potential migrants, their families, and other people in migrants’ countries of origin. A key feature of the paper is its consideration of how migrant rights affect both the capability to move and work in higher income countries (i.e. the access of workers in low-income countries to labour markets of higher-income countries) and capabilities while living and working abroad. The paper suggests that there may be a trade-off between the number and some of the rights of low-skilled migrants admitted to high-income countries and explores the implications for human development.

Keywords: Migrant rights, immigration policy, human development, global labor markets.

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## 1 Introduction

The rights of migrant workers (“migrant rights”) play an important role in shaping the outcomes of migration for migrants and non-migrants in sending and receiving countries. For example, whether or not migrants enjoy the right to free choice of employment in the receiving country’s labour market is likely to affect their earnings, remittances, and competition with local workers. Migrant rights can also influence the decisions and opportunities of individuals or households to migrate to particular countries. Rights to settlement and family reunion, for example, may be an important factor in the choice of destination. They may also affect how easy or difficult it is to be legally admitted to particular countries and therefore help shape global migration flows and patterns.

Most academic studies and policy debates on “migration and development” have paid relatively little attention to the role of migrant rights. Discussions of the economic and developmental effects of international labour migration on migrants and their countries of origin (see, for example, World Bank 2005) have been largely disconnected from debates about rights which are typically based on legal and moral considerations about socio-economic and political vulnerabilities of non-citizens living abroad (see, for example, Taran 2000). The recent discussions at the Global Forum of Migration and Development in Brussels (2007) and Manila (2008) are important exceptions. The main theme of the forum in Manila was “how the contribution of migrants to development taken in its widest context, can be enhanced by making the protection of their rights a shared responsibility of origin and host societies” (Abella 2008, p.1). To further develop this important debate, there is an urgent need for more conceptual and empirical analysis that explicitly links and studies the inter-relationships between migrant rights and development.

The aim of this paper is to conceptualise and explore the potential impacts of migrant rights on the human development of actual and potential migrants, their families, and other people in migrants’ countries of origin. A key feature of the paper is its consideration of how migrant rights affect both the *capability to move and work in higher income countries* (i.e. the access of workers

in low-income countries to labour markets of higher-income countries) and *capabilities while living and working abroad*. The paper suggests that there may be a trade-off between the number and some of the rights of low-skilled migrants admitted to high-income countries and explores the implications for human development.

Building on Ruhs and Martin (2008), the discussion focuses on international *labour migration* and the rights of migrant *workers*. It links different strands of literature on migrant rights, migration impacts, immigration policy and human development. Much of the discussion will be conceptual but arguments are supported by empirical examples and short illustrative case studies. The paper is intended as a “think-piece” that provides a conceptual framework for discussing important but so far largely ignored questions about the relationship between migrant rights and human development. The impacts of immigration and migrant rights on the human development of residents of migrant-receiving countries will not be considered.

The paper is structured as follows. Section 2 briefly discusses the concepts of human rights, citizenship rights and human development. The focus is on basic definitions, key features and inter-dependencies that are relevant to this paper. I argue that, rather than considering them in isolation, migrant rights are – and should be analysed as – a core component of nation states’ immigration policies. The analysis of the effects of migrant rights on human development thus needs to consider potential inter-relationships with other migration policy components, including especially the number and selection of migrants admitted, and consider the overall effects of particular “immigration policy regimes” on human development. To facilitate such analysis, Section 3 proposes a simple typology of immigration policy regimes, characterised and differentiated by how they regulate the number, selection and rights of migrants. It discusses, at a conceptual and empirical level, the relationships between the number, selection and rights of migrants admitted under different regimes. In light of this analysis, Section 4 then explores how migrant rights impact on the human development of actual and potential migrants, their families and other people in migrants’ countries of origin.



## 2 Concepts: Human rights, citizenship rights and human development

### 2.1 Migrant rights as human rights

At the risk of simplification, it is useful to distinguish between two overlapping yet in many ways distinct approaches to conceptualising and discussing migrant rights. The first approach, commonly adopted by international organisations, NGOs and others concerned with the protection of rights, is to view migrant rights primarily as human rights (see, for example, NGO Committee on Migration 2008). The key features and principles of human rights include: *universality*, i.e. they apply everywhere and to everyone (including migrants); *indivisibility*, i.e. there is no hierarchy of rights and certain types of rights cannot be separated from others; *inalienability*, i.e. human rights cannot be denied to any human being, nor can they be given up voluntarily; and *equality and non-discrimination*, i.e. all individuals are equal as human beings.<sup>1</sup> Human rights derive from a “common humanity” and the “inherent dignity of each human person” rather than from citizenship of a particular country.

The legal and normative basis of this approach comprises various international human rights treaties and separate legal instruments that specifically relate to migrants (for overviews of the international human rights framework for migrants, see, for example Cholewinski 1997; Aleinikoff and Chetail 2003; and Grant 2005). The three most significant international legal instruments that specifically address the rights of migrant workers are the UN’s *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (MWC, adopted in 1990) and the ILO’s *Migration of Employment Convention* (1949) and the *Migrant Workers (Supplementary Provisions) Convention* (1975). Together with the more general human rights treaties, these instruments set out a very comprehensive set of rights for migrants, including the right to equal protections under labour laws, anti-discrimination laws and family laws (for an overview, see Weissbrodt 2003; ILO 2004). The MWC in particular has become a cornerstone of the rights-based approach to migration advocated by many international

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<sup>1</sup> A longer list and explanation of key human rights principles can be found in the *UN Common Understanding on the Human Rights Based Approach to Development* (UNDG 2003).

organisations and NGOs concerned with the protection of migrant workers. It sets out a very broad set of rights for migrants, including those living and/or working abroad illegally.

In practice, the ratifications of the MWC and ILO conventions on migrant workers by state parties have been very disappointing (see Tables 1 and 2 below), in both absolute terms (i.e. considering the total number of UN and ILO member states) and in relative terms (i.e. compared to the ratifications of other human rights treaties and ILO conventions). The MWC is the least ratified treaty among all major human rights treaties. It has a quarter of the ratifications of the Convention on the Rights of the Child (passed a year before the MWC) and also fewer ratifications than the Convention on the Rights of Persons with Disabilities (passed 16 years *after* the MWC). The few countries that have ratified migrant worker conventions are predominantly migrant-sending rather than migrant-receiving countries.<sup>2</sup> Despite having signed general human rights treaties, nation states, especially major immigration countries, are clearly reluctant to ratify international conventions that limit their discretion and ability to restrict the rights of migrants living and working on their territories.

*Table 1: Ratifications of principal international human rights treaties (as of 2008)*

UN human rights Treaties (year)	CERD (1965)	CCPR (1966)	CESCR (1966)	CEDAW (1979)	CAT (1984)	CRC (1989)	MWC (1990)	CRPD (2006)
State parties	173	163	159	185	145	193	39	41

CERD = International Convention on the Elimination of All Forms of Racial Discrimination;

CCPR = International Covenant on Civil and Political Rights;

CESCR = International Covenant on Economic, Social and Cultural Rights;

CEDAW = Convention on the Elimination of All Forms of Discrimination Against Women;

<sup>2</sup> As of October 2008, the MWC has been ratified by Albania (2007), Algeria (2005), Argentina (2007), Azerbaijan (1999), Belize (2001), Bolivia (2000), Bosnia and Herzegovina (1996), Burkina Faso (2003), Cape Verde (1997), Chile (2005), Colombia (1995), Ecuador (2002), Egypt (1993), El Salvador (2003), Ghana (2000), Guatemala (2003), Guinea (2000), Honduras (2005), Jamaica (2008), Kyrgyzstan (2003), Lesotho (2005), Libvan Arab Jamahitiya (2004), Mali (2003), Mauritania (2007), Mexico (1999), Morocco (1993), Nicaragua (2005), Paraguay (2008), Peru (2005), Philippines (1995), Senegal (1999), Seychelles (1994), Sri Lanka (1996), Syrian Arab Republic (2005), Tajikistan (2002), Timor-Leste (2004), Turkey (2004), Uganda (1995), and Uruguay (2001).

CAT= Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

CRC = Convention on the Rights of the Child;

MWC =International Convention on the Protection of All Migrant Workers and Members of their Families.

CRPD =Convention on the Rights of Persons with Disabilities

The UN has 192 member states.

Source: [www.unhchr.ch](http://www.unhchr.ch) accessed on 26 Nov 2008

Table 2: *Ratifications of ILO fundamental conventions and migrant worker conventions (as of Dec 2008)*

<i>ILO conventions</i>	<i>Freedom of association and collective bargaining</i>	<i>Elimination of forced labor</i>	<i>Elimination of discrimination in employment and occupation</i>	<i>Abolition of child labor</i>	<i>Abolition of Migrant Workers</i>					
<i>Convention number (year)</i>	87 (1948)	98 (1949)	29 (1930)	105 (1957)	100 (1951)	111 (1958)	138 (1973)	182 (1999)	97 (1949)	143 (1975)
<i>Number of ratifications by countries</i>	149	159	173	171	166	168	151	169	48	23

*Note: The ILO has 182 member states.*

Source: See [www.ilo.org](http://www.ilo.org) accessed on 1 Dec 2008

The most cursory review of the rights of migrant workers around the world confirms that the majority, and especially those working in low-waged jobs, enjoy very few of the rights stipulated in international conventions. For example, under most existing temporary migration programmes in North America and Europe, migrants have neither the right to free choice of employment nor the access to welfare benefits that citizens and long-term residents typically enjoy. In many of the

Persian Gulf States in the Middle East, which have long admitted significant numbers of migrant workers, the protections of local labour laws do not apply to certain types of migrant labour. In Singapore, another major employer of migrant workers, migrants working in low-waged jobs are officially prohibited from co-habiting with, or getting married to, a Singaporean citizen. Illegally resident migrants, whose global numbers are substantial, have very few rights regardless of what country they are working in (with very few exceptions).

