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**Identification of the Obstacles to the
Signing and Ratification of the UN
Convention on the Protection of the
Rights of All Migrant Workers 1990:**

CHINA

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The project was undertaken under the auspices of the APMRN, a network of migration researchers that has been operating in the Asia Pacific region since 1995. The network has 17 countries/economies and seven of these were selected for inclusion in this research. A previous report covered seven countries in the APMRN and this time we looked at China. Two young researchers were particularly helpful in arranging and conducting interviews: Shaohua Zhan from the Institute for Sociology, Chinese Academy of Social Sciences, Beijing and Fiona Gao, from Shanghai. Without them the work would not have been feasible.

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Ultimately the interpretation of the information supplied rests with the researcher. We have sought to protect the people who provided sensitive material while at the same time endeavouring to ensure that some of the difficult obstacles are conveyed in a balanced manner.

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SECTION 1

INTRODUCTION

1.1 Background and Method

With the ratification by El Salvador and Guatemala on 14 March and Mali on 5 June 2003, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (hereafter: ICMR), adopted by General Assembly resolution 45/158 of 18 December 1990, finally entered into force on 1 July 2003. To date, from among the 34 countries that have ratified, or acceded to, the ICMR there are only three situated in the Asia Pacific region: the Philippines, Sri Lanka and Tajikistan.¹

The Asia Pacific region, however, has emerged as a particularly important source for the export and import of labour. By 2000 the stock of authorised migrants (mostly migrant workers) in the seven major labour importing countries in East and Southeast Asia alone was approximately 3.7 million. The stock of unauthorised migrant workers in the same countries was estimated at 2.4 million (Battistella, 2002: 406). Based on these statistics, an estimated 2 million women account for a third of the 6.1 million migrant workers in the region.

The increasing presence of non-national workers has resulted in a growing need for concepts, institutions, and legal instruments to protect the rights of migrant workers. International concern for the rights of migrant workers began with the establishment of the International Labour Organisation (ILO) in 1919 (which became a UN specialised agency in 1946). There are a number of ILO Conventions specifically relevant to migrant labour commencing with the 1975 *UN Convention on Basic Human Rights of Migrant Workers* whose text provided a primary model (along with ILO Convention 97 of 1949) for the drafting of the ICMR. The latter breaks new ground by clarifying the full application of the human rights law to migrant workers, defining what constitutes a migrant worker and covering the entire migration process. So far, it has gained only limited support from states generally and no support at all from labour receiving countries.² This stands in stark contrast to other UN conventions (such as the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*) covering other vulnerable groups such as women and children.

¹ Bangladesh and Cambodia have signed but not yet ratified.

² As of October 2005, the following 34 countries had ratified the Convention: Algeria, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timur Leste, Turkey, Uganda and Uruguay (please see: <http://www.migrantsrights.org/Ratificationchart.htm>).

The ICMR specifically addresses the fundamental human rights of migrant workers and members of their families based on their vulnerability as non-nationals in states of remunerative employment and states of transit. The types of migrants covered range from unskilled to skilled, including itinerant, project-tied, those in specified employment, self-employed migrant workers, and seasonal workers. Explicitly excluded are seafarers, business people (traders, investors), trainees and asylum seekers.³ Given the impact of global migration for employment, the Preamble of the Convention emphasizes the need to 'harmonize the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and their families'. Overall, this Convention underscores the age long conflict between the international norms of human rights and state sovereignty. Ultimately, the 'rights of states' clearly prevail over the 'rights of migrants' with states retaining the right to set the conditions under which foreigners may enter and reside in their territory. Many of the problems migrants face, however, are directly connected to their visa status or type of work permit. Migrants who are holders of valid work permits/visas tend to be in a better position than irregular migrant workers but they may be subject to state restrictions and their working conditions may be poor. The situation is usually much worse for irregular migrant workers who are afforded little or no legal protection and face the constant threat of deportation. Despite its flaws, the ICMR is nevertheless considered 'the first universal codification of the rights of the migrant workers and their family members in a single instrument' and although 'some of the provisions can be found in other international instruments, the fact that they are brought together in one Convention gives them validity' (Loennroth, 1991: 735).

Until fairly recently, neither relevant institutions within the UN system nor governments which had played an influential role in the drafting process had made efforts to promote this Convention. The marginalisation of the Convention might also be related to the fact that it did not officially come into effect until July 2003. Unlike the six UN core conventions⁴, the ICMR is a smaller convention that has never been given much priority. Until 1996 even obtaining its text was difficult, and until the beginning of 2001 no single person anywhere in the world was engaged on a full-time basis in promoting the Convention. On the contrary, there is evidence that a number of governments strongly discouraged attempts to do so. The late 1990s, however, witnessed (1) intensified civil society activism, notably in Asia which has the most advanced migrant worker NGOs and regional networks, (2) the launching of a Global Campaign for its entry into force in 1998⁵, (3) the appointment of a UN Special Rapporteur on Human Rights of Migrants in 1999, and (4) the official launching of International Migrants Day on 18 December by the UN in the year 2000 (Taran, 2000). In April 2000, the United Nations Commission on Human Rights in Geneva passed a resolution calling upon 'all member states to consider

³ Asylum seekers who have not yet obtained that status but who have managed to engage in remunerated activity while their claim as refugee is being processed do benefit from the new Convention's scope of application (Boehning, 1991).

