



ESCWA
United Nations Economic and Social
Commission for Western Asia

Inter-Regional Report on Labour Migration and Social Protection

United Nations
New York, 2013

E/ESCWA/SDD/2013/Technical paper.2
13 - 0083

Note: These studies have been prepared by a team of consultants. The opinions presented in these studies are not necessarily those of the United Nations.

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ABBREVIATIONS

AFTA	ASEAN Free Trade Area
BAIRA	Bangladesh Association of International Recruiting Agencies
BLAs	Bilateral Agreements
BSR	Business for Social Responsibility
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
BMET	Bangladesh Bureau of Manpower Employment and Training
CARAM	Coordination of Action Research on AIDS and Mobility
CEACR	Committee of Experts on the Application of Conventions and Recommendation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
EPS	Employment Permit System
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
EWOE	Ministry of Expatriates' Welfare and Overseas Employment
FDI	Foreign Direct Investment
GATS	General Agreement on Trades in Services
GCC	Gulf Cooperation Council
GCIM	Global Commission on International Migration
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICFTU-APRO	International Confederation of Free Trade Unions – Asian and Pacific Regional Organisation

ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICMC	International Catholic Migration Commission
ILO	International Labour Organization
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
MFEPW	Ministry of Foreign Employment Promotion and Welfare
MoU	Memorandum of Understanding
NGOs	Non-Governmental Organizations
OHCHR	High Commissioner for Human Rights
OSCE	Organization for Security and Co-Operation in Europe
PPA	Private employment agency
RCPs	Regional Consultative Processes
RMMRU	Refugee and Migratory Movement Research Unit
SAARC	South Asian Association for Regional Cooperation
SRAs	Skills Recognition Arrangements
TRF-AMW	Task Force of ASEAN Migrant Workers
UNDAW	United Nations Division for the Advancement of Women
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNIFEM	United Nations Development Fund For Women
UNRISD	United Nations Research Institute for Social Development
WTO	World Trade Organization

CHAPTER I

INTRODUCTION – MIGRATION FROM THE COUNTRIES OF THE ESCAP REGION TO THOSE OF THE ESCWA REGION



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CHAPTER I

INTRODUCTION – MIGRATION FROM THE COUNTRIES OF THE ESCAP REGION TO THOSE OF THE ESCWA REGION

The countries of Western Asia and those of the Asia-Pacific region have long been linked by trade and travel. However, since the 1970s in particular, the two regions have experienced a highly extensive movement of people looking to seize work opportunities created by the rapid development of the countries of the Gulf Cooperation Council (GCC).¹ Opportunities in Jordan and Lebanon have also opened up in recent years, increasing the number of migrants from Asian countries to them. Migration has enabled countries of destination to access a relatively low-cost workforce with appropriate skills, without which they would not have been able to implement their ambitious development plans.

Though the exact numbers are difficult to gauge, it seems likely that labour migrants² from the countries covered by the Economic and Social Commission for Asia and the Pacific (ESCAP)³ constitute the majority of migrants in the major countries of destination who are members of the Economic and Social Commission for Western Asia (ESCWA).⁴ Indeed, in some GCC countries, migrants make up the majority of the workforce, or even the population. This inter-regional migration is managed under a regime aimed at ensuring that migrants stay only temporarily in the countries of destination by linking foreign workers' residency status to their employment.

These trends have reshaped the economies and societies of both countries of origin and countries of destination in many complex ways. The resulting changes cannot simply be described as either positive or negative. Immigration has been vital in supplying labour for the development of the GCC countries. Yet, with immigration coexisting with high levels of unemployment among nationals, it is not clear whether the economic model supported through dependence upon labour migration is sustainable. On the other side, emigration eases labour market pressures in the countries of origin and affords households income through remittances, and it can increase migrants' skill levels. However, migration from the Asia-Pacific region to ESCWA countries results in divided families and takes place under recruitment

systems in countries of origin that are often *de facto* informalized, and the *kafala* (sponsorship) system in the countries of destination, both of which raise particular human rights concerns. Such processes increase the vulnerability of migrants in general, and migrant female domestic workers in particular, to exploitation and abuse.

To address these issues and build the capacities of their respective member countries to manage migration in such a way as to maximize positive outcomes and minimize negative ones, ESCAP and ESCWA organized a workshop on "Strengthening dialogue between ESCWA and ESCAP countries on international migration and development", from 28 to 30 June 2011 at the United Nations House in Beirut, within the framework of a United Nations Development Account-funded project on "Strengthening National Capacities to Deal with International Migration: Maximizing Development Benefits and Minimizing Negative Impacts". The workshop brought together policy makers and independent experts to discuss the issues at stake in this inter-regional migration flow, with a particular focus on the social protection of migrants, and to develop findings and recommendations to guide future dialogue and cooperation between countries of origin and countries of destination.

A number of background papers were presented to provide participants with a conceptual background to the issues discussed. This publication brings together these papers, amended in light of comments from participants, along with the conclusions and recommendations developed by the workshop.

The second chapter, "**Protection of the Rights of Migrant Workers in South and South-West Asia: Key Issues**", provides a broad overview of the human rights issues associated with international migration from the ESCAP region to the ESCWA region. It examines the characteristics of this migratory flow; the relevant civil and political, social and labour rights questions; the existing frameworks at national, bilateral, regional and international levels for the protection of the human rights of migrants; and the potential role of civil society actors. While observing some progress on

the protection of migrant rights, which countries of origin and countries of destination alike recognize to be an issue, it notes that there is still significant scope for progress in both implementing existing instruments and formulating new ones.

The third chapter, **“Recruitment Cost in Bangladesh: Challenges of Governing Migration in the Countries of Origin”**, looks at the issue of pre-departure migration costs in Bangladesh, which constitutes an abuse of migrant rights in the country of origin and has serious implications for the development impact of migration. The mechanisms underlying these costs are explained, the actors behind them described, and a breakdown of the typical costs to migrants to different countries in the GCC provided. The paper also discusses the measures migrants take to pay these fees and their effect of this on their real earnings and level of remittances, and concludes by noting that the only actors who benefit from the high costs are the middlemen and suggesting measures to reduce costs and make payment less onerous.

Having considered the issues facing countries of origin, the focus turns to conditions in the countries of destination. The fourth chapter, **“Reforming the Kafala: Challenges and Opportunities”** discusses the sponsorship system that regulates the lives of migrants from ESCAP countries in the GCC countries, as well as Jordan and Lebanon in its historical context, before assessing recent moves taken by various countries towards reforming it. Finally, it outlines key elements to consider in the formulation and implementation of reform processes.

Given the particular protection needs of migrant domestic workers in the ESCWA region, most of whom come from ESCAP countries, the fifth chapter addresses **“The Situation of Migrant Domestic Workers in Arab States: A Legislative Overview”**. The chapter discusses the relevant international Conventions that protect migrant domestic workers and then outlines the actual legal framework within which they live and work and the vulnerabilities these frameworks create. It also examines the responsibilities and actual roles of the various actors involved. In particular, it highlights the exclusion of domestic workers from labour legislation and the multiple forms of discrimination they face. The chapter concludes with a call for the ratification of the recent International Labour Organization Convention on Domestic Workers (No. 189).

The sixth chapter, **“The Migratory Experience of Returned Migrant Domestic Workers: The Example of Indonesia”**, uses survey data and in-depth interviews to analyse the characteristics of female migrant domestic workers from West Java, Indonesia who have migrated to GCC countries, often on multiple occasions, as well as their motivations, work experiences and the recruitment processes followed. It outlines potential areas of reform for the better protection of Indonesian female migrants and to maximize the benefits of the migration process upon return.

Finally, seventh chapter, **“The Way Forward: Some Key Concluding Messages”**, provides an overview of the key cross-cutting issues covered by the substantive chapters.