The gap between the comprehensive set of rights stipulated by the international human rights framework and on the one hand, and the rights that most migrant workers enjoy in practice on the other, should not be taken as a reason for rejecting the human rights approach as ineffective. Even if they are not ratified, international migrant rights treaties can play an important political and strategic role. For example, Wexler (2007) argues that they can influence non-binding regional processes, contribute to the development and dissemination of best practices, and help produce and codify a human rights discourse. Sen (2004) argues that human rights can be viewed as important ethical demands (rather than direct legal claims and commands) that highlight the significance of considering the freedoms of human beings. Nevertheless, the low levels of ratification and the discrepancy between migrant rights in human rights treaties and practice do point to the importance of paying attention to the role and interests of nation states. Many immigration countries that accept the idea of human rights (which are meant to apply to all people) clearly do not accept that these rights should also apply to migrants living on their territories. Migrant rights cannot, therefore, be comprehensively analysed and debated without a discussion of citizenship and the role and interests of the state in granting and restricting migrant rights.

## ***2.2 Migrant rights as citizenship rights***

Citizenship is a complex concept that can be conceptualised and discussed in various different ways. One can distinguish, for example, between citizenship as formal status and substantial rights, legal status and practice, positive and normative uses, and, more generally, between “think” and “thick” conceptualisations (see, for example, Baubock 2001; Castles and Davidson

2000). In recent years, there has also been increasing debate about the “location” of citizenship and citizenship rights. Although most conceptualizations are still based on the nation state, scholars have analysed “transnational citizenship”, “global citizenship”, “post-national citizenship”, and “cosmopolitan citizenship” (see Bosniak 2006). There is also discussion about whether human rights can and should be seen as universalised citizenship (e.g. Baubock 1994).

For the purpose of this paper, it is useful to view citizenship as a legal status that links individuals to states and that is associated with certain citizenship rights and duties (i.e. a “thin” conceptualisation of citizenship based on legal positivism). Citizenship rights may be broadly divided into civic, political and social rights (Marshall 1965) and/or classified into more detailed categories such as economic rights, cultural rights and gender rights (see Castles and Davidson 2000). Although their control over immigration is inevitably incomplete (see, for example, Joppke 1998), nation states have significant power to regulate access to citizenship and citizenship rights. This is reflected in the fact that the requirements and processes by which citizenship is acquired, and the rights and duties associated with citizenship status, vary significantly both across and within countries over time (for a recent review of citizenship policies in the EU countries, see Baubock et al 2006a, 2006b, 2006c).

Migrants without citizenship status in the host country are an important and growing group of residents in many countries who do not enjoy full citizenship rights (“quasi-citizens” or “denizens”, Hammar 1990). The immigration and integration policies of nation states typically result in highly differentiated rights between citizens and various types of non-citizens. Most countries make significant distinctions, for example, between the rights of migrants with permanent residence status (who usually enjoy most of the rights of citizens except for the right to vote); temporary migrants (whose economic and social rights are often restricted); and illegally resident migrants (who typically enjoy few rights in most countries). Further distinctions and restrictions of rights based on the migrant’s specific citizenship (e.g. member states of the European Union grant other EU nationals more rights than non-EU nationals) and purpose of residence (e.g. work, study, join family, asylum) are common and often contribute to highly complex immigration systems. For example, until recently the UK’s immigration policies

distinguished between over 80 different types of immigration status, each of which was associated with different rights and restrictions in the UK (see Ruhs and Anderson 2008).

The conceptualisation of migrant rights as citizenship rights that primarily derive from nation states suggests that, to understand why and when a particular country grants or restricts the rights of different groups of migrants, it is necessary to analyse the potential economic interests as well as political traditions, social structures and cultural understandings (Baubock 1994) that may underlie immigration policy and public policy decisions more generally.

Given this approach, a key argument and starting point of this paper is that the rights of migrant workers are – and should be analysed as – one of the three core components of labour immigration policy. At its core, the design of labour immigration policy requires nation states to make three fundamental decisions: (i) how to regulate the *number* of migrants to be admitted (e.g. through quotas or points-based systems); (ii) how to *select* migrants (e.g. by skill and/or nationality); and (iii) what *rights* to grant migrants after admission (e.g. temporary or permanent residence). The analysis of the effects of migrant rights on human development thus needs to consider potential inter-relationships with other migration policy components, including especially the number and selection of migrants admitted, and consider the overall effects of particular “immigration policy regimes” on human development.

### ***2.3 Human Development***

Building largely on the work by Amartya Sen (1980, 1999), human development can be defined as a process of “enlarging people’s choices and enhancing *human capabilities* (the range of things people can be and do) and *freedoms*, enabling them to: live a long and healthy life, have access to knowledge and a decent standard of living, and participate in the life of their community and decisions affecting their lives”.<sup>3</sup> In Sen’s words, capability “represents the the various combinations of functionings (beings and doings) that the person can achieve” (Sen 1992, p.40).

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<sup>3</sup> UNDP, ‘Origins of the Human Development Approach, <http://hdr.undp.org/en/humandev/origins/> , accessed on 2 December 2008

A capability-approach is “people-centred” in the sense that it focuses on agency and choice. As Sen explains, “capability concentrates on the opportunity to be able to have combinations of functionings ..., and the person is free to make use of this opportunity or not. [...]. The Term freedom, in the form of capability, is used here to refer to the extent to which the person is free to choose particular levels of functionings ..., and that is not the same thing as what the person actually decides to do” (Sen 2005, p. 155-156).

The concept of human development is inherently multi-dimensional (see the discussion in Alkire 2002). Theoretical discussions and empirical applications of the human development approach have identified various different dimensions of well-being and development. Nussbaum (2000), for example, lists central human functional capabilities related to life, bodily health, bodily integrity, senses, imagination, thought, emotions, practical reason, affiliation, other species, play and control over one’s environment. A World Bank study of how poor people perceive and experienced poverty distinguished between material, bodily, social, psychological, emotional well-being, security and freedom of choice and action (Narayan et al 2000).<sup>4</sup> Although Sen has not followed others in trying to identify a definite list of capabilities that is universally applicable, he has highlighted the importance of basic capabilities such as “the ability to move about”, “the ability to meet one’s nutritional requirements”, “the wherewithal to be clothed and sheltered”, and “the power to participate in the social life of the community” (Sen 1980, p. 218).

However the dimensions of human development are defined in a particular study, it is clear that they include but necessarily go beyond traditional economic measures of material well-being such as income and economic welfare. Human development can also take account of some – but not all – of the issues and freedoms that are addressed by a human rights approach. As discussed in a previous Human Development Report (2000), the idea of human development shares a common motivation with human rights. Both approaches “reflect a fundamental commitment to promoting the freedom, well-being and dignity of individuals in all societies” (UNDP 2000, p. 19). Despite their basic compatibility, however, it is important not to conflate human development with human rights. As Sen (2005) points out, although it can support many human rights, the capability

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<sup>4</sup> Alkire (2002) provides a useful comparative discussion of the various dimensions of human development identified in different studies.

approach cannot adequately take account of “process freedoms” such as the right to “due process” in legal proceedings.

A key feature of the human development approach, which is particularly important in the context of this paper, is its explicit recognition of the possibility of conflicts and trade-offs between different dimensions of development (or between different components of capability) and the consequent need to engage in “public debate and reasoning” about how to value and prioritise competing capabilities and objectives.<sup>5</sup> Sen explains,

*“..one of the uses of the capability approach is to bring out the need for transparent valuational scrutiny of individual advantages and adversities, since the different functionings have to be assessed and weighted in relation to each other, and the opportunities of having different combinations of functionings also have to be evaluated” (Sen 2005, p. 157)*

The emphasis on the need for valuation and public debate of potential trade-offs distinguishes the human development approach from both traditional economic approaches that focus on income as the only measure of well-being, and from human rights approaches that consider rights indivisible and therefore find it more difficult to engage in debate about trade-offs and priorities<sup>6</sup>. As the UNDP’s report on human rights and human development argues:

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<sup>5</sup> The concept of “decent work”, which has informed the recent work of the International Labour Organisation (ILO), is similar in its emphasis of the multi-dimensionality and potential trade-offs between different dimensions of labour market outcomes for individuals. For example, Martin Godfrey’s (2003) discussion of decent work explicitly mentions the potential trade-offs between the quantity and quality of work available.

<sup>6</sup> It is important to emphasise, however, that human rights scholars and activists have discussed the priority of some rights over others. For example, despite the principle of indivisibility, there has been debate about whether economic and social rights (which are sometimes described as “second-generation rights”) are of a different order than civil and political rights (“first-generation” rights). Much of this debate revolves around the justiciability of economic and social rights (see, for example, Dennis and Stewart 2004; and Christiansen 2007). There have been important recent developments that suggest an increasing recognition of the fundamental nature of socio-economic rights as human rights. For example, the UN’s Human Rights Council recently adopted the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (2008), which allows individuals to bring complaints about violations of their economic, social, and cultural rights to the attention of the Committee on Economic, Social & Cultural Rights.