⁴ The ICESCR and ICCPR came into effect after ten years (1966-76); the CEAFRD after 4 years (1965-1969); CEDAW (1980-81) and CROC (1989-90) after one year only and CAT after three years (1984-87).

⁵ The Campaign Steering Committee includes 16 leading international bodies on human rights, labour, migration and church organizations. See for more detail Global Campaign website at: www.migrantsrights.org

the possibility of signing and ratifying or acceding to the Convention as a matter of priority'.⁶

All of these recent developments were aimed at achieving the 20 necessary ratifications to allow the Convention to come into effect. The next step is not only to boost the number of ratifications but also to get receiving countries to ratify.

Purpose of this Report

The aim of this report is to identify the obstacles to the ratification of the ICMR in China in order to promote the protection of human rights for migrants by means of gaining wider acceptance of the ICMR. An earlier report published in 2003 examined the situation in seven other countries in the Asia Pacific region: Bangladesh; Indonesia; Japan; Korea; Malaysia; New Zealand, and Singapore (available on the APMRN website apmrn.anu.edu.au).

Taking an international human rights approach to the plight of migrant workers is particularly important in the context of the Asia Pacific region, as it not only lacks a regional human rights instrument and monitoring regime but also makes the extension of citizenship rights to migrants extremely difficult, if not impossible. The two main aims of this report are to:

- investigate why China has not ratified the Convention, and
- develop recommendations to encourage ratification.

Research Methods

The main research method employed was semi-structured interviews with key informants by Chinese interviewers (Ms Fiona Gao, Shanghai and Mr ZHAN Shaohua, Institute of Sociology, Chinese Academy of Social Sciences), assisted by the chief investigator. Informants were sought from among the following groups: politicians and/or governmental officials (at national and local level), academics, labour recruitment organizations and employers/industry organizations (see Appendix I for more details). The interview schedules for Guangzhou, Shanghai and Beijing were arranged by these 'local coordinators' — through members of the Asia Pacific Migration Research Network (APMRN).⁷

The actual interview schedule was designed to test the obstacles and opportunities created by ratifying the Convention from a legal, social and political perspective. The design of questions was approached from an import-export perspective. By grounding the open-ended questionnaire in an 'export-import' dialectic, different questions were asked at the import end informed by the export end and vice versa. In this sense, the interviewing schedule was dynamic rather than static.

⁶ E/CN.4/2000/L.56, Agenda item 14(a) (14 April 2000). The Resolution was ultimately adopted with this part of the draft text in tact. See E/CN.4/RES/2000/49 (adopted without a vote).

⁷ The APMRN is directed by Associate Professor Robyn Iredale, Australian National University, Canberra.

Other materials informing the report came from websites, and from newspaper clippings and copies of legal and semi-legal documents, which contained information on migrants' rights and reports of abusive practices against migrants.

1.2 Migration Patterns and Human Rights in the Asia Pacific Region

Over the last few decades, the labour market conditions in the Asia Pacific region have undergone considerable changes. Intensified migration pressures have resulted in the supply side of migrant labour out-balancing the demand, with the effect that benefits for migrants have been reduced, as wages have been pushed down and recruitment fees up. Furthermore, these market pressures allow for less protection, meaning migrants are subjected to higher levels of exploitation. On the labour exporting front, new source countries such as Nepal and Vietnam have emerged (see Appendix II for overview of policies in Asian sending countries). This has resulted in increased competition and lower standards of labour migration policies at the receiving end, where economic downturns and rising unemployment among the local workforce have lowered existing protective mechanisms and reduced the prospects of implementing rights-based regulations for non-citizens. Certain abuses have become more common, such as the non-payment of wages which reflects the current state of the economy in many receiving countries where unskilled migrants are usually employed in small- and medium-sized companies which typically take the brunt of increased competition. Hence, the costs of migration have come to be disproportionately born by the migrants themselves.⁸

Intra-Asian labour migration flows have become a structural part of the regional economies and societies. Despite the increasing cross-border movements, control over migration remains one of the last bastions of individual states, creating a growing discrepancy between the social reality of migration and its legal regulation. In much of Asia, this is also related to the political sensitivity of issues revolving around workers' and human rights which has prevented a regional dialogue on international labour migration from taking place within for such as ASEAN or SAARC. There are, however, signs of solidarity emerging - at least as far as major sending countries are concerned - and moves toward collective bargaining at the governmental level.⁹ With no Asian Human Rights monitoring system, however, this task is largely left to NGOs.

Despite some variations, labour migration policies in the receiving countries in Asia can be broadly summarized as follows:

- Limiting labour migration;

⁸ A good example is Singapore where employers pay one Singapore \$ as a 'fee' to agents for an Indonesian maid but the maid herself has to pay for her expenses and the proper fees, resulting in several months without wages to pay off the debts.

⁹ In April 2003, a ministerial level meeting among the labour sending countries in the Asian region was instigated by the governments of Sri Lanka and Indonesia and was held in Colombo, with the help of the International Organization for Migration (IOM). The next meeting was held in Manila in 2004 and a follow-up meeting was planned for Indonesia.

- Limiting the duration of migration;
- Limiting integration.

These policies all impact upon migrants' rights as they classify migrants as workers or labourers to be deposed off when convenient and thus reduce the economic benefits for individual migrants who are often forced into repeat or circular migration. There is a tacit approval of irregular migration in much of the region.