CHAPTER II

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS IN SOUTH AND SOUTH-WEST ASIA: KEY ISSUES



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CHAPTER II

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS IN SOUTH AND SOUTH-WEST ASIA: KEY ISSUES¹

A. INTRODUCTION

Many countries in South and South-West Asia² face the dilemma of choosing between promoting overseas employment and the protection of their workers abroad. A few countries of origin are making efforts to improve migration policies, rendering them sensitive to migrants' rights.³ Given the "supply side" characteristics of South and South-West Asia, which are marked by high population density and persistently high levels of poverty, the protection of citizens abroad poses a difficult challenge. Although in the countries of the Gulf Cooperation Council (GCC), which are the main destination for migrants from South and South-West Asia, migrant workers often outnumber nationals, the low skilled among them are widely reported as being subjected to harsh conditions.⁴

The protection of the rights of migrant workers is, therefore, a key concern. While the protection of these workers is often considered the responsibility of the country of destination, countries of origin can also contribute to improving it.

This chapter discusses rights issues as they have emerged in the case of foreign workers migrating from South and South-West Asia. It focuses on economic migration, as opposed to forced migration (for example, political refugees), and on movements across State borders; it therefore excludes internal migration. In an attempt to outline trends and patterns with a specific focus on the protection of the rights of migrant workers who move from and within the sub-region of South and South-West Asia, the major destinations for South and South-Western Asian migrants in Western Asia, namely the GCC countries, are included. Reference is also briefly made to South and South-West Asian migrants in South-East and East Asia. Excluded, however, are destinations outside these sub-regions, such as Australia, North America and Europe.

The discussion in this chapter is based on the specific features of South and South-West Asian labour migration, as well as on policies and accompanying practices. Using a social-sciences approach, it is also based on a human

rights framework that goes beyond labour rights to include economic, social, cultural, civil and political rights. The chapter begins by outlining the predominant effects of migration policies on the human rights of migrant workers and outlines specific rights violations. It then discusses normative and institutional issues of rights-based migration governance. The final section considers the role of civil society in the promotion of migrant workers' rights.

B. HUMAN RIGHTS IMPACT OF MIGRATION POLICIES

1. Background

Migrant workers often share a common characteristic: they enjoy fewer rights than the host population and are subject to the perception of not being entitled to the full range of economic, social, civil, political and cultural rights.⁵ In principle, migrant workers are well protected in international human rights law: through general norms of non-discrimination and equality; through substantive rights, such as freedom of movement, labour rights, and the right to be free from debt bondage; and through rights for specific groups, such as women and children. In other words, there are internationally agreed standards for the different roles migrants play as workers, non-citizens, children and women. The list of applicable human-rights norms includes: the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The latter also covers rights of migrants at the pre-departure stage. In addition, there are a number of International Labour Organization (ILO) Conventions relevant to migrant workers.⁶ Until recently, however, these general standards have

not been carefully examined for their application to migrant workers in particular.⁷ As reports of violations of the human rights of migrants gradually gained enough critical mass to attract attention (see the various reports by Human Rights Watch, for instance, HRW 2009), the protection of migrant workers has been addressed by highlighting the relevance of existing norms and progressively developing new standards to respond to gaps.⁸

The developments in the legal standards and practices are taking place alongside evolving frameworks for creating rights-based and gender-sensitive migration policy. The Division for the Advancement of Women (UNDAW) 2004 *World Survey on the Role of Women in Development* is devoted to the issue of “women and international migration”.⁹ The report *Gender Equality: Striving for Justice in an Unequal World* by the United Nations Research Institute for Social Development (UNRISD) contains a chapter devoted to the issue of gendered labour migration.¹⁰ The Organization for Security and Co-Operation in Europe (OSCE) has developed detailed guidelines on gender-sensitive migration policies.¹¹ The Draft ILO Multilateral Framework on Labour Migration employs a rights-based approach to migration. In addition, the final report by the Global Commission on International Migration (GCIM) of 2005 and the United Nations Development Programme (UNDP) *Human Development Report* of 2009 on migration highlight the importance of upholding migrants’ rights for enhancing human development.¹²

2. Key Features of Migration Policy and Migrant Rights in Asia

Migration from South and South-West Asia is largely driven by the prospect of increased earning opportunities in the countries of destination. At the same time, there are job opportunities for low-skilled workers in the countries of the GCC. However, the supply of workers willing to migrate abroad outnumbers the number of employment opportunities, which makes migration largely supply-driven and seems to reduce the bargaining power of the countries of origin. These imbalances lead to a number of market failures that have an impact on migrants’ protection. Such issues and their effects on migrants’ rights are largely the outcome of the specific features of labour migration in this region, which are:

1. A strictly temporary-labour migration regime with employment tied to one employer and with tight

contractual restrictions, especially to countries of the GCC.

2. A migrant skill profile dominated by semi-skilled to low-skilled workers (with little professional, highly-skilled migration).
3. Recruitment and hiring processes dominated by the private sector in both countries of origin and countries of destination.
4. A high incidence of irregular migration.
5. A high share of female migration in the case of Sri Lanka, and increasingly so in the case of Nepal;¹³
6. Increased trafficking and forced labour.¹⁴

2.1 Temporary labour migration

The migration regime that has evolved in Asia – to the countries of the GCC, as well as within Asia at large – is primarily a system of temporary labour migration, largely of low-skilled and semi-skilled workers, with contracts typically lasting for one to three years.¹⁵ Such contracts typically tie the worker to one specific employer. Breaking the contract to seek employment elsewhere – for instance in the case of abuse or contract violation by the employer – may change the status of a migrant to that of an irregular migrant.

In existing temporary labour migration schemes, rights are linked to skill levels. While low-skilled migrant workers, who constitute the majority of foreign workers in the GCC countries, do not have the right to bring in their families, highly-skilled workers do.¹⁶ For example, highly skilled workers from India are allowed to bring in their families to GCC countries, while the large majority of Indian migrants (70 per cent), who are semi- and unskilled workers, cannot. In the absence of family reunification policies in Asia, most migrant households are therefore transnationally divided, with either one parent working abroad, or both parents working abroad in different countries.

2.2 Migration flows dominated by semi-skilled and low-skilled workers

Tending to work in the informal sectors of the labour market, or in sectors where labour standards are not applied or do not exist even for local workers, low-skilled temporary migrant workers, who constitute the majority of labour migrants in Asia, are more vulnerable to rights violations than the better skilled. In terms of their position within the labour market, most male migrants are hired

for work in the construction sector, the small-firm manufacturing sector, subcontracting companies, the agricultural sector and food processing, shipyards, fisheries, and services. The demand for low-skilled workers exists for jobs such as domestic workers, cooks, gardeners and drivers, where there is typically no protection under local labour laws. Adverse working conditions, exposure to very hot climatic conditions, an inability to participate in social and cultural activities, and long periods of separation from families and relatives lead to emotional deprivation and physical exhaustion.¹⁷

Once at the destination, the key issues and concerns for foreign workers centre upon workplace grievances, and can be broadly classified into two sets: 1) employment-related issues, and 2) welfare, occupational health and safety issues. The first set consists mainly of issues of non-payment or underpayment of wages and unauthorized deductions, while the second pertains to accommodation, long working hours and workplace hazards. The latter also includes work-related injuries and accidents, as well as physical and sexual abuse (suffered primarily by foreign domestic workers). Official statistics on numbers and types of the various workplace grievances are rare—indeed mostly non-existent—as are systematic studies or recording activities by NGOs.

Rights violations may also arise at the pre-migration stage, when the migrant is still in the country of origin. A lack of decent employment opportunities or social safety nets in cases of illness, widowhood and other situations of distress and gender inequality in general are major factors leading people to migrate. Once the decision to migrate is made, malpractice by recruitment agents often adds to the hardship of many migrants.

2.3 Recruitment

Legal migration is limited to workers who have individually arranged their employment contracts in advance while still in their country of origin. The limited role of Governments in the process of recruitment has resulted in the commercialization of migrant labour flows through the use of designated public or private recruitment agencies. According to Hague (2005), over 90 per cent of the labour recruitment in Bangladesh, India, Pakistan and Sri Lanka is carried out by private agencies, a practice that exposes low-skilled migrants to illegal human and financial exploitation,¹⁸ and leads to potential collusion between business and Government.¹⁹

2.4 Growing share of female migration

The increasing share of women migrating has to do with gendered push and pull factors. Migrant women find work in traditionally female-dominated occupations, mostly in the health sector and domestic work. They can also be found working in smaller, but considerable, numbers in factories, especially in the garment sector. As domestic workers, migrant women lack recognition as workers and are hence inadequately addressed by labour legislation.