*“Human rights advocates have often asserted the indivisibility and importance of all human rights. This claim makes sense if it is understood as denying that there is a hierarchy of different kinds of rights (economic, civil, cultural, political and social). But it cannot be denied that scarcity of resources and institutional constraints often require us to prioritize concern for securing different rights for the purposes of policy choice. Human development analysis helps us to see these choices in explicit and direct terms” (UNDP 2000, p.23)*

In the context of the effects of migration and migrant rights, the capability approach is particularly useful because it can distinguish, and requires critical discussion of potential conflicts, between: (i) the capability to move and work abroad (i.e. capabilities before migration); and (ii) the capabilities while working and living abroad and, if applicable, after return (capabilities after emigration). This distinction is, I argue, critical to exploring the relationship between migrant rights and human development.

### **3 Numbers vs rights: Towards a typology of policy regimes for low-skilled immigration**

This section discusses, at a conceptual and empirical level, the relationship between the number, selection and rights of migrants in high-income countries. The conceptual analysis is largely (but not exclusively) based on economic considerations. It highlights the key difference between high and low-skilled immigration and then focuses on exploring the relationship between the number and rights of migrants working in low-skilled jobs in high-income countries. The analysis suggests three economic reasons – one to do with the characteristics of the supply of migrant labour and the nature of competitive labour markets, the other two with the economic interests and policies of high-income countries – why there could be a negative relationship (a trade-off) between the number and rights of low-skilled migrant workers. In light of this analysis, I propose a simple typology of policy regimes for regulating low-skilled immigration and provide illustrative empirical examples.

### ***3.1 The economics of regulating the numbers and rights of migrant workers***<sup>7</sup>

Economic considerations suggest that we can expect an important asymmetry in the relationship between the numbers and rights of high-skilled and low-skilled migrants. Highly skilled migrants are relatively scarce in the global economy. A significant number of high income countries with a high and increasing demand for skills are competing for a relatively small pool of highly qualified workers willing to migrate. As a result, qualified migrants are able to choose among competing destinations, and their choice of destination is likely to depend on both expected earnings and expected rights in destination areas. Countries that offer relatively few rights to highly skilled migrants can be expected to receive relatively small numbers of migrants and *vice versa*. We can thus expect to see a positive relationship between the relative number and rights of highly skilled migrants in practice. Various empirical examples support this argument.

For example, Canada and Australia, two countries that have long been successful at attracting skilled migrants, grant qualified migrants permanent residence and the associated comprehensive set of rights immediately upon arrival (*see*, for example, Richardson and Lester, 2004). The UK's Highly Skilled Migrant Programme (HSMP), introduced in 2002 and recently converted into Tier 1 of the UK's new points-based system for managing immigration, aims to attract highly qualified migrants by offering them the opportunity to migrate to the UK without a job offer and the right to apply for permanent residence after five years of residence in the UK. Take-up of the HSMP increased from less than 5,000 in 2002 to over 20,000 in 2006 (Migration Advisory Committee 2008). In contrast, Germany's "Green Card" program for attracting IT workers from abroad offered a five-year work permit without a clear path to permanent residency status, and attracted significantly fewer than the 20,000 visas offered (for a discussion, *see* Kolb, 2005).<sup>8</sup>

In contrast, the relationship between the number and rights of low-skilled migrants in high-income countries is likely to be negative (i.e. characterized by a trade-off). There is an almost unlimited supply of potential migrants in low-income countries willing to accept low-skilled jobs

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<sup>7</sup> The discussion in this section builds on Ruhs and Martin (2008).

<sup>8</sup> Following the failure of the Green Card system to attract significant numbers of highly skilled migrants, Germany passed a new immigration law in 2004 that provides for unlimited residence permits for highly qualified migrants and their families.

in higher-income countries at wages, employment conditions and rights that are significantly lower than those mandated by local laws and international norms. Migrants may not demand equal treatment in the labor markets of higher-income countries, especially if they are recently arrived (“new” migrants), plan a limited and relatively short spell of employment abroad and/or consider the wages and employment conditions in the labour markets in their countries of origin as their primary “frame of reference” (Piore, 1979). The “excess” supply of low-skilled migrant labour means that employers in high-income countries can increase the employment and at the same time reduce the wages and rights of low-skilled migrants.

Employers face a downward sloping demand curve for labour, meaning that, *ceteris paribus*, higher labour costs will be associated with fewer workers employed. Certain employment rights for workers – such as the right to minimum wage, work-related benefits and health and safety standards – increase labour costs for employers, thus generating a numbers–rights trade-off. In other words, employers’ demand curve for labour is downward sloping with regard to certain rights. The trade-off between the rights and number of employed workers is familiar, as when employers oppose minimum wage increases because they assert that higher labor costs will mean fewer jobs. The analogy to migrants’ rights is clear: if migrants have all the economic and social rights laid out in ILO and UN conventions, including the right to equal wages and all work-related benefits, their cost to employers will be higher and fewer will be employed. On the other hand, more limited migrant rights may mean lower costs for employers and more migrants employed. In this sense, increasing the rights of migrants can affect their employment in the same way that a higher minimum wage can reduce the number of jobs (for all workers, not just migrants). Of course, it needs to be added that not all rights create significant costs for employers. Nevertheless, it is clear that some rights do create costs and that *significant* increases in labor costs will, *ceteris paribus*, encourage profit-maximizing employers to reduce the number of jobs on offer.

The numbers–rights trade-off described above rests entirely on the rational behavior of employers and workers, and can be expected to hold in any competitive labor market. If the state stipulates a relatively high set of employment rights for low-skilled migrants, employer demand – and thus

the number of migrants legally employed in low-skilled jobs – can be expected to be lower than what it would be if migrants had fewer rights.

There may also be two other economic factors, stemming from the interests and policies of the state rather than the actions of employers and workers, that help to generate a negative relationship between the number of low-skilled migrants and their rights in high-income countries. The first of these factors relates to the fiscal effects of immigration. The net fiscal impact of immigration, i.e. the difference between the taxes that migrants pay and the costs of public services and benefits that migrants consume, largely depend on: migrants' age, earnings, and eligibility for and take-up of government benefits and services; the nature of the welfare system, especially the extent to which it redistributes income from high- to low-income earners; and how immigration affects non- migrants' contribution to and use of the welfare state, e.g. through positive or negative impacts on employment rates of non-migrants (see, for example, Rowthorn 2008). Everything else being equal, low-skilled migrants employed in low-waged jobs can be expected to pay fewer taxes and be eligible for more welfare benefits than the average resident of high-income countries. There is empirical research that suggests that the net-fiscal effects of low-skilled migrants are negative (see, for example, Smith and Edmonston 1997<sup>9</sup>; Storesletten 2000). In order to minimize the fiscal costs of low-skilled migrants for existing residents, high-income countries may therefore be expected to limit migrant numbers or their access to welfare benefits.

The labour market and income effects of low-skilled immigration may create another incentive for states to admit or increase the number of low-skilled migrants only if some of their rights can be restricted. As discussed in Ruhs (2008), if the policy objectives are to maximise the economic benefits and minimise adverse impacts on the lowest paid among existing residents, high income-countries have economic incentives to admit low-skilled migrants on a temporary rather than permanent basis and restrict their employment to carefully selected sectors and/or occupations of the host economy's labour market. These are sectors and/or occupations where it is genuinely

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<sup>9</sup> Smith and Edmonston's (1997) assessment of the long-term fiscal impacts of immigration in the US concludes that the net present value of the fiscal impact of an immigrant with less than high school education is -\$13,000 while that of an immigrant with more than high school education is +\$198,000.

difficult or impossible to address staff shortages by raising wages and/or alternative mechanisms such as adopting less labour intensive production methods in the short run; and/or where there is evidence that the costs of lower wages (or lower wage growth) that some resident workers incur because of immigration are outweighed by the benefits the resident population derives from the lower prices of commodities and services that are produced/provided by migrants. Limiting low-skilled migrants' length of stay and restricting their right to free choice of employment can thus be important to the objective of maximizing the overall economic benefits of immigration for existing residents while protecting lowest-paid residents, and this may be reflected in high-income countries' labour immigration policies.<sup>10</sup>

Taken together, these three factors – (i) the excess supply of low-skilled migrant labour and the downward sloping labour demand curve with respect to some rights; (ii) the fiscal effects of immigration; and (iii) the labour market and income effects of immigration on existing residents of high-income countries – provide an economic basis for expecting to observe a trade-off between the number and some of the economic and social rights of low-skilled migrant workers in high-income countries in practice. To avoid unintended confusion and at the risk of stating the obvious, it is worth making two clarifying remarks about this hypothesis.