In terms of human rights protection in general, the Asia Pacific region is the only region without a specific human rights treaty and without some form of a region-wide mechanism.¹⁰ This is despite the fact that this region has about one third of the world's area and two thirds of its population. The region's enormous diversity particularly in terms of political systems explains the absence of a regional human rights mechanism of the kind existent in South America, Europe and Africa.

None of the sending countries covered by this or the earlier report have a migrant worker bill including human rights, along similar lines to *The Migrant Workers and Overseas Filipinos Act of 1995*. This Act is promoted by the Philippine government as being the *Magna Carta* for overseas workers.

A report produced by the APMRN in 2004 contains an analysis of the impact of this Act, and ratification of the ICMR generally, on the situation of Filipino overseas workers. This study also covered Sri Lanka, as one of the other three ratifiers in the Asian region. The report is available as APMRN Working Paper No 15 (Iredale, Piper and Ancog 2004) on the APMRN website (apmrn.anu.edu.au).

¹⁰ This is partially due to the level of diversity, in terms of political systems, historical processes, languages, and culture in the region, and the emphasis on economic gains in the last 50 years.

SECTION 2

PROFILE AND DESCRIPTION OF OBSTACLES IN CHINA

The main reason for not ratifying the ICMR is often political. Receiving governments' strategy for overcoming financial crises or periods of recession is to maintain a mobile and flexible workforce through importing migrant labour. This functions as a convenient mechanism for regulating economic performance and provides a system which has no political repercussions. When convenient, any number of migrant workers can be deported without public outcry. Rising unemployment in both receiving and sending countries creates a climate that is not conducive to ratification; the senders fear losing their share of the regional labour market, and the receivers fear an unfavourable reaction by the populace/citizenry. There are differences though, as to whether a country is mainly an importer or exporter of labour.

Sending countries have to date been more ready to sign on to the ICMR as part of a political/social agenda to protect the rights and conditions of their workers abroad. The actual attitudes in, and situation that pertains to, each country need to be better understood to enable discussion about possible means of alleviating the concerns and fears of countries in the region.

2.1 People's Republic of China's Perspective

During the last two decades the government of the PRC has fundamentally redefined its position on emigration, which is now regarded as an individual citizen's right. ... Since 1985, several laws and regulations have come into force that have granted increasingly more rights to citizens seeking to travel abroad.

... At the national level, the key legal document continues to be the *Migration management law*, which became effective on 1 February 1986 ... (Huang and Pieke, 2003: 43)

But as these authors point out the 'actual procedures and rights of going abroad continued to vary from locality to locality and 'there is no unified approach to manage the rapidly growing flows of international migrants' (Huang and Pieke, 2003: 43).

International contract labour migration is a growing phenomenon in China. It resumed in the late 1970s, with the opening up of the economy. A Ministry of Commerce document states that 'the number of contracted workers is growing year by year and currently there are more than half a million workers working overseas' Ministry of Commerce, 2004: 1). These data do not include irregular migrant workers and are therefore not indicative of the total numbers.

**TABLE 1. AVERAGE ANNUAL NUMBER OF MIGRANT WORKERS
ORIGINATING IN CHINA AND DISTRIBUTION BY REGION OF
DESTINATION (%), 1980-1999**

Sending country/ receiving region	1980-1984	1985-1989	1990-1994	1995-1999
Western Asia (Gulf)	80.1	8.2	3.7	n.a.
Other Asia	6.0	8.6	37.6	...
Outside Asia	14.4	3.3	58.6	...

Sources: Zlotnik (1998: 31-2), Stahl and Iredale (2001: 2).

The growing importance of areas outside of Asia is evident in Table 1. The increasing importance of Europe, especially Spain, as a destination is shown in Table 2. The legalised 'migrant stock' for Europe was estimated to be 200,000 in 2000 (Laczo, 2003). By 2000, Italy and Germany had surpassed Spain in numbers of PRC nationals but this figure includes students, high skilled workers and permanent residents. The growth and widening of source regions and destinations is obvious.

**TABLE 2. STOCK OF FOREIGN LABOUR AND IMMIGRANT LABOUR FROM
CHINA IN SELECTED OECD COUNTRIES (THOUSANDS)**

Destination	1990-91	1995-96	1998	1999	No. of women
Asia					
Japan		23.3	33.4		
Korea		18.0	32.6		13.9
Europe					
Austria		2.0		1.5	0.5
Finland		0.5		0.6	
Hungary		2.6	2.8		
Portugal				1.5	
Spain	1.7	6.2		10.7	3.9

Note: Figures for Japan and Austria include Chinese Taipei.

Source: OECD, 2001: 342-54.

Labour out-migration is managed by a range of government agencies: Bureau of Entry and Exit in the Bureau of Public Security; Labour and Social Security Bureau; Committee for International Trade and Economic Co-operation under State Council, and the Office of Overseas Chinese There are two major forms of overseas employment through the Bureau of Public Security. These flows are agreed to by the government but

handled by private companies: (a) 'project engineering' and 'international labour cooperation'; and (b) 'overseas employment of individuals' (Zhang, 2001: 127).

(a) 'Project engineering' comprises contracting and implementing engineering projects abroad for foreign governments, institutions, enterprises and individual employers, on the basis of international competitive bidding. 'International labour cooperation' refers to the export of labourers abroad for economic, social and science/tech activities under contracts with foreign governments, institutions, enterprises, and individuals employers, with the intent to earn remuneration.