At the global level, skilled migrant women have tended to enter what can be broadly classified as welfare and social professions (education, health, social work) – which can be considered traditionally female jobs. Nursing is the most female-dominated skilled sector, with 90 per cent or more of the nursing workforce being comprised of women.²⁰ Siddiqui reports that a relatively small number of Bangladeshi nurses are working abroad.²¹ Most low-skilled migrant women around the world work as domestic or care workers; entertainers; in manufacturing, especially in the garment sector, where male migrants are often part of higher management levels; and to a lesser degree in agriculture.²² Domestic work is also the single most important category of employment among female migrants in the countries of the GCC, as well as in Lebanon and Jordan.²³ Small numbers of women migrant workers are also working in manufacturing.²⁴

The trend towards the feminization of migration is directly related to the feminization of poverty in South and South-West Asia. In Nepal, for instance, the brunt of poverty falls disproportionately upon women due to gender discrimination. The majority of female migrants are married and have children, which suggests that they migrate because of family financial problems and the inability of men to provide sufficient income.²⁵ Other than in Sri Lanka and Nepal, however, women's migration has been very restricted. As a result, the low-skilled migrants deployed by India, Pakistan and Bangladesh are virtually all male. In Pakistan, for example, unmarried women below 35 do not receive clearance to migrate from the Ministry of Labour. Prior to 2003, Bangladesh restricted the migration of low- and semi-skilled women; females then constituted less than one per cent of all workers deployed abroad.²⁶ Since the ban was lifted, small numbers of Bangladeshi women have been working in Malaysia in manufacturing.²⁷

Domestic work deserves special mention, since it is a highly significant source of legal employment for foreign women (and for many fewer men). Although such work is well regulated by formal migration policies, possession of legal status (that is, entry and work permits) does not necessarily translate into labour law protection or even recognition by labour laws; in fact, domestic work is widely excluded from national labour legislation. Foreign domestic workers or carers (typically women) do not fall under national employment acts (in Singapore, Malaysia, Taiwan Province of China, and the GCC countries), whereas foreign workers in industries such as construction and manufacturing are usually covered by industrial relations legislation. Thus, national employment acts or standard labour laws do not recognize domestic work as a legitimate form of labour, notwithstanding the work permit most migrant domestic workers hold. The new ILO Domestic Workers Convention no. 189, adopted on 16 June 2011, seeks to address this gap.

2.5 High incidence of irregular migration flows

Irregular migration occurs alongside legal migration. It is the result of a number of complex issues and is thus not purely a matter of unauthorized entry. The number of irregular migrants is especially high in certain countries. Partly as a result of the high incidence of irregular migration, wage discrimination and labour rights violations are rampant.²⁸

The different bans imposed by Governments of Bangladesh and Nepal on migration of low-skilled women to engage in domestic work (the largest pull factor for women) in the GCC countries has often had the reverse effect of leading the women targeted by these bans to follow irregular migration routes, placing themselves at both physical and legal risk.²⁹

3. Areas of concern related to the protection of the rights of migrant workers

All migrants, including female migrant domestic workers, are, regardless of legal status, entitled to respect for and protection of their fundamental human rights, whether by public officials, other agents of the state, or by private individuals and other non-state actors. These include the right to life; freedom from torture and other ill-treatment, including sexual and gender-based violence; freedom of movement; freedom from arbitrary

detention; social and economic rights, including rights in the workplace; and freedom from any form of discrimination.³⁰

Abuses of migrant workers' human rights, especially those of domestic workers in the GCC countries and South-East Asia have received a great deal of attention in recent years. Reports of various kinds of abuse, including sexual abuse, are frequent.³¹ According to official data on complaints received by the Sri Lankan Government, most come from women working in the GCC, with the highest numbers of complaints between 2006 and 2009 having come from those deployed in Saudi Arabia and Kuwait.³² Specific abuses range from having passports or other identity documents confiscated; having salaries routinely withheld; working excessively long hours; verbal and physical abuse at the hands of employers; restrictions on freedom of movement; to violations by the state in the justice system, including arbitrary arrest, detention and expulsion.³³ Some examples of concerns related to the protection of the rights of migrant workers are given below:

3.1 Civil and political rights

- International instruments clearly state that regardless of their legal status, mass **deportations or expulsions** of migrant workers, should be avoided, since they result in gross violations of human rights, especially in situations of detention. In the Bangkok Declaration on Irregular Migration adopted in 1999, several countries and territories in Asia and the Pacific³⁴ committed themselves to ensuring that “return should be performed in a humane and safe way”. Yet, this principle appears not to have been followed in practice, with the occurrence of large-scale arrests, detention and deportation of workers by several South-East Asian countries, as reported by non-governmental organizations such as Migrant Forum Asia and Migrants' Rights International.³⁵
- Among the countries under discussion, Afghanistan, Bangladesh, India, and Islamic Republic of Iran have provisions for overseas voting rights.³⁶ Provisions for overseas voting vary, with some countries, such as the Islamic Republic of Iran, allowing voting in embassies, whereas Bangladesh and India require overseas voters to return to their countries to vote in their constituencies.

3.2 Social rights

- Health and safety management in the construction industry, one of the key sectors for male migrant employment, is poor. Although the hazards are well known, the rate of fatal and major injuries is one of the highest for any industry and prevention measures are the poorest.³⁷ Domestic work also carries occupational health and safety risks.
- A study focusing on Indian migrant workers has shown that migrant workers are specifically vulnerable to HIV and AIDS and that provisions for its prevention, treatment and care among migrant workers are inadequate.³⁸
- Low-skilled migrants are typically accommodated in crowded accommodation in small rooms with bunk beds, which in some instances have to be shared by at least two workers. The facilities provided, such as toilets and kitchens, are inadequate. Generally, the living conditions and amenities provided by large corporations are better than those offered by small companies or individual employers. Many migrant workers who returned from the countries of the GCC as well as non-governmental organizations emphasize the need for improvement in both working and living conditions of low-skilled labour. Live-in domestic workers often lack privacy or are forced to sleep in inadequate places without being provided with their own rooms.
- Most destination countries in Asia, including Western Asia, exclude low-skilled foreign workers from social security systems.³⁹ In Qatar, for instance, nationals have free access to a Government-supported healthcare system, while non-citizens must generally pay for services. The labour law stipulates that employers must provide healthcare for their workers, but often these relatively new regulations are not enforced.⁴⁰

3.3 Work and labour rights

- One major issue resulting in violation of labour rights, or which can be the first step towards such violation, is recruitment. The ILO estimates that private recruitment agencies, many of whom charge excessive recruitment fees,⁴¹ carry out almost 80 per cent of all foreign job placements.⁴² The International Confederation of Free Trade Unions (ICFTU) also cites a wide range of abuses by recruitment agencies,

ranging from fictitious job offers to trafficking.⁴³ Cases have been reported of such agencies imposing the equivalent of up to six months wages for employment lasting three years.⁴⁴ ILO Convention 181 on private agencies forbids private employment agencies from collecting fees from migrant workers, although it is a routine practice. Unlawful deductions from wages often include “training expenses” and charges for accommodation and food even if the contract stipulates that these would be free or at a lower cost.

- The sponsorship-by-employer (*kafala*) system is often considered as one of the causes of migrant worker rights abuses. The limitations of the system have already led Bahrain to undertake major reforms of the system, while Kuwait has announced its intention to reform it, and Saudi Arabia has suggested potential avenues of reform.⁴⁵ Under the *kafala* system foreign workers come to the GCC countries concerned (or depart from them) at the invitation of their employers and their residency is subject to a signed work contract with an employer, which can be an individual, an enterprise or even the State when the post is in the public sector. Moreover, migrant workers are not allowed to change jobs, or in some cases leave the country, without the employer’s consent. Employers, on the other hand, are accountable for the actions of their sponsored migrant workers (for example, if a worker absconds, the employer is fined), which often leads employers to withhold the passports of their foreign workers. Indeed, the system restricts both workers and employers.
- A recent study of Pakistani and Bangladeshi workers in the GCC countries has found that though the majority of workers received their wages on a regular basis, their main concern was the discrepancy between the wages they were promised and what they actually received. Both female domestic workers and male workers in other sectors suffered from this abuse, with one male respondent receiving less than 60 per cent of the promised amount. The sectors where this practice appears to be most widespread are cleaning, construction, domestic work and farm work.⁴⁶
- There is also evidence of contract workers being misinformed about the nature of the job they will be doing. Stories abound of workers who were promised work as tailors or tellers, only to end up having to do heavy loading or similar arduous work.⁴⁷

4. Rights-based Migration Governance

Over the years, efforts aimed at finding viable mechanisms for cooperation for better management of international migration have been pursued at multilateral, regional and bilateral levels.⁴⁸ Yet, despite the recent attention migration has received in global policy circles migrant worker-specific instruments are among those with the lowest number of ratifications.