First, it is important to emphasise that economic considerations are not necessarily the only factor that determine the relationship between the number and rights of migrant workers in high income countries. In practice, nation states' interests and policies on labour immigration may be determined by a range of economic, social, political and moral considerations. For example, states that make egalitarianism and/or compliance with international human rights norms key components of their national identity may be reluctant to restrict migrant rights. Restricting migrants' rights may also generate significant social costs, especially if the restrictions are long term and lead to the emergence of a large group of “second-class residents.” Furthermore, as shown by a rapidly increasing political science literature on the determinants of immigration policy (see, for example, Freeman and Kessler 2008; Meyers 2007), national policy may not always be “rational” and based on a clear set of objectives of maximising certain economic or

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<sup>10</sup> To avoid undercutting in the labour market, however, it will be in the economic interest of high-income countries to grant migrants all other employment rights enjoyed by resident workers.

other national interests. Policy decisions could instead be the outcome of negotiations, power struggles and compromises made among different actors (e.g. different government departments) within the state bureaucracy. Alternatively, immigration policy may be driven by interests groups and “client politics” (see, for example, Freeman’s classic 1995 paper on the “modes of immigration politics”). The role of economic considerations in labour immigration policy is essentially an empirical question that is likely to vary across countries and over time. Nevertheless, it is reasonable to expect economic considerations to play at least some role in the design of policies for admitting migrant *workers*. Policies that lead to sustained fiscal losses or significant adverse impacts on low-paid residents are often politically unpopular and may be unsustainable in the long term.

Second, by suggesting the theoretical possibility of a trade-off between the number and rights of low-skilled migrant workers in high-income countries, I am not arguing or assuming that it is normatively desirable to restrict migrant rights. What I am saying is that there are economic effects and mechanisms which suggest that we may observe an inverse relationship between the number and rights of low-skilled migrants in practice. If this is so – an open empirical question that I begin to explore below – it is an important consideration to take into account when discussing the effects of migrant rights on human development.

### ***3.2 Empirical examples of different policy regimes for regulating low-skilled labour immigration***

There are numerous empirical examples that support the hypothesis of a trade-off between the number and rights of low-skilled migrant workers in high-income countries. Depending on how exactly rights and numbers are balanced, it is possible to identify three policy-regimes for low-skilled immigration: (i) high numbers and few rights; (ii) low numbers and comprehensive rights; and (iii) a balance of numbers and rights that falls between the extremes of (i) and (ii). This section briefly discusses selected empirical examples of these different regimes and tentatively explores the reasons for restricting rights under each regime. The discussion is based on current and past experiences and policies in different countries. How numbers and rights are balanced in a

particular country may of course change over time. The focus of the brief discussion below is on identifying different regimes rather than on systematically analysing the determinants of policy choices in different countries. In practice, immigration policy regimes are likely to be related to wider economic and social policies as well as to the political system and structure.

Typologies and analysis of “regimes” have been extensively used in various fields of social science including, for example, in the comparative analysis of: social policy and welfare states (e.g. Esping-Andersen 1990); labour market and employment policies (e.g. Schmid 1997); monetary policy (e.g. Mishkin 1999); political regimes and forms of government (Alvarez et al 1996); international rules, institutions and governing arrangements (e.g. Krasner 1982); and the social rights of migrants (Sainsbury 2006). I use the term “regime” simply to distinguish between different approaches to regulating low-skilled labour immigration in high-income countries. The typology of regimes proposed below is preliminary and meant as a starting point for further discussion and more systematic empirical analysis of the prevalence, determinants and effects of different approaches to regulating labour immigration and restricting migrant rights. Typologies are not a goal in itself but a means of helping represent reality (Klant 1984). Arts and Gelissen (2002) argue that typologies are particularly useful to empirical analysis that is still in its infancy. This clearly applies to the analysis of the relationship between the number, selection and rights of low-skilled migrants in high-income countries.

### ***High numbers, few rights: GCC countries***

The most extreme examples of countries operating high numbers-few rights labour immigration policies are the oil-rich Gulf Cooperation Council (GCC) States (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). Following Europe and the US, the GCC states are today the third most important global destination for migrants. As shown in Table 3 below, the GCC states hosted almost 13 million migrants in 2005, more than 50 percent more than in 1990, and representing over a third of the GCC population in 2005. This is substantially higher than the share of migrants in Europe (9 percent) and Northern America (14 percent). Since the labour

market participation rates of migrants are much higher than that of GCC citizens, the share of migrants in the GCC labour force significantly exceeds their population shares. According to the latest figures available, foreign nationals account for 90 percent of the labour force in the United Arab Emirates, 86 percent in Qatar, 81 percent in Kuwait, 71 percent in Oman, 59 percent in Bahrain and 50 percent in Saudi Arabia<sup>11</sup> (DESA 2006, p.16). Although doing all kinds of high and low-skilled work, the majority of migrants in GCC countries are employed in medium and low-skilled jobs, especially in the private sector where, in some countries, very few citizens are employed. In Kuwait, for example, migrants constitute over 90 percent of the private sector workforce (Kuwait Institute of Banking Studies, 2006). The majority of migrants working in GCC countries are from Asian countries, a change from the early 1980s when the majority originated from Arab countries (see Kapisiewiczski 2006). The five Asian countries sending most migrant workers to the Gulf are the Philippines, India, Pakistan, Bangladesh and Sri Lanka. Egypt and Yemen remain major senders among Arab countries. Women constitute about a third of all migrants working in GCC countries, a low share compared to other high-income countries. Female migrants in the GCC countries are mainly employed in the domestic service sector, care giving and health care (DESA 2006).

Table 3: Number and share of migrants in population: GCC countries, Europe, Northern America and World, 1990 and 2005

	Migrant stock in thousands		Migrant stock as % of population	
	1990	2005	1990	2005
GCC	8,260	12,802	37.2	35.7
Bahrain	173	295	35.1	40.7
Kuwait	1,551	1,669	72.4	62.1
Oman	452	628	24.5	24.4
Qatar	370	637	79.1	78.3
Saudi Arabia	4,743	6,361	29.0	25.9

<sup>11</sup> Some of these figures date back to 2001.



United Arab Emirates	1,330	3,212	71.2	71.4
Europe	49,381	64,116	6.9	8.8
Northern America	27,597	44,493	9.7	13.5
World	154,945	190,634	2.9	2.9

Source: Trends in Total Migrant Stock: The 2005 Revision, UN Population Division

Labour migration to GCC countries is primarily regulated through the *kafala* (sponsorship) system which is essentially an employer-led, large-scale guest worker programme. Under this system, migrants require a *kafeel* to be given permission to enter and take up employment. *Kafeel* literally translates as sponsor but in practice *kafeels* are also expected to also be the employer of the migrant. To become a *kafeel* and employ migrant workers, GCC citizens or institutions need to make an application to the relevant public authority (e.g. in Kuwait, this is the Ministry of Social Affairs and Labour for workers in the private sector; and the Ministry of Interior for domestic workers). If the application is granted, the migrant receives a work permit that is temporary (e.g. two years in Kuwait) and, in most cases, renewable for an unlimited number of time. In most GCC countries, there is no opportunity to obtain permanent residence, even if a migrant has worked in the country on for many years (as it is often the case in practice). Family reunion is possible but fairly restricted. In Kuwait, a working wife cannot sponsor a husband as a dependent, while a male migrant worker can sponsor wife and children only if he earns a minimum monthly salary which is set at a level that means that, in practice, only a minority of migrant workers are eligible to apply for dependent visas (see Shah 2005). Since migrants are primarily considered as temporary workers, integration policies and projects are largely absent in GCC countries (Fargues 2006).

Migrants' access to welfare benefits and rights in the labour market and are significantly restricted. Access to welfare benefits and public services are often restricted to citizens. In the labour market, the work permit requires the migrant to work for their sponsor only. Mechanisms for filing grievances (e.g. in case of non-payment of wages) are very limited. Domestic workers are typically excluded from the protection of local labour laws (which often distinguish between

workers employed in the private and public sectors, with citizens mainly employed in the latter). However, even if domestic labour laws are applicable and fairly comprehensive (as it is the case with private sector labour law in Kuwait), they are in practice often not implemented as migrants are also, and apparently first and foremost, subject to immigration and residence law which gives the sponsor significant power over the migrant workers. One of *kafeels'* most significant means of exercising power over their migrant workers is the constant threat of dismissal, which leads to immediate deportation. It is common, for example, for sponsors to hold migrant workers' passports. Longva (1997, p.89) thus argues that "by making the expatriate workers entirely dependent on the *kafeel* for their residence and work permits, the Residence Law has barred many of them from the possibility of using the Labour Law's provisions to defend their legitimate rights". Although some GCC countries have recently begun to make efforts to grant migrants better protection (see the discussion in Baldwin-Edwards 2005), there have been numerous reports documenting the denial and abuses of migrant workers' rights – in some cases involving basic human rights violations – in GCC countries, especially (but not exclusively) of construction workers and domestic workers (see, for example, Human Rights Watch 2004). It is not uncommon for migrant workers from different countries to be paid different wages for the same work (ILO 2002). None of the GCC countries have ratified the two ILO conventions on migrant workers or the UN's 1990 MWC (also see Jureidini 2004).

As it is the case in most high-income countries, migrants working illegally have fewest rights. Although there are no figures, illegal working of migrants is thought to be considerable in GCC countries (Fargues 2006). The great majority of migrants working illegally in GCC states have entered legally and then either overstayed their temporary work permits or found themselves the victims of the illegal practice of "visa-trading" which often involves the sale of visas to migrants without actually offering a job (see Shah 2005).