(b) 'Overseas employment of individuals' refers to individual movements that are managed by employment service agencies. This has only existed on a small scale but is developing rapidly. There were 70,000 labourers employed abroad under these arrangements by the end of 1999 and a further 10,000 were added in 2000. Destinations are widespread in Asia, Africa, Europe and America and the main occupations are in the agriculture, garment, housing and catering service sectors (Zhang, 2001: 130).

The main responsibility for handling these workers rests with the overseas employment service agencies. Recruitment is done by certified private recruiting companies/agents who must lodge one million RMB, the equivalent of USD200,000, with the government in order to be able to operate. This money may be used to compensate migrant workers if they lodge a complaint.

Their functions include: providing labour market information, job recommendation and recruitment; signing employment contracts, technology and language training, assistance with social insurance; protection of labour rights by means of mediation or legal action, etc (Zhang, 2001: 130). No fees can be charged by private recruiting agencies.

More specifically, the recruiters' role is to:

1. examine contracts offered by recruiters in foreign countries to ensure migrant workers are adequately covered in terms of wages, conditions, health coverage, occupational health insurance etc. Wages vary so that in some countries wages for construction workers may be 400\$/month while in other countries they are \$700. They try to get the best they can but cannot always bargain up the wages. There is no government involvement in this process – no minimum wages, etc. The recruiters learn by experience which foreign recruiters to avoid but it is not clear how many contracts are rejected. They 'work to get good contracts', according to one interviewee (Personal interview, 2005);

2. check out if the foreign company that wants workers is real, through embassies, websites, visits and from experience. There are some countries to which they will not allow workers to go — eg Iran and some African countries. The government provides information on poor destinations and warns people not to go to these places.

Then the company applies to the government for the number of workers they need and after the government agrees they can begin recruiting. The recruiter in China collects people who are appropriate for what the overseas company wants and then the foreign

employers/recruiters come and interview the workers and select the people they want. They mostly want high tech workers or workers in jobs that locals do not want to do (eg aged care workers in Canada and the US, construction workers, agricultural workers in Japan).

The private recruiters deal directly with disputes or anything that goes against the law. If they are not able to resolve disputes with the government of the receiving country they will go to the Chinese Embassy in the destination and seek their intervention. Thus, there is no central government organisation to count or handle disputes and therefore no central data collection to show the extent of mistreatment and/or abuse of migrant workers.

These government-agreed to schemes still carry a range of problems, according to Zhang, (2001: 129-30). The main ones are:

- the export of labour is not considered as important as trade and so the legislation and system for managing the projects are not perfect;
- channels for export cannot meet demand for people to go overseas to work and so 'illegal' migration exists;
- workers find it difficult to adapt abroad;
- legal rights and interest of labourers are not protected effectively.

The Chinese government has taken a series of measures covering these schemes that include: improving regulations and rules for managing projects; opening up more channels for the export of organised labour and simplifying procedures; and improving preparatory language and cultural knowledge training before workers go abroad. Nevertheless, problems are still seen as persisting. The new *Regulation on Management of Overseas Employment Service* was promulgated on 1 July, 2002 but numerous problems and infringements of migrant workers' rights are still likely to occur.

Outside of these two forms of 'controlled' labour migration, a large and growing undocumented element is handled by illegal agents or 'snakeheads'. News reports indicate that irregular migration from China is 'far from spontaneous' (Scalabrini Migration Center 2000). Human smuggling has been going on for the last 20 years and it is estimated that around 100,000 migrants are smuggled out of China every year, bringing in around US\$1.3 billion for the syndicates that orchestrate the whole process. 'Snakeheads' or smugglers recruit potential migrants (at US\$33,500 or more per head), targeting mostly migrants from the southern province of Fujian. Migrants are provided with forged documents and transported to transit stops such as Hong Kong and Thailand and then to the intended country of destination (Scalabrini Migration Center, 2000).

Little empirical work has been done in China on the nature and scale of labour movements, especially irregular movements. but it is estimated that there are more workers going in an irregular fashion than through registered recruiting agents. Some preliminary fieldwork by a researcher in Shanghai shows that rural women in villages in the coastal provinces of China were promised jobs in factories in Japan by

'snakeheads'.¹¹ They gathered together or borrowed the fee for their travel and other costs and then were taken, often via Bangkok, to Japan. Some did not make it past Bangkok and simply disappeared while others, on their arrival in Japan, were forced to work in the entertainment (or sex) industry. Irregular migrant workers are not protected by Chinese embassies: they would be too afraid to report any problems as they may be deported.

2.2 Areas of Human Rights Violations vis-à-vis Migrants

In terms of its overall human rights records, China has ratified: Convention on the Elimination of Discrimination Against Women (CEDAW) and the Optional Protocol to CEDAW; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child (CROC); Convention Against Torture (CAT); International Convention on Economic, Social and Cultural Rights, (ICESCR) and has signed but not yet ratified the International Convention on Civil and Political Rights (ICCPR).

There is a clear view in China that regular labour workers who go under organised schemes or through formal channels have some right to protection but those who go irregularly are less able to claim protection. Reports of human rights violations of offshore migrant workers fall under the following three headings.