Governments usually face the dilemma of prioritizing competing interests. Countries of origin of migrants face the pressure of having to address high unemployment or under-employment and can depend on migrant worker remittances, while destination countries are interested in solving labour market shortages in certain sectors by ensuring a highly flexible and compliant workforce, which is sometimes seen as conflicting with granting and ensuring the protection of migrant workers' rights. These dilemmas are also reflected in the discourse of, and the recommended policy practices emanating from the annual Global Forum on Migration and Development leading NGOs, trade unions and academics to raise concerns that the Forum may attempt to institutionalize migration as a development programme.⁴⁹

4.1 National Level

Most Governments in South and South-West Asia promote labour migration, either actively or passively. To this end, they have gradually put in place legal and administrative structures dealing with the labour market in one form or another. Generally speaking, structures geared to redressing the problems of migrant workers more directly have yet to emerge.⁵⁰ The fairly sophisticated regulatory system of the Philippines has served as a model for several other countries in the region. Some countries have adopted measures to provide some safeguards for their migrant workers against abusive recruitment practices. India and Sri Lanka, for instance, have put concrete policies in place in recent years and have shown greater interest in the concerns of individual migrants by establishing complaints structures on the websites of relevant ministries and by having embassies collect relevant data.

In 2006, **Bangladesh** adopted an Expatriate Labour Policy setting out principles for the protection of migrant workers abroad, and expressing a commitment to take legal action against illegal

recruiters. In the same year, the Bangladesh Bureau of Manpower Employment and Training (BMET) and the main labour recruitment agency jointly agreed to enforce limits on recruitment fees. In its 2007 annual report on trafficking, the Government of the United States of America reported that during the previous year the Government of Bangladesh had opened investigations against three Bangladeshi recruitment agencies that allegedly used deceptive recruitment practices, and raided five other similar agencies, closing them down and rescinding their licences.⁵¹

The **Indian** Emigration Act of 1983 focuses on the welfare of the migrants, as well as on promoting overseas employment. Since the Act, in an attempt to make the system more responsive to the interest of the migrant workers, the Indian Government has made some changes and adjustments, creating an institutional infrastructure for dealing with various aspects of migration more efficiently.⁵² For instance, the Office of the Protectorate General of Emigrants was transferred from the Ministry of External Affairs to the Ministry of Labour, and a system of public hearings was introduced to redress workers' grievances. Eight offices of the Protector of Emigrants are located in various parts of the country. Seeking to make both Government functionaries and the recruitment industry more accountable, there is currently a proposal for establishing a National Manpower Export Promotion Council. In addition to the Ministry of Labour, the other ministries involved are: the Passport Issuing Authority; Indian diplomatic missions, which function under the Ministry of External Affairs, and the Airport Immigration Authorities of the Bureau of Immigration under the Ministry of Home Affairs.⁵³

Nepal's Foreign Employment Act of 1985 aims to regulate the provision of recruiting agency licences and the procedure of selecting workers. The Foreign Employment Bill 2007 passed by the Interim Government is an improvement on the Act and takes a "rights-based" approach. It envisions the creation of a Board to manage foreign employment and has provisions for creating a new Government department dedicated to this issue. Additional provisions establish tribunals to adjudicate complaints by migrant workers, to set up a Welfare Fund, safeguard the right of women to seek jobs abroad, provide compulsory insurance in contracts, and to expand the rights of recruitment agencies to operate outside Kathmandu. To prevent unscrupulous elements from taking advantage of migrant workers, the Bill requires recruiting

agencies to deposit Rs. 3 million (equivalent to US\$ 4,600) to get an operating licence.⁵⁴

Pakistan has a comprehensive emigration system that operates under the Ministry of Labour, Manpower, and Overseas Pakistanis. Under the Emigration Ordinance of 1979, the Bureau of Emigration and Overseas Employment, which is under the Labour Ministry, regulates migration in the private sector, while the Overseas Employment Corporation looks after public sector migration. Migration for purposes other than foreign employment is controlled by the Ministry of Interior through its various departments, including the Federal Investigations Agency, the Directorate General of Passports, and the Immigration and National Database and Registration Authority.⁵⁵

Furthermore, Pakistan has both developed institutions and set rules to regularize the recruitment process and safeguard migrants against abuse. For example, the Pakistani Ministry of Labour, Manpower and Overseas Pakistanis has established Community Welfare Attachés at selected posts in the GCC countries to oversee the employment conditions and the welfare of Pakistani workers. A complaint cell for Overseas Pakistanis was established in the Ministry to resolve grievances through the Overseas Pakistanis Foundation (OPF). The OPF has set up a range of services for the benefit of migrant workers, including pre-departure briefings, a Foreign Exchange Remittance Card Scheme, vocational training, a welfare fund and a Pension Scheme. The Government has also concluded bilateral labour agreements with a number of receiving countries, including the United Arab Emirates (UAE) (in 2006) and Qatar (in 1987).⁵⁶

Sri Lanka has sought to adopt a proactive approach to the provision of greater protection to its migrating citizens and promoting their welfare. Acknowledging the continuing importance of migration for overseas employment for its economy and society, the newly created Ministry of Foreign Employment Promotion and Welfare (MFEPW) gave priority to elaborating and adopting a comprehensive national labour migration policy in 2008.⁵⁷ The main objectives of establishing this and other relevant ministries are to facilitate safe migration, provide protection and welfare to migrant workers, regularize the labour migration industry, and promote Sri Lankan labour for more overseas employment opportunities. According to its new comprehensive national migration policy, the Sri Lankan Government has adopted a

proactive stance to identifying global employment opportunities and to upgrading migrants' skills by providing them with appropriate training to enhance their competitiveness. In this sense, skill development is identified as one of the main means for improving migrants' rights abroad.

Most countries of origin in South and South-West Asia have labour attachés posted to their missions in receiving countries where there are significant numbers of their workers. These countries also generally provide pre-departure training in one form or another, while missions abroad have some mechanisms for receiving complaints from workers, which are usually related to non-payment or underpayment of wages, lack of medical facilities and poor food and living conditions (for the example of Indonesia, see chapter VI, this volume).

The countries of destination in the GCC have also come to realize the need to formulate a common strategy to address the socio-economic impact of foreign workers. On May 1, 2007, the **Doha Declaration on Foreign Workers in the GCC** was issued at the conclusion of a regional symposium of high-level Government officials, academics and decision makers from countries of origin and destination, including experts in population, labour and migration. The Declaration recognized the importance of strengthening cooperation among the GCC states and called for the further integration of their policies through the exchange of relevant information, including through international agencies, such as the ILO and other United Nations bodies. However, more concrete steps towards policies to protect migrants' rights did not figure in this Declaration.⁵⁸

4.2 Bilateral approaches

Various types of bilateral agreements (BLAs) are the most common mechanisms for regulating inter-State labour migration. A formal bilateral agreement sets out the commitments of each side and may provide for quotas. Less formal is a Memorandum of Understanding (MoU). Most countries prefer MoUs, probably because they are easier to negotiate, implement and modify in response to changing economic and labour market conditions as they are non-binding.⁵⁹ In the Asian region, such agreements are still the exception more than the rule.

Concerns raised regarding these MoUs include that they do not contain specified minimum standards for working conditions; workers

typically have no explicit right to join trade unions; and employers can keep workers' passports.⁶⁰ Moreover, the monitoring and enforcement mechanisms they provide for are weak, and their focus on recruitment procedures and the regulation of migration flows sidelines provisions for worker welfare and protection. In addition, typically, such MoUs lack gender sensitivity, since they often exclude domestic workers, and social partners are not involved in their formulation and implementation.⁶¹

4.3 Sub-Regional Processes

The Association of South East Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) are the two major sub-regional groupings within Asia.