What are the main reasons for the high number and significant restrictions on the rights of migrant workers in GCC states? The primary factor, I would argue, is economic. Since the dramatic increase in oil prices and revenues in 1973-74 and 1979, the *kafala* system, with its in-built discrimination between citizens and non-citizens, has provided a cheap migrant workforce that

has facilitated the low-cost provision of goods and services in the private sector (including domestic services) and the development and maintenance of a generous welfare state whose benefits and services are largely limited to citizens. This system has clearly been of significant short-term economic benefit to GCC citizens as employers in the private and domestic service sectors and as consumers of public services and products/services provided by the private sector. It has, however, also created long-term economic problems that have begun to be recognized in most GCC countries. Most importantly, there have been increasing concerns about disguised and open unemployment of GCC citizens who can no longer be absorbed in the public sector. Because of the almost complete segregation of the labour market, it has proved very difficult to increase the share of citizens employed in the private sector. Attempts to “localize” the workforce have been common across GCC countries in recent years (see Shah 2005). So far, they have had only limited success. According to Dito (2008, p.8), “extending social protection to include migrant workers will contribute toward leveling the gap between national and migrant workers.” In other words, granting more rights to migrants can be expected to result in lower numbers.

A second reason for the restriction of migrant workers’ rights in GCC countries stem from concerns about maintaining the national identity and national security, especially in countries with small populations and where citizens constitute a small minority of the population (e.g. in the United Arab Emirates and in Kuwait). The policy of strictly temporary migration with few or no opportunities to acquire permanent residence and citizenship has aimed at maintaining the identities of the citizen population without having to actively pursue policies of reducing the number of migrant workers. Recent policies aimed at localizing the workforce in GCC countries may, however, signal a policy change. In a 2005 survey of government views on the level of immigration, all GCC countries except for Bahrain expressed a preference for lowering immigration (DESA 2006).

#### *Low numbers, comprehensive rights: Sweden*

If the GCC states are at one end of the numbers-rights spectrum (high number - few rights for migrant workers), Sweden is located on the other end (low numbers – comprehensive rights).

With a population of just under nine million, Sweden has one of the world's most advanced social welfare states. It combines a liberal market economy with an extensive state-run welfare state. Most comparative analyses of social policy consider Sweden the archetypal "social democratic welfare state" (see especially Esping-Andersen 1990) that aims at universal coverage and rights and benefit equality. Most wages and employment conditions are determined by collective bargaining and, with most workers in unions, employment conditions generally adhere to industry-wide standards.

About 12 percent of Sweden's population is foreign-born (OECD 2008). However, only a small minority of Swedish immigrants have been admitted as migrant *workers*. With the exception of the period 1949-1971 when Sweden experienced labour immigration from Finland and Southern Europe, migration to Sweden has primarily consisted of asylum seekers and family members. Over the past 30 years, labour immigration from outside the common Nordic labour market has been minimal. Of the 42,000 non-Nordic nationals issued residence permits in 2005, only 13 percent were granted permits for the purpose of employment (Statistics Sweden website<sup>12</sup>). According to the OECD (2008), permanent-type labour migration from non-EEA countries was less than 400 persons per year in both 2005 and 2006.

Importantly, whenever Sweden has permitted permit labour immigration, migrants were given a comprehensive set of economic and social rights, According to the Migrant Integration Policy Index (British Council and Migration Policy Group 2007), Sweden ranks highest among EU member states in terms of rights granted to migrants in the labour market. Sweden's policy of granting migrants a comprehensive set of rights is long-standing and largely due to the strong role and influence of labour unions which are concerned about "social dumping" and adverse impacts on collectively agreed wages and employment conditions. For example, when Sweden recruited migrant workers from Yugoslavia and Greece to fill labour shortages in the 1960s, it admitted migrant workers as permanent residents and potential future citizens rather than as temporary guest workers as was the case in many other European countries at the time. The Swedish government cooperated closely with the trade union confederation to ensure that migrant workers

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<sup>12</sup> See [http://www.scb.se/templates/Publikation\\_162450.asp](http://www.scb.se/templates/Publikation_162450.asp) accessed on 8 December 2008

were not used as cheap labour and that labour immigration was only allowed if migrants were given same wages and rights as Swedes including unemployment benefits (Westin 2006).

More recently, Sweden was among only three countries of the EU 15 member states (Ireland and the UK were the others) to grant nationals of the ten countries acceding to the EU in May 2004 immediate free access to the Swedish labour market. As discussed in Tamas and Munz (2006), this decision was taken against the intention of the Swedish government which wanted to introduce transitional restrictions – to protect the labour market and social welfare system – but lost in a parliamentary vote. Sweden offered migrants from the new EU member states unrestricted access to the social welfare system. It also introduced a number of measures aimed at preventing immigration from undermining the effectiveness of existing labour market regulations and collective bargaining structures (Tamas and Munz 2006). These measures and the insistence of equality of rights with Swedish workers more generally, are a major reason why Sweden experienced very limited immigration of East Europeans despite its policy on unrestricted access to the labour market. Only 5,000 A8 nationals found jobs in Sweden in 2005. With equal rights and effective labour law compliance, there was little reason for employers to hire East European migrants to save money.<sup>13</sup>

The experience of the Latvian construction company *Laval un Partnery* is a good example illustrating the trade-off between the number and rights of migrant workers in Sweden. In May 2004, *Laval un Partnery*, acting through a subsidiary (L&P Baltic Bygg AB, registered in Sweden) posted workers from Latvia to work on the refurbishment of a school near Stockholm. Swedish unions protested because L&P agreed to pay its Latvian workers in Sweden the equivalent of €12 an hour. Swedish unions demanded that L&P pay the equivalent of €16, the wage negotiated for Stockholm-area construction workers, and blocked access to the work site when L&P refused. L&P sued to stop the union's action, lost in Swedish labour courts in late 2004, and subsequently left Stockholm (see the discussion in Woolfson and Sommers 2006; and Tamas and Munz, 2006). However, after L&P brought the case back to the Swedish labour court,

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<sup>13</sup> Another important reason for the relatively low number of A8 migrants in Sweden, compared to the UK and Ireland, may have been the Swedish language. Recent research has shown that the desire to learn English has been a major motivation of many A8 migrants coming to the UK and Ireland since EU enlargement (see, for example, Anderson et al., 2006).

it was eventually sent to the European Court of Justice (EJC). In December 2007, the ECJ ruled – to the great shock of Swedish trades unions - that the unions’ blockade and sympathy actions to combat social dumping against *Laval un Partneri* represented a restriction on the freedom to provide services. The ruling effectively restricted Swedish trade unions’ right to take industrial action to force foreign companies into signing collective agreements when operating in Sweden. It is now the responsibility of the Swedish Labour Court to adjust the ECJ’s ruling to national regulations. (European Industrial Relations Observatory website<sup>14</sup>)

Very recently, the Swedish government began to consider increased labour immigration of “vital importance to Sweden’s ability to meet both present and future challenges in the labour market” (Swedish Ministry of Justice 2008, p.1). In December 2008, new rules for regulating labour immigration from outside the EEA were introduced. These rules make it easier for employers to recruit migrant workers of all skill levels from outside the EEA, mainly because of the removal of the previous requirement that any application for a work permit for a non-EEA national needs to be approved by the Swedish Public Employment Service. However, compared to most other high-income countries, Sweden’s new labour immigration policies still put significant emphasis on ensuring that immigration does not undermine the maintenance of employment rights and conditions. Under the new rules, job vacancies must have been advertised in Sweden and the EU and the terms of employment must be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry. Furthermore, the relevant union must be given the opportunity to state an opinion on the terms of employment (Swedish Migration Board website<sup>15</sup>). All this is “to ensure that there is sound competition for jobs in the labour market and to avoid social dumping” (Swedish Ministry of Justice 2008, p.2). The temporary work permits are valid for two years and renewable. After 48 months, the employee will be eligible for a permanent residence permit.

Although it is too early to tell, Sweden’s new rules for regulating labour immigration from outside the EEA may signal a new policy approach that is less influenced by trades unions and that involves admitting greater number of migrant workers than in the past. Unions and their

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<sup>14</sup> See <http://www.eurofound.europa.eu/eiro/2008/01/articles/SE08010191.htm> accessed on 8 December 2008

<sup>15</sup> See <http://www.migrationsverket.se/english.jsp> accessed on 8 December 2008

economic interests appear to have been a major factor in determining Sweden's past policy of relatively low numbers but comprehensive rights for migrant workers. ). It is possible that EU enlargement and the new rules for labour immigration from outside the EEA will shift the numbers-rights balance in Sweden toward greater numbers and fewer rights for migrant workers.

*Balancing numbers and rights: protecting welfare systems and reviving temporary migration programmes*

Most liberal-democratic high-income countries strike a balance between the number and rights of migrant workers that falls between the two extremes of the GCC states on the one hand (large numbers, few rights) and Sweden on the other (few numbers, comprehensive rights). It is clear, however, that trade-offs are being made in various countries and that economic considerations are often the main motivation. The trade-offs are often most explicit with regard to the social rights (especially access to the welfare system) of migrant workers. For example, in 1996 the United States decided to keep legal immigration high by restricting access to means tested welfare benefits and adopting a "one-strike and you are out" policy toward immigrants who committed felony crimes. The Commission on Immigration Reform, reacting to the perceived cost of providing tax-supported services to immigrants that led to approval of Proposition 187 in November 1994 in California<sup>16</sup>, urged Congress to reduce immigrant admissions but maintain immigrant access to social safety net programmes (US Commission on Immigration Reform, 1995). Congress rejected this recommendation, and instead kept immigrant numbers high and reduced migrant access to benefits.<sup>17</sup> In his analysis of the politics of immigration control in the US, Tichenor (2002: 284) described this policy as

*"a triumph for free market expansionists, who allied with pro-immigration liberals to sustain unprecedented legal admissions with anti-immigrant conservatives to trim alien*

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<sup>16</sup> The purpose of Proposition 187 was to deny illegal aliens and their children welfare benefits, nonemergency healthcare, and public education. Proposition 187 was approved by voters in California but later declared unconstitutional by a federal court (see Tichenor, 2002).