Financial 'mistreatment of labour migrants

(1) Poor conditions and wages are frequently negotiated by government-approved agencies, according to some of our interviewees:

- 'If you read the contract of labour sending, you would think that the labourers are sold out to foreign countries. An example is the Chinese government has signed the contract with the countries like Japan and South Korea, where Chinese labourers are called "Yan Xi Sheng" and treated terribly. The government should not send its labourers to these countries';
- 'the enterprises and governments can earn a high profit from labour sending. Thus migrant workers' rights are subjected to the profit and often sacrificed. For example, Chinese government sends its migrant labourers to Japan, which calls them as "Yan Xiu Sheng" and place them actually in a terrible situation. In a seminar on the issues of Eastern Asia, I pointed out that it is illegal to damage human rights like this in some western countries, no matter for domestic workers or those from outside. But the situation in Japan is different, this country needs this terrible system, not only for labourers from China, but also for labourers from other Asian countries, such as Vietnam and Cambodia. A Japanese researcher said that it is indeed an evil, but there is nothing they can do because Japan needs this kind of labourers. In western countries, it will be punished severely if the enterprises are found using "black" (illegal) workers, but it is legitimised in Japan. It is the truth. Please bear in mind that it is Chinese government who sign such kind of agreement or contract with Japan';

¹¹ The fieldwork was conducted in Shanghai in the late 1990s. Robyn Iredale obtained this information from a Migration Research Workshop held at the Shanghai Academy of Social Sciences in 1996.

- ‘Many Chinese labourers, who are sent out by the governments, work in Japan as “Yan Xiu Sheng” with low payment and terrible conditions. They must come back after three years, i.e., they must endure three-year exploitation. Moreover, each of them must deposit a large amount of money, 80, 000-110,000 Yuan (about 10000 to 13750 USD) before they go out as migrant workers. This is a terrible example’;
- ‘there are some regulations and policies to protect migrant workers. However, they are not implemented effectively. Just as the situation within China, the law and policies cannot ensure that people will shoulder their responsibilities required. It is the key point. For example, Labour Law in China is very good literally but has not been conducted seriously. There are not many effective ways to monitor the implementation. The problem here is that the life of Chinese labourer is cheap: the government thinks so, and the bosses of enterprises overseas think so, too. If the government does not respect the rights of its labourers, it is impossible to regulate the employers in other countries’.

(2) Often no contracts exist for individual workers and they have only verbal agreements;

(3) Contracts favour employers but do not provide for the rights of workers;

- ‘Laws and policies restrict migrant workers more than protect them’;
- As long as wages are paid workers do not ‘mind how hard or difficult their jobs are’;

(4) Unscrupulous activities of illegal recruitment agencies;

- Forged Documents cost high sums of money;
- Many middlemen sell fake passports and visas.

Corruption

There are strong vested interests in maintaining the system and corruption occurs in the form of ‘snakeheads’ and illegal recruiters operating at various stages of the emigration and placement process.

Gender discrimination

As well as outgoing workers, China has incoming irregular workers who are not protected by Chinese law.

... for example, there are some North Korean female labourers who work as domestic servants, nannies in China, and some Filipinos work for rich people (mostly foreigners) as housemaids in Guangdong Province. I do not know much about these workers, but definitely they are not protected by Chinese law. I have a research in Yunnan, there are thousands of sex workers from Vietnam. (Personal interview, 2005)

2.3 Obstacles to Ratification of the ICMR

Political/economic climate and commitment to human rights issues

The process of ratification of five UN and various ILO and other conventions has proceeded steadily in the past ten years or so. As China opens up to the outside world there is a perception both internally and externally that it should become an international player. The desire to demonstrate a commitment to human rights, within the context of its market socialist political system, is part of this process.

The process of signing and ratification of a convention proceeds as follows. First, several Ministries may join together to promote ratification of a convention but it is up to the Ministry of Foreign Affairs to propose it to the People's Congress. The Deputy Premier Minister is responsible for this process. Second, the Congress agrees or disagrees with signing the convention. If the Congress agrees, the MOF will sign the convention.

But signing only means we know the existence of the Convention, but does not mean we should take the responsibilities of the Convention. Third, after signing the Convention, the government will study and discuss the ratification. Concerning this Convention, the ministry related like the Ministry of Labour and Social Security and the Ministry of Commerce, together with the MOF, will produce a report and draft a proposal of ratification, which will be submitted to the National People's Congress. Fourth, the Congress will put the proposal on its agenda and consider its ratification. The congress will take a vote to pass the ratification if everything is OK. Finally, after the approval of the Congress, the MOF will ratify the Convention and the Convention goes into effect in China. (Personal interview, 2005)

One interviewee reported from an informal conversation about the ICMR as follows:

some officials from the MOF said that there are not many difficulties in signing and ratifying the convention in terms of politics and law. So I think the convention is not signed by China only because of some technical reasons. As what I know, there are only several people working for the ratification of international conventions within the MOF and the National People's Congress. Therefore, the government now is considering the ratification of the convention on civil and political rights, and in the following it can think about other issues. (Personal interview, 2005)

Another felt less optimistic and stated:

- a) It would be 'hard work' for China to ratify the Convention – on the one hand they want to protect human rights but on the other they do not want to encourage irregular movement of migrant workers – *do they see the Convention as accepting irregular migration? The Government is worried about increasing spontaneous migration.*
- b) It is not yet a priority for the Central Government but if the problems get more severe it could become an issue.

Therefore, from a government point of view it would appear that it is partly a matter of resources and the need to carefully work its way through each convention and partly a matter of the lack of priority. China's 'opening-up' has only occurred in the last 25 years or so and it has a lot of catching up to do with the rest of the world.