4.3.1 SAARC⁶²

In South and South-West Asia, the SAARC has yet to develop a sub-regional legal framework to protect the rights and interests of migrant workers. The SAARC Social Charter that was adopted by the 12th SAARC Summit in Islamabad in January 2004, established a people-centred framework for social development to guide the work of Governments for building a culture of cooperation and partnership. However, the SAARC charter makes no mention of workers or migrants. Accordingly, the SAARC Charter does not include a commitment to the eight ILO Core Labour standards.⁶³

Nonetheless, the adoption at the 11th SAARC Summit in Kathmandu in 2002 of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution has been described as a significant initiative in combating and preventing trafficking in South Asia, especially since it recognizes the need for the extraterritorial application of jurisdiction. However, the Forum for Women, Law and Development has pointed out that the definition provided by this Convention focuses too narrowly on prostitution and, thus, leaves no room for application to broader trafficking scenarios. Moreover, the Convention lacks a strong treaty body and a perspective on the rights of victims.⁶⁴

4.3.2 ASEAN

With the endorsement of the ASEAN declaration against Trafficking in Persons, Particularly Women

and Children, together with an ASEAN Plan of Action to Combat Transnational Crime, including trafficking, the most advanced processes in the region are those linked to transnational crime. However, some migration issues have begun to be addressed at a regional level with the launching of the ASEAN Free Trade Area (AFTA) in 1995. To date, there are only specific provisions on skilled labour mobility in the AFTA. Following the General Agreement on Trades in Services (GATS) framework, the ASEAN Framework Agreement on Services was developed in 1998, aimed at facilitating temporary migration of individual service providers. Since 1997, there has been an on-going project on Enhancing Skills Recognition Arrangements (SRAs), but its concrete outcomes are not clear. The Asia-Pacific Economic Cooperation (APEC) Business Travel Card scheme facilitates some free movement.

The Task Force of ASEAN Migrant Workers (TF-AMW) is comprised of individuals who are also active in the Migrant Forum in Asia, a regional network of migrants' rights organizations. Via this Task Force, migrants' rights organizations have been able to channel their concerns to the ASEAN Forum on Migrant Labour (institutionalized by ASEAN Labour Ministers), which has been held three times (the third ASEAN Forum was held in Hanoi between 19 and 20 July 2010). The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers outlines obligations for countries of origin and destination in Asia. Clause 12 asks countries of origin to "ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to [the] migration of workers". Thus, the concept of migrants' rights clearly goes beyond merely ensuring fair labour rights at the destination. Indeed, the concept of such rights has evolved to include the right of not having to migrate in the first place, or to have a choice.

4.4 Regional Consultative Processes

While migration management is still treated as a sovereign prerogative, States increasingly recognize that national efforts work best when supplemented with inter-State cooperative agreements. To this end, informal and non-binding consultation mechanisms are said to be favoured, notably in the form of Regional Consultative Processes on migration (RCPs). These are used as information-gathering and "mood testing" venues, and constitute state-owned and state-led fora, with little input or access by civil society.⁶⁵

In Asia, the most significant RCPs were:

- The Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC), 1996.
- The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in the Asia-Pacific region, 2002.
- The Ministerial Consultation on Overseas Employment and Contractual Labour for countries of Origin in Asia (Colombo Process), 2003 (followed by a second meeting in Manila in 2004, a third in Bali in 2005, and a fourth in Dhaka in 2011). The Colombo Process is a regional initiative on the management of overseas employment and contractual labour for countries of origin in Asia. It began in 2003 and includes 11 Asian countries.⁶⁶
- The Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destinations in Asia (Abu Dhabi Dialogue), 2008 (with 9 Asian countries of destination, among them the six GCC countries). The latter produced the Abu Dhabi Declaration, among whose recommendations is to form a partnership for information-sharing and inter-State cooperation on preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers. The Second Ministerial Consultation was held in Manila in 2012. Future consultations are to take place every two years.

The International Organization for Migration (IOM) functions as a secretariat for many of these Regional Consultative Processes (including the Bali, Colombo, and Abu Dhabi Processes).

4.5 Global Mechanisms

The High-level Dialogue on International Migration and Development, held on 14 and 15 September 2006, was the first time a session of the United Nations General Assembly was dedicated to the theme of international migration and development. It brought ministers and delegates together to discuss migration issues in informal roundtable discussions. Since that High-Level Dialogue migration issues have become more prominent in the United Nations system. A second High-Level Dialogue is mandated for 2013.

As part of the wider United Nations system, there are international organizations whose constituencies are exclusively States, such as the IOM, but international human rights non-

Governmental organizations such as HRW, can have observer status. Although the IOM has no legal protection mandate, its activities have the effect, or consequence, of protecting persons involved in migration, therefore they do contribute to protecting human rights. In addition, in several of IOM regional or country offices in Asia, staff have carried out migrants' rights-related work, as in Sri Lanka and Bangladesh.⁶⁷

Critical analysis of emerging trends towards global "management of migration" and its impact on advancing migrant rights is also crucial with regard to another development. This is the on-going negotiations at the World Trade Organization (WTO) revolving around the General Agreement on Trade in Services (GATS) Mode 4, which indicates a trend to subsume migration under a broader trade agenda.⁶⁸ Developing countries are often said to have a surplus in skills in the service sector, and GATS is seen as providing opportunities for employment. However, the strictly temporary movement of the highly skilled proposed under Mode 4 of GATS, with limited commitments by developed countries, imposes serious immigration barriers and, thus limits fulfilment of rights.

4.6 Regional Mechanisms

Regional human rights bodies play an important role in consolidating a rights-based approach to migration. The most progressive example is the Inter-American Human Rights system, which offers mechanisms for investigating and promoting human rights in the Americas, including special rapporteurships possessing "mandates filled by individuals who are designated to investigate and report on specific thematic human rights concerns".⁶⁹ Currently, rapporteurships have been established in seven issue areas, including the rights of migrant workers and their families.

The level of ratification of human rights treaties in Latin America and the Caribbean, Africa and Europe is backed up by the existence in these regions of intergovernmental organizations (Organization of American States, African Union, Council of Europe and European Union) that have adopted human rights Conventions and mechanisms. Furthermore, all regions of the world have a regional human rights body, including Asia, which has the Asian Human Rights Commission founded in 1986 as an independent non-Governmental body. Many Asian countries also have national human rights institutions, and in 1996, national human rights

institutions formed the Asia Pacific Forum as a venue to discuss and promote human rights standards in Asia.⁷⁰ This forum has, however, been preoccupied with conventional civil and political human rights concerns, with migrant worker issues yet to reach the agenda.

In a sub-regional context, the primary goal of the Working Group for an ASEAN Human Rights Mechanism has been to push ASEAN to turn its formal recognition for the need of an intergovernmental human rights body into practice. In 2009, the ASEAN Intergovernmental Commission on Human Rights was finally launched, but, to date, there is no ASEAN Human Rights Commission.

4.7 Existing international legal instruments and their ratifications

At the time of writing, seven ESCAP member states were among the 45 state parties that have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW): Azerbaijan (1999), Kyrgyzstan (2003), the Philippines (1995), Sri Lanka (1996), Tajikistan (2002), Timor-Leste (2004), and Turkey (2004); Cambodia (2004) had also signed the Convention.⁷¹ In the sub-region under discussion here (Western and South and South-West Asia), five countries have ratified this Convention: Bangladesh, Egypt, the Syrian Arab Republic, Sri Lanka and Turkey.

No major country of destination in Asia, however, has ratified the ICRMW. Obstacles to the ratification of the ICRMW are complex and their assessment needs to be holistic, whereby protection of migrant labour via international human rights law is seen in relation to politics and practices at the national level (intra-State), as well as at the transnational or regional level (inter-State).

The ratification of non-migrant-worker-specific instruments, such as the Convention on the Elimination of Discrimination Against Women (CEDAW), is also important, since the committees charged with overseeing their monitoring, interpretation and implementation have begun to pay greater attention to the application of these Conventions to the situation of migrants.⁷² In addition, the Special Rapporteur on Trafficking of Persons especially Women and Children visited Bahrain, Qatar and Oman from October-November 2006 and raised concerns that many domestic workers were victims of trafficking and that access to justice for migrant workers, including migrant

domestic workers, with complaints of abuse and maltreatment, remained inadequate. On 20 April 2007, the GCC countries were reported to have agreed to look into recommendations by international organizations to improve the situation with regard to migrant workers,⁷³ but to date the outcome of this remains unclear.