<sup>17</sup> Migration News (1996) 'Welfare Overhaul and Minimum Wage Changes' Vol. 3, No. 4, September. Available at [http://migration.ucdavis.edu/mn/more.php?id=1022\\_0\\_2\\_0](http://migration.ucdavis.edu/mn/more.php?id=1022_0_2_0)

*substantive and procedural rights. The outcomes of 1996 suggested that large-scale immigration would flow into the United States uninterrupted for the foreseeable future, and that those who arrived would enjoy fewer membership rights until they acquired citizenship”.*

A similar trade-off between openness to immigration and migrant’s access to welfare rights could also be observed when the UK and Ireland opened their labour markets to workers from the new EU member states in May 2004. The right to freely take up employment in the “flexible” labour markets in Ireland and the UK was accompanied by increased restrictions on migrants’ access to unemployment and welfare benefits (see National Economic and Social Council of Ireland 2006; Ruhs 2007). This was because both countries were concerned, partly due to intense political pressure and a very heated public debate (especially in the UK), about “welfare migrants”, i.e. the potential danger of a large number of migrants coming to take up welfare benefits rather than work. More than one million East European migrants have moved and taken up employment in the UK and Ireland since May 2004, half of whom are thought to have since returned to their home countries (see Pollard et al. 2008; MAC 2008).

The (re-)introduction or expansion of temporary migration programmes (TMPs) for low-skilled workers in various high-income countries is another reflection of an increasingly common policy approach that involves a trade-off between the numbers and rights of low-skilled migrant workers. Temporary migration programmes increase the number of migrants working legally abroad but at the same time restrict the rights of migrant workers in various different ways. Although policy details vary across TMPs in different countries, and between TMPs for different groups of workers or sectors within countries, most programmes restrict migrants’ access to social welfare benefits, free movement in the labour market and often also to family reunion (for reviews and comparative analysis of TMPS for low-skilled workers in different countries, see, for example, Martin 2007; Ruhs 2006, 2003; and GAO 2006). TMPs are controversial because of the unanticipated consequences such programmes generated in the past (see, for example, Castles 2006). This included the non-return and eventual settlement of many guest workers, partly because some migrants illegally overstayed their temporary employment permits (as was the case



following the end of the *Bracero* programme in the USA in the early 1960s) or because migrants remained legally, and subsequently brought their families, because of rights acquired over time in the host country (the German experience in the 1970s). A number of economic measures and incentives have been proposed to minimize the risk of migrants overstaying their temporary employment visas (see, for example, Ruhs, 2006; Abella, 2006). Much of the recent discussion about new guest-worker programmes revolves around the feasibility and the normative implications of these measures and of the restrictions of migrant rights that are inherent to all such programmes.

It is interesting to note that, in addition to countries that have some experience with guest worker programmes in the past, TMPs for low-skilled workers are also becoming increasingly popular in countries that used to admit mainly skilled migrants on a permanent basis such as Canada, Australia and New Zealand. Canada, for example, recently expanded migration channels for temporary low-skilled migrants. The increase has been most pronounced in Alberta, where there were 22,000 temporary migrant workers in 2006, a 41 percent increase over the previous year. Most of this increase was accounted for by a significant rise in the work permits issued to low-skilled migrant workers. Work permits tied workers to a specific employer. Most migrants employed under Canada's new TMPs for low-skilled workers have taken jobs in cleaning, hospitality, manufacturing, oil and gas and construction (Elgersma 2007). Temporary migration programmes are also expanding in New Zealand, where the government started a bilateral Seasonal Labour Scheme for Pacific Islanders in 2007 (see IOM 2008, chapter 3; World Bank 2006).

#### **4 The effects of migrant rights on human development**

The discussion now turns to the key question motivating this paper: how do migrant rights affect human development? The analysis distinguishes between: (i) the capability to move and take up employment abroad; and (ii) capabilities while living and working abroad. I argue that there can be a tension between these two capabilities and that this creates an important question for normative analysis and public debate.

#### ***4.1 The capability to move and work abroad***

Compared to international trade and capital flows, the scale of international migration remains relatively limited in the global economy. In 2005, the ratios of exports and outward FDI to world GDP were 28 percent (IMF) and 24 percent (UNCTAD), respectively. In contrast, migrants constituted only about three percent of the world population in 2005 (ten percent in more developed regions, see UNPD 2006). The main reason for this asymmetry lies with immigration policies of middle and high-income countries which generally welcome skilled and highly skilled workers but are very restrictive with regard to admitting low-skilled workers. In other words, while skilled workers in low-income and low-capability countries find it relatively easy to migrate abroad, the capability of low-skilled workers to gain access to labour markets in higher income countries is very limited. Although it is clear that emigration cannot be a “magic bullet”, expanding the capability of low-skilled workers in low-income countries to move and legally take up employment in higher-income countries may be a powerful way of promoting human development of migrants and their families. Under certain circumstances, it may also contribute to wider development in migrants’ countries of origin.

Compared to residents of the host country, migrants typically face a disadvantage in the labour market on arrival (see, for example, Clark and Drinkwater 2008). For many but not all migrant groups, this disadvantage tends to become smaller over time, partly because migrants acquire more skills (including language skills), work experience, and social networks that are specific to the host country (see, for example, Venturini and Villosio 2008). In some countries, such as in many GCC countries, the wages of migrants never catch up with those of citizens as labour markets are completely segmented.

However, even if the wages that migrants earn abroad are lower than those of residents with comparable skills and experience, they are typically significantly higher than the wages migrants would receive in their countries of origin. Freeman (2006) suggests that wages of workers in high-income countries typically exceed those of workers in similar jobs in low-income countries by four to 12 times. In 2004, the average gross national income *per capita* of the ten new member

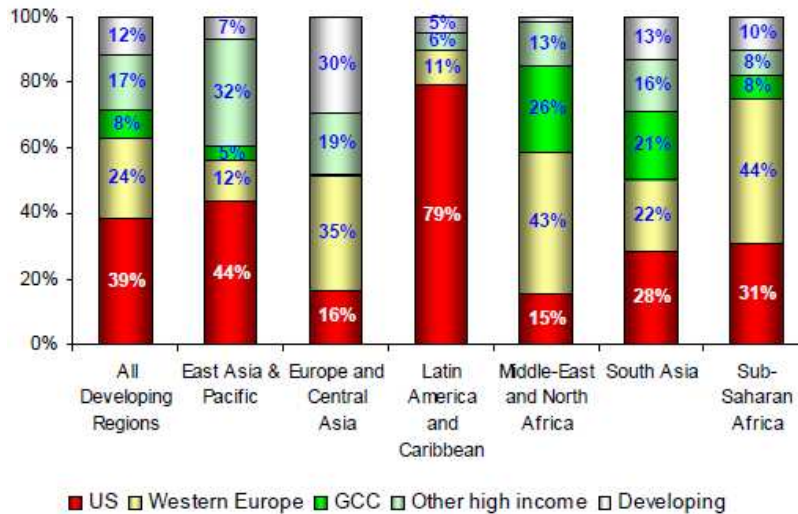
states that joined the EU in 2004 was about a fifth of that in the EU15, and about 40 per cent when measured in purchasing power parities (Brucker, 2007). These international wage differences mean that migrants can significantly raise their productivity and make very large financial gains from employment abroad.

Because international wage differentials far exceed differences in commodity prices and interest rates, the global efficiency gains of increased migration—most of which would accrue to migrants—are significantly greater than those of further liberalizing international trade and capital flows (see Rodrik, 2002; Freeman, 2006). The World Bank (2005) estimates that increasing the share of migrants in high-income countries by 3 per cent (about 13.2m people) would generate a global real-income gain of over \$350 billion, exceeding the estimated gains from global trade reform by about 13 per cent. If migrants transfer some of their benefits back to their home countries—in the form of remittances, investment, and/or knowledge transfers—migrant-sending countries may reap a significant share of these global income gains from migration.

According to the World Bank (2008), remittance flows to developing countries amounted to about US\$265 billion in 2007 (more than double the figure in 2002). Global remittance flows are more than twice as large as total development aid and represent the largest source of foreign exchange for numerous countries. The World Bank also predicts that, during the economic downturn, remittances are unlikely to fall as much as private flows and official aid to developing countries (World Bank 2008, Migration and Development Brief 8). As shown in Figure 1 in the Appendix, among low-income countries, the top three remittance receiving countries in 2008 were India (US\$ 30 billion), China (\$27bn) and Mexico (\$24bn). Measured against GDP, remittances were highest in Tajikistan (45 percent), Moldova (38 percent) and Tonga (35 percent). Figure 1 below shows the origins of remittance flows to developing countries in 2008. The US, Western Europe and the GCC countries are the main sources of remittances but the relative share of each varies across destinations (of remittances). In Bangladesh and Pakistan, remittances from the GCC states accounted for 63 percent and 52 percent, respectively, of all remittances inflows in 2008 (World

Bank 2008). More than 80 percent of migrant workers from Bangladesh, and over 70 percent of migrants from India, are working in GCC countries (DESA 2006, p.5).