Another interviewee stated that:

there is little research concerning this issue in China. It denotes that the government has not placed it on to agenda. (Personal interview, 2005)

Among the general population, the spread of information about rights is limited and the need for employment often overrides all else. This leads people into seeking risky offshore opportunities without checking out the conditions, agents and future job availability. Human rights concerns are low on the concern list of both would-be workers and officials. Finding employment and economic survival/success are the priority concerns for many Chinese workers. Thus there is little groundswell of opinion to push for ratification. This is necessary not only to make it a political issue but also for implementation.

... the Convention should be agreed by mass people. An example is that the EU Constitution is objected in the referendum. Thus, if the Convention is only signed or ratified by the top level, it is possible it cannot be agreed or followed by grassroots. It would be more valuable if a convention can root in local society and people think it is good for them. (Personal interview, 2005)

In China, the absence of NGOs that would normally fill the role of providing education and spreading awareness about human rights, welfare provisions, appropriate employment conditions and remuneration, etc makes the situation even more serious.

There are some international NGOs like *Save the Children* being involved in this kind of issue. It is nearly impossible for internal NGOs to deal with and concern the issue, for a simple reason that they do not have many opportunities to go overseas. Also, in China, it is difficult or illegal to officially link internal NGOs to international NGOs as their affiliates. (Personal interview, 2005)

There is a general reluctance, including among the media, to highlight human rights abuses of migrant workers onshore, let alone offshore. The current estimate of 120-150 million internal migrant workers far outweighs the number going offshore to work and so there is much less attention devoted to overseas migrant workers and their situations.

I think that firstly we need to do researches or studies in this respect in order to find the problems, after that we can figure out possible ways or channels to deal with this issue politically or legally. For example, the government can cooperate with NGOs or other organizations to deal with migrant workers' rights together. (Personal interview, 2005)

Moreover, there is a different perception about migration and who should be protected in China's view.

In China trafficking is not seen as migration, but in the Convention it is seen as migration. That is to say, China will not agree with some provisions in the Convention. (Personal interview, 2005)

In addition, the fact that other countries like the US and Canada, European countries, Australia and New Zealand, Singapore, Japan, etc have not ratified the Convention may influence China's decision to sign and ratify. It also means that since these receiving countries have not ratified the ICMR Chinese workers will not be protected within their borders.

Perceptions of impact of ratifying ICMR

The perception among some interviewees is that the issues have not attracted enough attention for the government to them important. Moreover, the Government thinks that Chinese migrant workers are protected now and the convention is redundant.

The contracted migrant workers go out by the channel arranged by the government, so the governments think they can protect these migrant workers, there is no need to protect them by the Convention. Therefore, the government does not think it is an important issue.

Concerning illegal migrants, the governments think they are bad, so they just stop it, thus it is not an issue of protection, either. And the issue of trafficking labour is a very sensitive one in China because the government think it will lose their faces if talk this kind of issue too much. Another example is prostitution which is also illegal in China, thus the government does not take into consideration the prostitutes' rights. And illegal migrant workers are seen as the criminals not victims. (Personal interview, 2005)

On the other hand, one interviewee could not see any great gains to be made from ratifying the ICMR.

But what is important is: first, how much will its signing and ratification mean to China? As a matter of fact, the United Nation has reached a lot of agreements and decisions, but most of them are only "paper" agreement. For instance, the US has not taken its responsibility according to the agreements and conventions. Now worse, the country refuses to sign many agreements and conventions, such as *Kyoto Protocol*. Recently the US becomes the only country in the world to refuse to sign a UN convention on cultural diversity. Thus the institutions and regulations are not so important. Actually in China there are a lot of regulations and policies to protect the rights of migrant workers. But they are out of sight for those international organizations, philanthropists, NGOs, etc.

Other obstacles

The government is trying to stamp out irregular Chinese migration by both closing down illegal agents and cooperating with other countries, such as the UK and US, in the arrest of people smugglers. For example, Chinese officials are pressing the US to stop providing asylum to Chinese who entered the United States illegally, 'so as to have them give up any illusions' (Zhang 2001: 131). Chinese embassies in receiving countries are active in dealing with the issue of trafficking but do not necessarily want to highlight the problem.

Concerning illegal migrants, the governments think they are bad, so they just stop it, thus it is not an issue of protection, either. And the issue of trafficking labour is a very sensitive one in China because the government think it will lose their faces if talk this kind of issue too much. Another example is prostitution which is also illegal in China, thus the government does not take into consideration the prostitutes' rights. And illegal migrant workers are seen as the criminals not victims.

Spontaneous in-migration from North Korea, Vietnam, Philippines and elsewhere occurs on a steady basis. It is extremely sensitive and highly politicised issue and all governments try to avoid addressing these issues publicly. Ratification of this Convention would draw attention to migration generally and would require equal treatment of all migrant groups, a fact that is politically untenable at the moment.

SECTION 3

CONCLUSION

Ratification of the ICMR faces major hurdles in the Asia Pacific region for two major reasons: fear among sending countries of being undercut by other sending countries and fear of political/economic/social consequences in receiving countries. For sending countries, the fear of being undercut by non-ratifying neighbours is often a major obstacle — countries fear they will lose markets if they ratify as their workers may become ‘too demanding’ and ‘rights conscious’. The trade-off between ensuring labour market penetration and the labour and human rights of migrants is a complex issue and countries need to work together to ensure that undercutting does not occur. The need to encourage cooperation and collaboration, rather than competition, is imperative.¹²

This was not stated as an obstacle in China as recruiting agencies are free to negotiate their own contracts and there are no minimum wages or standard contracts. This study has shown that Chinese workers are often not well protected and the conditions that many face are substandard and exploitative. Workers are often treated in a demeaning way and their liberties are curtailed.