4.7.1 United Nations Conventions

a. The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)

The ICRMW consists of nine parts: scope and definitions; non-discrimination with respect to rights; the human rights of all migrants (Part III, which also includes the rights of migrants in an irregular or “undocumented” situation); other rights of migrants who are documented or in a regular situation; provisions applicable to particular categories of migrants; the promotion of sound, equitable, humane and lawful conditions in connection with international migration; the application of the Convention; general provisions; and final provisions. Inspired by existing legally binding agreements, United Nations human rights studies, the conclusions and recommendations of meetings of experts, and by debates and resolutions on the migrant worker question in United Nations bodies over two decades, the Convention is considered the most comprehensive international treaty covering the rights of migrant workers beyond the realm of work.

The main contributions the ICRMW has made to existing international human rights instruments are as follows:

- The ICRMW bridges a gap in protection due to the vulnerable situation in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their country of origin and to the difficulties they may encounter arising from their presence in the country of employment.
- Migrant workers are viewed as more than labourers or economic entities.
- The ICRMW provides, for the first time, an international definition of migrant workers, categories of migrant workers, and members of their families.
- Minimum universal human rights standards are guaranteed for all migrant workers, both regular and irregular.

- Further rights are extended to and members of their families, notably in the equality of treatment with nationals of states and in employment in a number of legal, political, economic, social and cultural areas.
- b. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC)

At the time of writing, 45 countries had ratified the ICRMW, whereas a significantly larger number of countries have ratified the other six core human rights treaties, including CEDAW.⁷⁴ Given this imbalance and the significance of feminized migration in the context of some countries in South and South-West Asia (such as Sri Lanka and increasingly Nepal), efforts have been made to promote CEDAW as an instrument to protect the rights of migrant women.

In a study of references made by treaty bodies to migrant worker-related issues, it is shown that by far the main issue of concern to the CEDAW Committee regarding female migrants is trafficking and sexual exploitation. The Committee provides a detailed analysis of the causes of vulnerability of women to traffickers and of the various measures to combat trafficking, punish perpetrators and protect victims. The second most common conclusion relates to emigration. The Committee also lists the minimum labour rights female migrants should enjoy. Special attention is given to predominately female labour sectors with higher risks of abuse, such as domestic work, entertainment, agricultural work, work in free trade zones and the tourist sector. According to CEDAW, in order to ensure that migrant women fully-enjoy their rights under the Convention, countries of destination should put in place information and awareness-raising programmes about the availability of social services; disseminate information on women's rights, residence permits, and legal remedies; and offer language classes. The Committee stresses that migrant women, including those in an irregular situation, are victims of multiple discriminations with respect to health, education, employment, social and political participation and violence, including domestic violence, due to the intersection of gender with ethnic and religious factors. Migrant women are also victims of discriminatory laws with respect to access to residency and citizenship. CEDAW advises that culturally- and gender-sensitive measures can be necessary and that the specific

needs of women should be taken into account in relation to health and protection against violence.⁷⁵

Until 2003, the CRC tended to refer to foreign children in general without singling out migrant children. Since then, it has started to clarify the status of foreign children, whether they are migrant children, children of documented or undocumented migrant workers, refugee children or asylum seekers, or children under special protection measures. From 2000 onwards, the CRC Committee has also developed a strong interest in trafficking, including the situation of trafficked children once they are returned to their country of origin. This is notably due to the adoption in 2000 and entry into force in 2002 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The main concern of the Committee is discrimination in access to adequate social services, in particular health and education facilities, for migrant children in general and irregular migrant children in particular. Another concern is the issue of birth registration for undocumented migrant children and children born to foreign parents. The Committee also examines child labour and economic exploitation and recommends that the best interests of the child be taken into account. The Committee also expresses concern over the situation of migrant children in detention and immigrant reception centres.⁷⁶

c. ILO Conventions

As will be elaborated in Chapter V, the international labour standards formulated by the ILO, covering both Conventions and Recommendations, are the main international mechanisms to improve the conditions of employment of men and women. Two of these Conventions are directly related to migrant workers: ILO Convention 97 on Migration for Employment, and ILO Convention 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. None of the countries in the region under discussion has ratified these two specific Conventions.

The core labour standards of the ILO are indirectly relevant to migrant workers' rights. Pakistan, Sri Lanka, and Turkey have ratified the full set of ILO fundamental human rights Conventions; that is, the two ILO core Conventions relating to the elimination of discrimination (No. 111 on Discrimination in Employment and Occupation and No. 100 on Equal Remuneration), the two

fundamental ILO Conventions on the Right to Organize and Collective Bargaining (No. 98) and the Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87).

Bangladesh and Nepal have ratified at least one Convention under each heading (freedom of association and collective bargaining, elimination of forced labour, elimination of discrimination in respect of employment, abolition of child labour). Among the major countries of destination of South and South-West Asian migrants in Asia, Malaysia, Jordan, Kuwait and Singapore are among those that have ratified at least one Convention. The Maldives has not yet ratified any of the core Conventions. The Conventions related to freedom of association have not been ratified by Afghanistan, Bahrain, India, the Islamic Republic of Iran, the Republic of Korea, Qatar, Saudi Arabia and the UAE, but all GCC countries, except Oman, have ratified ILO Convention 111 on Discrimination (Employment and Occupation).

The new ILO Convention 189 on Domestic Workers has only recently been adopted (16 June 2011); as such, at the time of writing there were no ratifications to report.⁷⁷ The Governments of the countries covered in this chapter that were present voted in favour of this Convention, and the post-voting statement delivered by the UAE, on behalf of all member states of the GCC, expressed support for it.⁷⁸

4.7.2 Implementation by State Parties

Of the state parties to the ICRMW in the region under discussion, Sri Lanka has submitted reports on the status of implementation of the Convention.

In its report, Sri Lanka identifies itself as primarily a labour sending country, “largely because there is sufficient Sri Lankan workforce, including domestic labour, to satisfy overall market demand at all levels” at home. Of its outgoing labour, 90 per cent went to Western Asia (of whom 63 per cent were women). Pre-departure orientation services are provided, together with rights awareness training. During the information-gathering trip to Sri Lanka in 2005, the content of these courses was limited to the most basic information, with no reference to migrants’ rights. However, it appears that the content was improved with the cooperation of the United Nations System and United Nations-affiliated agencies. Measures to regulate recruitment agencies have been put in place, and a welfare fund for migrant workers

has been established. To protect the interests of its citizens working abroad, the Government has attached labour-welfare officers to almost all Sri Lankan diplomatic missions in countries of destination, and Sri Lankan missions maintain safe houses to shelter domestic workers in distress. To provide social security, a contributory pension scheme for migrant workers is being implemented, under which migrant workers are required to pay a specified amount of money to qualify for a pension upon reaching the retirement age of 60.⁷⁹

In the case of Sri Lanka, there are a number of reports on its implementation of ICRMW prepared by NGOs reporting from Lebanon, Israel and from Asia more broadly.⁸⁰ The main issues of concern mentioned therein are: a lack of monitoring of recruitment agencies; limited consular support (and inadequate training for consular officials); a lack of information on rights in pre-departure training programmes provided for migrants (as a result of which, migrants are found to be unaware of their rights and the channels available to them for assistance); and a lack of overseas voting rights.