Figure 1: Sources of remittances by recipient regions, 2008



Source: World Bank 2008, *Migration and Development Brief 2008*, p.9

It is important to emphasise that more low-skilled migration does not automatically translate into faster development of migrants' countries of origin. The effects of remittances, and emigration more generally, can be mixed both in theory and practice (see, for example, Lucas 2005). Research and the experiences of countries of large-scale emigration—such as Egypt, Mexico, and the Philippines—suggest that sending workers abroad cannot, on its own, be an effective development strategy (ILO, 2004). Nevertheless, it is clear that, if used effectively, remittances and other transfers migrants make back to their home countries can be of significant benefit to migrants' families and/or to the overall economies of migrants' countries of origin.

The discussion in the previous section has shown that, in practice, we can observe a negative relationship between the numbers and some of the socio-economic and other rights of migrant workers in high-income countries. To maximize the economic benefits of low-skilled

immigration, high-income countries can have economic incentives to carefully and selectively restrict some of the socio-economic rights of migrants. These rights include the rights to free choice of employment, the right to selected welfare benefits and the right to stay permanently in the host country. The implication is that the goal of increasing workers capabilities to move and take up low-skilled jobs in high-income countries may require a (at least temporary) restriction of some of these rights of migrants. Insisting on full and immediate equality of economic and social rights with citizens – as it would be the case if low-skilled migrants are given permanent residence status right upon admission – may be an obstacle to achieving the goal of increasing the number of workers in low-income countries who can access and benefit from working in low-skilled jobs in high-income countries. The comparison between the high numbers-low rights policies of Kuwait with the low numbers-comprehensive rights policies of Sweden is instructive here.

#### ***4.2 Capabilities while living and working abroad***

Migrant rights obviously have an important impact on migrants' human development while living and working abroad. As human development is defined as enlarging choice, capabilities and freedoms, we can generally expect that the economic, social, political, and cultural rights that migrants *effectively* enjoy<sup>18</sup> will have a positive impact on their human development. For example, the right to public health care and education will promote good health and development of knowledge. Cultural rights enable migrants to practice their own cultures and traditions. The right to family reunion enables a family life. Access to the welfare state could, among other things, offer support in times of economic hardship. And employment rights, such as the rights to a minimum wage (where it exists) and the right to join trade unions will in many cases enable migrants to achieve better outcomes in the labour market.<sup>19</sup> Conversely, the lack of rights,

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<sup>18</sup> I am now discussing rights that migrants can actually exercise in practice rather than rights in formal law that exist “on paper” but are not implemented in practice.

<sup>19</sup> There is of course considerable debate about the impact of labour market rights and institutions, including the rights to minimum wage and collective bargaining rights, on the labour market outcomes of workers. Some economists argue that more rights and institutions make the labour market less flexible and thus, for example, increase the likelihood of unemployment. I acknowledge but do not go into the detail of these debates in this paper. For a review of the impact of the minimum wage on employment, see, for example, Neumark and Wascher, 2007; for

especially the most basic human rights, can lead to situations where migrants' welfare and capability to act becomes highly dependent on their employer which can lead to very "unfree" living and working conditions.

Various national and international institutions concerned with migrants have published a large number of reports and case studies documenting how a lack of rights can have highly adverse impacts on migrants' personal safety, physical and mental health, ability to participate in social life and outcomes in the labour market. The academic literature on how rights impact on human development is much more limited. Most analyses do not consider specific rights but instead distinguish between the four major types of immigration status each of which is generally associated with different rights and restrictions: "illegally resident"; "temporary (legal) resident"; "permanent (legal) resident" and "citizen". There are some analyses in the economic literature on how different types of immigration status – or the transition from one status to another- impact on migrants' outcomes in the labour market (see Ruhs 2009). Most of this work concerns the effects of illegality.

Their "deportability" can put illegally resident migrants in a vulnerable position in the host country (De Genova 2002). Some employers may offer illegally resident migrants lower wages and inferior employment conditions, either because they take advantage of migrant's deportability and/or simply to account for the increased risk associated with employing migrants without legal residence rights. Taylor (1992) suggests that cost-minimising employers will allocate illegally residents migrants to jobs where the expected cost of apprehension is lowest; and that such jobs are likely to be relatively low skilled jobs. This type of employer discrimination is most likely to occur when employers know about the (illegal) immigration status of their migrant employees. It may, however, also arise from employers' perceptions – rather than direct knowledge – of their workers' immigration status. Qualitative research in the UK has shown that, in practice, employers frequently do not know or "choose not to know" their workers immigration status (Ruhs and Anderson 2008).

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a for a critical discussion of the impact of labour market institutions on labour market flexibility see, for example, Howell et al 2007.

Deportability may also impact on migrants' earnings through mechanisms that are not directly related to employer discrimination. Importantly, illegal residence status may alter migrants' behavior in the labour market (Kossoudju and Cobb-Clark 2002). Migrants without the right to reside may, for example, have lower reservation wages than workers with the right to legal residence. The fear of being deported could also discourage migrants from investing in the development of host-country specific human capital (Chiswick 1984). Illegal residence status could also impact on the kinds of social networks that migrants may access, which, in turn may affect migrants' access to well-paying jobs (Massey 1987). A more general point is that illegal status usually constrains migrants' choice of employment in the host country and thereby prevents migrants from maximizing the returns to their human capital (Calavita 1992).

Although not at constant risk of removal, migrants employed on legal temporary work permits in low-skilled occupations may also experience lower earnings because of their immigration status. Temporary work permits for low-skilled workers typically restrict migrants' employment to the sector and employer specified on the work permit. Where a change of employer is allowed, a new application for a work permit is usually required by the new employer. This requirement naturally restricts migrants' choice of employment in the labour market and may make it difficult to leave jobs offering adverse employment conditions. Furthermore, a temporary migrant's right to legal residence is usually tied to ongoing employment in the host country. As it can be the case with illegally resident migrants, unscrupulous employers may take advantage of temporary migrants' employment restrictions and offer employment conditions that are lower than those enjoyed by migrants with permanent residence status.

Most of the very limited empirical research on the impacts of immigration status on migrants' labour market outcomes has focused on the effects of illegality. Most studies have been carried out in the US, especially in the aftermath of the 1986 Immigration Reform and Control Act (IRCA). IRCA gave amnesty (including eventual permanent residence status) to undocumented immigrants – about 1.7 million outside agriculture<sup>20</sup> – who could prove continuous residence in

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<sup>20</sup> A separate legalization programme for agriculture – the Special Agricultural Workers program – legalized an additional 1.3 million people who could prove 90 days of employment in the perishable crop sector in the year before IRCA, or more than 30 days in each of the previous three years (Papademetriou et al 2004).

the US since 1982. Rivera-Batiz (1999) found that illegal status adversely affects migrants' earnings even after controlling for migrants individual characteristics. This finding contradicted the results from earlier (pre-IRCA) studies which often concluded that the wage differential between legal and illegal immigrants could be mostly accounted for by differences between the characteristics and human capital of the two groups (see, for example, Bailey 1985; Massey 1987). Comparing legalized migrants' earnings before and after legalization, Rivera Batiz (1999) further concluded that legalization led to significant wage growth for legalized migrants. Kossoudi and Cobb-Clark (2002) also find that IRCA had positive earnings effects for legalized migrants. Kossoudi and Clark suggest that much of the wage growth following legalization can be attributed to increased returns to human capital (also see Tienda and Singer 1995).

There are a few systematic analyses that investigate the role of legal status as a determinant of migrants' wages in Europe. Baldacci et al (1999) find that illegal status imposes a significant wage penalty on migrants in Italy. In a more recent study, Ruhs (2009) analyses the impact of EU enlargement on the earnings of East European workers who were already working in the UK before 1<sup>st</sup> May 2004 – legally or illegally. The preliminary results suggest a significant positive impact of acquiring EU status on earnings - in the order of 6-8 percent – but no significant impact of legalization on its own.

Most of the existing economic literature thus confirms the expectation that immigration status (and associated rights) can be a significant determinant of migrants' labour market outcomes and that illegality and/or temporary residence status can have a significant adverse impact on earnings when compared to permanent resident status and/or citizenship.<sup>21</sup> Expanding employment rights can thus be generally expected to have beneficial effects on the economic welfare and human development of migrants. Greater capabilities of migrant workers will often also raise the human development of family members who are living with the migrant abroad.

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<sup>21</sup> It is important to emphasise, however, that the effects of immigration status are likely to be highly specific to country and time. For example, in labour markets where the enforcement of immigration and employment laws is relatively low, there can be many factors, unrelated to migrancy and immigration status, that make workers vulnerable in the workplace.



It is tempting to further conclude that, because of the beneficial impacts on migrant's human development, expanding rights will also promote the human development of those "left-behind" (family members and/or others) in migrants' countries of origin. For example, if expanding rights leads to higher wages, remittances may also increase. The suggestion that more rights for migrants will also promote development in migrants' countries of origin is a plausible possibility. However, it is also important to consider potential exceptions and trade-offs where an increase in certain rights for migrants may lead to a reduction in the benefits of migration for migrants' countries of origin. For example, migrants on temporary residence permits – especially those with families in their home countries – can be expected to remit more of their wages than migrants with permanent residence status abroad. Although the overall empirical evidence on this issue is mixed, there is some evidence that remittances initially increase but eventually decrease with a migrant's duration of stay in the host country, reflecting the counteracting forces of wage increases (which increase remittances) on the one hand and increased detachment from the home country and family reunification (lowering remittances) over time (see, for example, the review in Carling 2008). Acquiring the right to permanent residence will benefit migrants' human development but the associated decline in remittances (and, if migrants are highly skilled, the potential permanent loss of human capital) could lower human development in migrants' countries of origin. Of course, the impact of rights on remittances is just one type of effect that may be outweighed by other beneficial impacts for sending countries. The research on this issue is, however, limited.