Ratification of this Convention does not, however, appear to be a high priority for China because of a lack of resources, scepticism about what ratification would achieve given that no receiving countries have ratified and the fact that there are many other more pressing internal issues on the political agenda. International migrants are very small in number compared with the scale and issues surrounding internal migration. These domestic issues will require a high level of attention in the coming years to cope with the housing, education, employment, health and legal aspects that have and will continue to emerge.

Thus, international migrant workers have not yet become a major topic of concern in the media or among the general population. Many may in fact be better off than they would be in China and migrant workers and their families usually do not complain as the remittances have become an important source of income. They often remain silent about their mistreatment, deception and abuse for fear of retribution or of losing their employment. This is particularly the case for irregular workers and victims of trafficking. The Government has no desire to appear to be supporting these latter groups of migrants and is intent on stopping such movements, rather than demonstrating concern about the protection of their human rights.

The absence of an active NGO movement in this area is a definite disadvantage. There is no collective voice to highlight the situation facing offshore Chinese working in poor conditions. Placement agencies are ultimately responsible, as it is a self-regulating

¹² A subsequent UNESCO-sponsored study carried out in 2004-05 investigated the economic, social and political impacts for the Philippines, and Sri Lanka of ratification of the ICMR. The study found no evidence of a loss of markets but evidence that ratification encouraged senders to bypass destinations that were deemed to offer poor conditions and inadequate protections.

industry, but it appears that the concerns of employers are more important than those of employees. This leads to a situation where migrant workers have little recourse in the face of a disagreement.

An anomaly exists whereby the Government has set up authorities and introduced regulations to oversee the processes of labour emigration but these are not implemented properly. The creation of an environment of 'good governance', which would involve broad level reforms to render ratification of this Convention meaningful, is needed. On the whole, major problems are posed by the lack of resources, at the governmental and absence of NGOs, by a lack of awareness or ignorance on the part of the migrants themselves, and by the strong interests involved in the 'migration business'.

Ultimately, ratification hinges upon political will based on the formation of consent in favour of this Convention. This can normally be brought about through combined efforts by local, regional and global campaigns by NGOs and the Steering Committee for the Global Campaign.¹³ The absence of these mechanisms in China could make for a slower than usual road to ratification.

¹³ For more information, see www.migrantsrights.org/about_campaign_engl.htm

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Appendix I

List of Interviews

Mr. Chen Shiyan, Research Fellow of Law, Institute of Law, CASS

Mr Guan Fuqun, President, Guangzhou Branch, China Star Corporation for International Economic and Technical Cooperation

Professor Gui Shixun, , Population Research Institute, East China Normal University, Shanghai

Ms. Han Jialing, Research Fellow of gender studies, Institute of Sociology, Beijing Academy of Social Sciences.

Professor Huang Ping, Senior Research Fellow of Sociology, Bureau of International Cooperation, CASS

Professor Luo Keren, China National Committee for Pacific Economic Cooperation. Asia Pacific Development Research Center, Shanghai

Mr Liang Mengquan, President, Shanghai Branch, China Star Corporation for International Economic and Technical Cooperation

Mr. Wang Chunguang, Senior Research Fellow of Sociology, Institute of Sociology, CASS

Mr. Zhao Jianwen, Professor of Law, the Law School of Zhengzhou University, Henan Province

A/P Wu Ruijun, Population Research Institute, East China Normal University, Shanghai

Ms. Zheng Zhenzhen, Research Fellow of Demography, Institute of Population and Labour Economics, CASS

APPENDIX II

A COMPARISON OF LABOUR MANAGEMENT POLICIES OF SAMPLE OF ASIAN SENDING COUNTRIES

Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of returning labour migrants	Inter-state cooperation
Bangladesh	Gov't and private. Limited co-ordination.	Limited female migration suggests significant irregular migration. Limited protection. Local missions.	Ministry of Labour and Employment (Bureau of Manpower, Employment and Training), Home and Foreign Affairs <i>Emigration Ordinance 1982</i>	None	Both formal and informal. Migrants prefer informal though some advances made in formal recently.	No gender segregated information. Number obtaining clearance through BMET collected only.	Less developed program environment.	One bi-lateral agreement with Kuwait.
India	No national coordination.	Indian Missions responsible.	<i>1983 Emigration Act</i> - controls recruiting. 3 Ministries responsible.	Some NGO preparation and skills training by receiving companies.		Number obtaining clearance to work o/s (Emigration Check Required) collected by Ministry of Labour – under-enumeration as other categories not counted.		MoU with Nepal.
Nepal	No policy till recently – based on history.	Little policy development.	<i>Foreign Employment Act 2042 (1985)</i>	Little begun recently.	In hands of licence holders.	No official collection.		MoU with India.

Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of returning labour migrants	Inter-state cooperation
Pakistan	Gov't organised private sector placements, O/S gov't work, and private.	Local missions responsible.	Comprehensive legislation under MOL - <i>Emigration Ordinance 1979</i> .	Limited to info about countries, cultural norms.	Many generous incentives to OPs to remit, generally formal channels.	Visa details. Limited gender segregated information.		Two bilateral agreements (Jordan and Qatar).
Sri Lanka	1985 SLBFE Act, 2001 Employment Policy.	Handled by licensed agents, missions, SLBFE, labour organisations and NGOs.	<i>Foreign Employment Agency Act No. 32 of 1980</i> to regulate recruitment agents.	Standard syllabus, govt. trainers but provided by licensees. Training stamp required on passport.	Non Resident Currency Accounts administered by Central Bank. Some training and awareness building.	SLBFE data based on registrations. Immigration/emigration card system at airport represents a second data collection system.	Low take-up of self-employment loans. Limited development of micro programs to support initiatives.	No MoUs.
Thailand	Gov't promotion	Little policy development. OFWs have right to vote at home.				Out-migration data improving. Poor data on irregular immigrants.		Agreement with Taiwan.

Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of labour migrants	Inter-state cooperation
Philippines	Gov't actively promotes – increasingly looking for skilled employment Definition of 'skilled' is often pragmatic	Most developed protection Inc role of private recruiters. Model contracts Prominent role of NGOs at home and o/s.	<i>Migrant Workers and Overseas Filipinos Act 1995</i> Philippines Overseas Employment Agency (POEA), Overseas Workers Welfare Admin (OWWA). Both regular and irregular migrants.	Widespread. All OCWs must participate.	Relatively well managed.	POEA, Inter-Agency Committee on Tourism and Overseas Employment Statistics	Some policies but room for improved policy.	MoUs with many countries.
Vietnam	Government actively seeks out 'safe' labour markets	Protection by means of more government control, women prohibited from working as domestics, entertainers. Few private agents.	Gov't control high. Labour contracts handled by enterprises once government has negotiated agreement.	Increased training on a range of topics.	Gov't earns foreign currency. No managm't of personal remittances and small % sent through banks.	2 domestic agencies – MOLISA, Ministry of Public Security, Dep't of Statistics, Ministry of Planning and Investment.	Training and loans available for establish. of small and medium enterprises & assistance in finding a job.	Bilateral Agreements with Kuwait, Lebanon, Saudi Arabia, Libya, Japan S. Korea.
China	Gov-managed schemes and growing no. of employment agency contracts and irregular mig.	Attempts to improve protection in managed flows but little protection in others.	Regulation on Management of Overseas Employment Service, 2001-02.			Bureau of Public Security		

Source: Compiled from data collected from a wide range of sources, but especially from information available from government departments in the various countries.

APPENDIX III

SUMMARY OF MAIN OBSTACLES TO RATIFICATION IN SEVEN OTHER COUNTRIES

	Main Obstacles		
Sending Countries	Political/economic climate	Perceptions of impact of ICMR	Other
Bangladesh	Good ratification record but bad implementation largely based upon poor resources; high rates of illiteracy resulting in little awareness.	Clashes with domestic law; fear of being made liable for migrants in BD; fear of losing market for own workers abroad; fear of being made liable for irregular migration.	Migration between Pakistan, India and BD politically very sensitive because of ethno-religious conflicts.
Indonesia	Transition phase to democracy and decentralisation; weak bureaucratic structure; labour issues marginalized; priority put on ratifying other core conventions; lack of international pressure to ratify ICMR; reasonable ratification record, but poor implementation.	Fear of losing out on regional labour market; reluctance to criticize Muslim brother countries; fear of being liable for migrants in Indonesia.	Lack of transparency in bureaucratic processes; lack of experts (HR and international law).

	Main Obstacles		
Receiving Countries	Political/economic climate	Perceptions of impact of ICMR	Other
Japan	Grip on power by the Conservative Party (LDP); ICMR considered unimportant (not a core convention; not ratified by other G7 countries); lack of international pressure to ICMR; good ratification record but no interest in entry into more multilateral treaties (critique of UN system).	Clashes with domestic law; favourable treatment to migrant workers; implications for basic immigration policies; lack of willingness to give protection to irregular migrants; lack of willingness to accept family members.	'Oldcomer' immigrants are not protected according to international standards either.
Korea	Fear of losing 'mono-ethnic' character; Korean foreign policy reactive, not pre-active; economic recession does not allow for protection of migrant workers; conservative politicians in majority.	Lack of willingness to accept family members; fear of migrants joining strong labour unions; high burden of monitoring and implementation.	Possibility of reunification with North and influx of workers from the North.
Malaysia	Poor ratification record, little appreciation of universal HR by government; little pressure from within civil society; no public debate; existing legislation seen as sufficient to protect foreign workers	Lack of willingness to accept family members and settlement; fear of ethnic society becoming unbalanced; protection of irregular workers seen as unacceptable	Collusion with employers and recruiters; composition of ethno-religious politics
New Zealand	ICMR seen as irrelevant in view of existing settlement policies and protective legislation; high burden of implementation and monitoring; best ratification record but no interest in entry into more multilateral treaties (critique of UN system); no pressure from NGO's.	Lack of willingness to protect irregular migrants; clash with domestic laws	Maori communities might object to giving newcomers special treatment
Singapore	Poor ratification record and little civil society advocacy for HR in general; reluctance to be inspected by UN system.	Clash with immigration policies; avoidance of settlement and family unification for unskilled workers.	Lack of transparency regarding migration policies and official statistics unavailable.