4.7.3 Impediments to Ratification

In sum, the **main obstacles to ratification** relate to the following issues:⁸¹

- Some states have only a small number of migrants and do not see a need to legislate.
- The Convention is not well known and is, therefore, not high on the political agenda.
- Some states lack the infrastructure necessary to apply the Convention.
- Some states do not wish international agreements to interfere with their migration policies, which they view as a strictly national affair.
- Economic instability and high unemployment prompt states to give preference to national over foreign workers.
- States are wary of extending protection to members of families of migrants.
- States do not wish to extend protection to irregular migrants.
- States fear that ratification would send out a signal to potential migrants and spur increased immigration.

a. Non-ratifying countries of origin

According to the ICRMW, the main obligations for countries of origin are to provide information

on the conditions of admission and remunerated activity; to give migrants the right to emigrate and return; to regulate and monitor recruitment agencies; to assist migrants in the resettlement and reintegration process; and to provide overseas voting rights. Crucial obligations for countries of origin would, therefore, include pre-departure information campaigns and training sessions, monitoring of workers abroad and the imposition of sanctions on brokers and recruiters operating illegally. Under the current institutional arrangements in many countries, this is a difficult task. Moreover, the ratification and implementation processes of any United Nations Convention are complex undertakings and the Governmental budget and expert staff assigned to them are often limited.

The sheer number of private recruitment agencies and the magnitude of emigration from some countries hamper efforts to regulate and monitor emigration and to protect migrants' rights. Another serious obstacle to ratification, as expressed by Government officials in a study conducted in 2003⁸² is the concern of losing out on the regional job market, since receiving countries may be disinclined to employ foreign workers perceived to be too "rights conscious". This concern particularly affects countries of origin that depend highly on a small number of countries of destination and the majority of whose migrants are low skilled.

b. Non-ratifying countries of destination

Ratification of the ICRMW would also mean that countries of destination such as the GCC countries and some countries in East Asia would have to reformulate their temporary labour migration schemes. However, the perceived benefit of these schemes for countries of destination is that they preclude permanent settlement by migrant workers through designating migrant workers as "temporary contract workers." For example, low-skilled migrants are generally only allowed to enter Japan and the Republic of Korea with their families if they are ethnically close (such as the *nikkeijin* in the case of Japan and the Korean-Chinese in the case of the Republic of Korea). Other low-skilled foreign workers can enter legally as "trainees" in Japan or as temporary workers under the new Employment Permit System (EPS) in the Republic of Korea.

Another major obstacle to ratification is that Governments are not prepared to extend rights

to irregular migrants. There is indeed very little acknowledgement of the complex ways in which the status of migrants becomes irregular (at times beyond their knowledge or control) and little political will by employers to address this problem.

Moreover, gaining support for the protection of migrant workers is difficult in many countries of destination, since the national population often perceives foreign workers to be competitors in the labour market.

C. ROLE OF CIVIL SOCIETY ACTORS

1. Trade unions

Although trade unions operate in all South Asian countries (except Bhutan and the Maldives), they have a limited role and the authorities take little notice of them (although Sri Lanka, for instance, has come to "recognize civil society organizations and trade unions to be another effective means by which migrant workers can avail themselves of an environment of successful reintegration").⁸³ Workers in this region tend to have a low social status and unionization rates are comparatively low. This is hardly surprising, given the extent of the informal sector (in India, for instance, 90 per cent of the workforce works in the informal sector), which is mostly non-unionized. In addition, migrants are seen as better off for having found employment and hence not in need of organizational support. Moreover, since collective bargaining practices are weak in countries of origin, unions cannot easily argue for such rights in the countries of destination.⁸⁴

In general, the GCC States heavily restrict the right to form a trade union for local and foreign labour. Indeed, until recently, trade unions were prohibited. However, in some GCC States, such as Bahrain, trade unions can operate, albeit in a rather restricted environment. Saudi Arabia took a step forward in 2002 by approving regulations on workers' councils, but foreign workers are expressly excluded.⁸⁵

At the regional level, the impact of trade unions has been limited. For example, trade unions have not been able to make collective efforts to ensure that labour issues are included in the SAARC agenda and other regional activities (unlike in the case of ASEAN, see above).

One concrete example of a union strategy in the area of migrant rights is union-to-union agreements designed to promote membership of

migrant workers in unions in the countries where they work, or at least offer them assistance, such as the agreement between the British TUC and the Portuguese trade union Confederação Geral dos Trabalhadores Portugueses (CGTP). Another example is union-to-union cooperation to protect migrant domestic workers, such as that between the Association of Progressive Labour (APL) in the Philippines and its counterpart in Hong Kong, China. The National Union of Building and Construction Workers (NUBCW) in the Philippines and the National Federation Chinese Construction Workers Union (NFCCW) in Taiwan Province of China have committed to undertake a pilot project to manage the flow of migrant workers in the construction industry. The NUBCW will facilitate sending its currently-employed or unemployed members intending to work in construction in Taiwan Province of China, while the NFCCW would facilitate the acceptance of the Filipino workers in their unionized construction projects. At the same time, the union in Taiwan Province of China will protect the Filipino workers by helping them organize a separate union for migrant construction workers or by integrating them into existing union structures.

2. Migrant associations

Two regional networks, the Migrant Forum in Asia and CARAM Asia (Coordination of Action Research on AIDS and Mobility), have member organizations from most of the countries of origin discussed in this report (Bangladesh, India, Nepal and Sri Lanka) and many of the countries or territories of destination (Republic of Korea, Japan, Malaysia, Singapore, and Taiwan Province of China).⁸⁶ In a few countries of Western Asia, such as Bahrain and Jordan, NGOs have recently formed and started operating very carefully in a politically-restricted environment. A difference should be observed between organizations formed by the migrants themselves or by their compatriot activists (for example, by Filipinos in countries of destination) and organizations set up by concerned non-migrant citizens (for example, in Singapore). These organizations engage in a variety of activities, ranging from rights advocacy to service provision (such as shelters or legal aid). Given migrant organizations' importance in driving the migrants' rights agenda, building their capacities is essential for the full realization of migrants' rights.

3. Employers

There are few initiatives to uphold a rights-based approach to labour migration aimed at employers. One is the initiative by Business for Social Responsibility (BSR) to promote responsible behaviour by businesses.⁸⁷ BSR developed a good-practice guide in line with international human rights standards, outlining the issue areas where most migrant rights violations occur, such as the practices of recruitment agencies, contracts, withholding of wages, housing and dormitories, food and health and the right to join trade unions, and suggesting action in each area.

D. CONCLUSION AND RECOMMENDATIONS

On the national level, many countries of origin in the region under discussion have made efforts to regularize emigration procedures, resulting in more migrants enjoying legal status. Being legal, however, does not automatically result in rights protection. Although recruitment agencies have become subject to greater monitoring and pre-departure training schemes have improved somewhat, gaps remain. In addition, labour inspection of employer practices needs to be stepped up. Furthermore, gender-sensitivity is still lacking in the migration policy of many countries.

Some countries of origin have begun to collect data on rights abuses. However, putting in place concrete channels for making claims and seeking redress remains to be done. As for the major receiving countries of South Asian migrants, the GCC countries are beginning to address the issue of domestic work more seriously. Yet, it remains to be seen whether draft legislation said to be in the making in some GCC countries will in fact be passed and implemented. On a bilateral level, social security is absent from MoUs and BLAs, and the latter are far too rarely used as regulatory mechanism in favour of MoUs that do not lead to rights protection and that need not necessarily be implemented.

On the regional level, it is laudable that migrant workers' rights have made it onto the agenda of regional consultation processes and the various continuing dialogues between countries of origin and destination. Concrete and binding outcomes – beyond declarations – are, however, still missing. Furthermore, civil society organizations need to be given greater access and the opportunity to participate in deliberations and influence policy outcomes.

CHAPTER III

RECRUITMENT COSTS IN BANGLADESH: CHALLENGES OF GOVERNING MIGRATION IN COUNTRIES OF ORIGIN



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CHAPTER III

RECRUITMENT COSTS IN BANGLADESH: CHALLENGES OF GOVERNING MIGRATION IN COUNTRIES OF ORIGIN¹

A. INTRODUCTION

The cost of the recruitment of Asian migrant workers to work in the Gulf Cooperation Council (GCC) countries, as well as to Jordan and Lebanon, has been identified as one of the key issues that challenges the protection of migrant workers and reduces the development impacts of international migration. Recruitment practices are one of the contributing factors to the high cost of migration. Bangladesh is one of the major labour sending countries of South and South-West Asia, where the cost of migration is very high. This chapter attempts to develop an in-depth understanding of the cost of migration and the role of the recruitment industry in this respect. The main objective is to provide national and international policy makers with the necessary information to reduce migration costs and ensure better migration governance. The objectives of the chapter are to:

- Understand the significance of recruitment costs in the overall migration experience;
- Survey the fee structure, with a breakdown of the fees charged by the private recruiting agencies in Bangladesh and the employers and/or intermediaries in the GCC countries;
- Analyse sources of migration finance, conditions of loans and assess the time required, in work months, to pay off the loans obtained to finance migration;
- Understand the role of recruiting agencies in the migration process in Bangladesh and in protecting migrants, and assess the current regulatory process of recruiting agencies; and finally
- Make policy recommendations to countries of origin and destination to address the high recruitment costs and regulate recruiting agencies or intermediaries at both ends.