#### ***4.3 How to balance numbers and rights to promote human development?***

The analysis has shown that there can be a tension between the positive effects of migrant rights on human development on migrants while living and working abroad, and the negative effects that some socio-economic rights may have on the capability of workers in low-income countries to access labour markets of higher-income countries. This tension raises an important and difficult question about how to best balance the two sets of capabilities. This is an inherently normative question that different people will think about and evaluate in different ways. A consequentialist ethical framework may more readily accept restrictions of individual rights to achieve certain outcomes than a strong rights-based position (for a discussion of ethics in immigration policy,

see, for example, Ruhs and Chang 2004; Gibney 2004). Although most people would agree that it is important insist on at least basic human rights for all people regardless of outcomes, there is no single answer to the question whether and under what circumstance it is justifiable to restrict specific socio-economic rights of individuals. For example, Wickramasekara (2008) argues that “the idea that source countries can expand overseas employment of their nationals by agreeing to reductions in their rights is morally unacceptable, and indeed violates international norms. All migrant workers have basic rights as human beings and workers which cannot be traded-off” (p.1258). Carens (2008) argues that, even if there is a trade off between migrant numbers and rights, restrictions of migrant rights are always morally problematic “because they violate the state’s own understanding of morally acceptable conditions of employment” (p.421). In contrast, Bell and Piper (2005) suggest that unequal rights under a guest worker program could be morally justified if three conditions are met: (a) if they benefit migrant workers, as decided by migrant workers themselves; (b) if they create opportunities for people to improve their lives; and (c) if there are no feasible alternatives to (a) and (b). (Bell and Piper, 2005: 214).

As discussed in section 2, the human development approach urges “public debate and reasoning” about conflicting dimensions of development. As a “people-centred” approach, it also emphasizes the agency and choice of individuals. The debate about how to balance the capability to move and work abroad with capabilities while living and working abroad thus needs to consider the perspectives of migrants and their countries of origin.

Large numbers of migrant workers are employed in countries that severely restrict migrants’ rights, suggesting that many workers are willing to tolerate, at least temporarily, a trade-off between higher wages and fewer rights (also see Abella 2008). Of course, the mere presence of migrants in countries with “high numbers – low rights” policies does not mean that such policies are in the migrants’ best interests and therefore desirable. Nevertheless, the fact that migrants often pay significant recruitment fees to work in such countries highlights the need for a more explicit discussion of the choices that many workers in developing countries face. We can expect considerable variation in migrants’ motivations. Migrants’ intentions (e.g. temporary or permanent stay abroad) and their “frame of reference” are likely to be important determinants of

the choices they make at particular points in time. The role of good information in order to make informed and rational decisions is likely to be key. Narrow rights-based approaches to migration rarely discuss the agency of migrant workers, i.e. their capacity to make rational and independent decisions when faced with limited options. Instead they often tend to treat migrants as victims of recruiters and smugglers rather than rational economic agents maximizing within constraints.

Sending countries do not always insist on equality of rights in order not to reduce the access of its nationals to labour markets abroad. For example, some major migrant-sending countries are reluctant to ratify the International Convention on the Protection of All Migrant Workers and Members of their Families for fear of losing jobs for their nationals abroad (Piper and Iredale 2003). The conflict between migrant rights and better access to jobs in high-income countries is also apparent in the negotiations about the role of wage-parity in the international movement of service providers within ‘Mode 4’ (which regulates the ‘movement of natural persons’) of the World Trade Organization’s General Agreement on Trade in Services. Many high-income countries want wage parity to protect the jobs of their nationals, but some major sending countries assert that equal wages would limit the numbers of their migrants abroad. ‘Wage parity . . . is intended to provide a non-discriminatory environment, [but] tends to erode the cost advantage of hiring foreigners and works like a *de facto* quota’ (Chaudhuri *et al.* 2004, p. 366). Chanda (2001, p. 635) goes further, asserting that wage parity ‘negates the very basis of cross-country labour flows which stems from endowment-based cost differentials between countries’.

## **5 Conclusion**

The rights of migrant workers play an important yet under-researched role in shaping the effects of migration on the human development of migrants, their families and of those “left-behind” in migrants’ countries of origin. A comprehensive analysis of the relationship between migrant rights and human development must consider the intrinsic value of rights and engage with the human rights framework that has been central to most discussion of migrant rights to date. It must also, however, recognise that migrant rights are a subset of “citizenship rights” that derive from nation states and that, in practice, are often severely restricted. In practice, migrant rights can be

an important part of nation states' immigration policies. The analysis of the effects of migrant rights thus needs to consider potential inter-relationships with other aspects of immigration policy, especially the number and selection of migrants admitted to high-income countries, and consider the overall effects of particular "immigration policy regimes" on human development.

Viewed in this way, it cannot simply be assumed that "more rights" will automatically translate into increased human development of migrants, their families and people left-behind in migrants' countries of origin. To be sure, the protection of rights will in many cases be very important to promoting the human development of workers living and working abroad. The expansion of the rights of migrants can be expected to enhance migrants' capabilities while abroad. However, as discussed in this paper, migrant rights can also have an impact on low-skilled workers' capability to legally move and work abroad. The economic interests and policies of high income countries can help generate a negative relationship (a trade off) between the number of low-skilled migrants admitted and some of their socio-economic rights after admission. This trade off arises from the fiscal and labour market effects of low-skilled immigration, the large supply of workers in low-income countries seeking access to low-skilled jobs in high-income countries, and from the downward sloping demand curve for labour with regard to employment rights that create costs for employers. The paper has presented empirical examples that support the hypothesis of a trade-off driven by economic mechanisms and effects. There is, however, clearly a need for more systematic empirical research that includes a larger number of countries and that investigates alternative explanations of the relationship between the number and rights of low-skilled migrant workers.

The trade-off between increased access to high income countries and socio-economic rights after admission is at the core of current discussions about new or expanded temporary migration programmes for low-skilled migrant workers. Such programmes can increase the number of low-skilled workers legally employed abroad while restricting some of migrants' rights abroad. The restrictions of rights of TMPs vary significantly between different countries and for different groups of migrants within a particular country. Most people would agree that the restrictions of rights that we currently observe in the GCC states would be unacceptable in liberal democracies.

However, there is no easy or universal answer as to when and under what circumstances it is desirable to accept the selective restriction of some socio-economic rights (such as the right to free choice of employment, access to social benefits, and the right to permanent stay in the host country) in order to facilitate better access of low-skilled workers to the labour markets of higher-income countries. Some view temporary migration programmes that restrict migrant rights as inherently discriminatory, unfeasible and thus undesirable, others (including this author) suggest that they may promote human development by expanding workers' choice and capabilities to legally move and work abroad, and that it is therefore important to ask how new TMPs could avoid the adverse consequences of past programmes. If we take a people-centred approach that emphasises agency and choice, the debate about TMPs must take account of the perspectives of migrants and, perhaps to a lesser extent, also their countries of origin. To progress the debate, it would also be useful to begin a discussion about the "core" rights that we agree must never be restricted under any TMP, regardless of the effects for development and other consequences.

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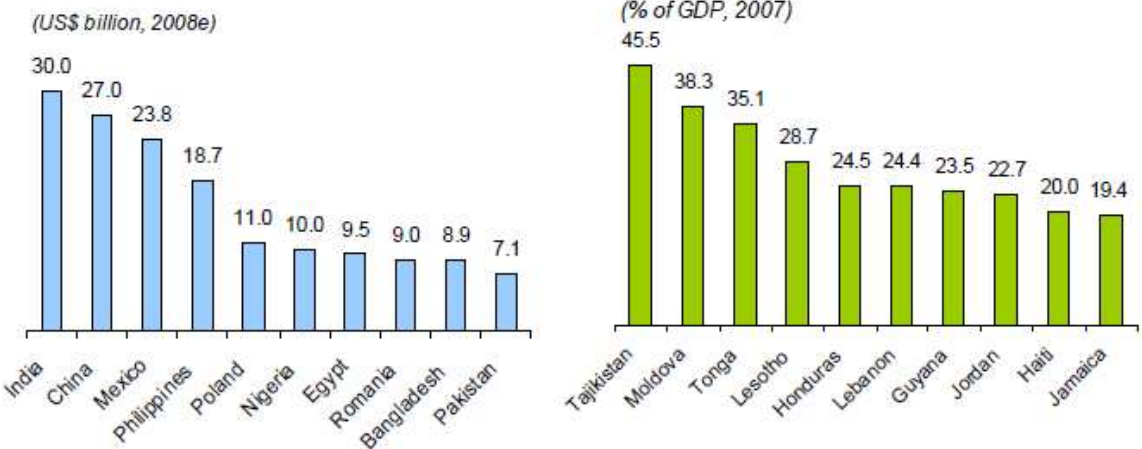
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**Appendix**

Figure A1: Top 10 remittance-recipient developing countries in 2008



Source: World Bank 2008, Migration and Development Brief 8