B. RESEARCH METHODOLOGY AND STRUCTURE OF THE CHAPTER

The chapter is based mostly on secondary information, including research publications; grey materials; monographs; workshop proceedings; minutes of the inter-ministerial sub-committee

on the cost of migration of the Government of Bangladesh; and Bureau of Manpower Employment and Training (BMET) and Bangladesh Bank data. Some primary data have been generated through interviews of Government functionaries, members of private recruiting agencies, migration experts and civil-society representatives. While analysing the cost, different studies presented prices in different currencies. All these have been converted to United States dollars by using the exchange rate of 1 June 2011.

The paper is divided into six sections including the introduction and conclusion. Section C lays out the context of migration of Bangladeshi workers to the GCC countries, as well as Jordan, Lebanon and Libya. It sheds some light on the migration patterns and trends of Bangladeshi workers to those states and the flow of remittances and their impact on the national economy. Section D provides evidence of differential costs of migration on the basis of skill, gender and types of visa. It also breaks down the costs of migration at the source and at the destination. It then attempts to gauge the timeframe needed to recover the cost, and shows the sources used by migrants to finance these costs. Section E presents the main features of the current regulatory framework and analyses the role of recruiting agencies in matching the desires of migrant workers and the labour needs of employers in the destination countries. The final section draws out key conclusions on the above issues. Based on the findings, the recommendations address the reduction of costs as well as the regulation of the recruitment sector, with the aim of enhancing the developmental outcomes of migration.

C. TRENDS OF LABOUR MIGRATION FROM BANGLADESH

One of the elements that has contributed to Bangladesh's rapidly-emerging economy is labour migration and the flow of remittances resulting from it.² A World Bank study indicates that this flow has helped Bangladesh cut poverty by 6 per cent in Fiscal Year (FY) 2006. The draft sixth five-year plan highlighted that poverty has reduced more in those

regions where migration takes place.³ In 2010 remittances were almost 12 times the Foreign Direct Investment (FDI) flow to the country and around six times more than total foreign aid received. It enabled the country to maintain balance of payment surpluses for more than six years in a row, despite trade imbalances and stagnant FDI inflows. Hence, it is important to recognize the important role that the GCC and South East Asian labour receiving countries indirectly play in supporting the economic development of Bangladesh.

1. History of Labour Migration

International labour migration from Bangladesh has a long history. Migration linked to trade and the spread of spiritualism was a common experience of those residing in the territory that now constitutes Bangladesh. In the early 1940s, work opportunities on British merchant ships created new migration prospects for Bangladeshis. Since then, the migration routes have undergone changes, but voyages beyond borders in search of a better life and livelihood continues to be a major feature of Bangladeshi society and economy. The present

form of contractual labour migration began mainly in the 1970s to cater to the labour needs of the GCC countries and later the emerging economies of South-East Asia. Being based on specific job contracts, the foremost characteristic of this type of migration is its short duration. Indeed, almost all of those who participate in this labour market have to return to their country of origin on the completion of their contracts.

2. Annual Flow of Migrant Workers

According to BMET data, from 1976 to 2010, 7.1 million Bangladeshis went abroad as short-term migrants. Figure III.1 captures the growth of official labour migration over the last 3 years. It indicates that in 1976, the migration flow from Bangladesh was less than 10,000. By 2008 it reached its peak, standing at well over 800,000. In 2009, due in particular to the global financial crisis, there was a major decline in labour recruitment by the traditional destination countries. Even then, 400,000 people migrated for work in that year. Migration did not pick up in 2010, and the first half of 2011 follows the same trend.

Table III.1

Bangladeshi migrant workers by destination 1976-2010 (percentage share and total number)

Year	Saudi Arabia	Kuwait	U.A.E	Qatar	Libya	Bahrain	Oman	Malaysia	Rep. of Korea	Singapore	Others	Total number of migrants
76-80	16.35	10.08	27.89	10.13	7.17	4.45	11.03	0.02	0.00	0.35	12.54	99,189
81-85	31.11	11.63	10.70	7.54	4.48	3.56	15.07	0.01	0.00	1.01	14.90	312,177
86-90	45.59	11.08	13.78	8.31	2.74	4.10	8.32	0.50	0.00	0.20	5.38	416,334
91-95	47.66	13.16	7.02	1.13	0.79	2.31	10.11	15.78	0.52	0.71	0.81	953,632
1996	34.35	9.94	11.25	0.05	0.93	1.78	4.11	31.47	1.30	2.51	2.32	211,714
1997	46.10	9.14	23.68	0.81	0.84	2.17	2.59	1.23	0.38	11.86	1.20	231,077
1998	59.30	9.51	14.49	2.54	0.47	2.62	1.79	0.21	0.22	8.12	0.75	267,667
1999	69.26	8.35	12.06	2.09	0.65	1.73	1.51	0.00	0.56	3.58	0.21	268,182
2000	64.94	0.27	15.28	0.64	0.45	2.08	2.36	7.74	0.44	4.98	0.80	222,686
2001	72.63	2.83	8.60	0.12	0.24	2.31	2.41	2.60	0.83	5.09	2.34	188,965
2002	72.48	7.00	11.30	0.25	0.70	2.41	1.71	0.04	0.01	3.04	1.06	225,256
2003	63.78	10.51	14.69	0.04	1.12	2.94	1.59	0.01	1.48	2.09	1.74	254,190
2004	50.93	15.06	17.22	0.46	0.22	3.37	1.62	0.08	0.08	2.55	8.40	272,958
2005	31.83	18.61	24.53	0.84	0.38	4.24	1.91	1.15	0.09	3.82	12.61	252,702
2006	28.70	9.38	34.13	2.02	0.03	4.29	2.12	5.37	0.26	5.28	8.44	381,516
2007	24.51	0.51	27.19	1.82	0.18	1.97	2.10	32.81	0.00	4.60	4.30	832,609
2008	15.10	0.04	47.92	2.92	0.58	1.51	6.04	15.06	0.17	6.47	4.19	875,055
2009	3.09	0.00	54.36	2.46	4.78	5.98	8.77	2.61	0.31	8.33	9.31	475,278
2010	1.81	0.01	52.04	3.09	3.11	5.59	10.91	0.24	0.69	10.00	12.52	390,702
Total number of migrants	2,580,198	479,619	1,790,791	167,808	95,194	213,005	403,165	699,655	24,113	318,650	359,691	7,131,889

Source: Prepared by RMMRU⁴ based on BMET Data.

FIGURE III.1

Annual overseas employment



Source: Prepared by RMMRU⁹⁵ from BMET data.

Table III.2

Bangladeshi workers in Libya, Jordan, Lebanon and GCC countries

Year	Percentage of total migration	Total number of migrants
2005	82.34	252,702
2006	80.67	381,516
2007	58.28	832,609
2008	74.11	875,055
2009	79.44	475,278
2010	79.56	390,702

Source: Prepared from BMET data by RMMRU.

Table III.1 presents the percentage shares of receiving countries of the outflows of Bangladeshi workers, as well as the total numbers of Bangladeshi labour migrants over time. Saudi Arabia, the United Arab Emirates (UAE), Malaysia, Kuwait, Oman, Singapore, Bahrain, Qatar and Libya are some of the major receiving countries. Table III.2 indicates that the GCC countries, along with Libya, Jordan and Lebanon, continue to be the major destinations. From 2005 until 2010, except for 2007 and 2008, around 80 per cent of Bangladeshi migrants went to these countries. Over the period 1998–2003, Saudi Arabia received 60 to 70 per cent of the total Bangladeshi migrants. Since then, the share of Saudi Arabia began to decline; by 2010 it had dropped to less than two per cent. At the same time, Bangladeshi migration to the UAE has increased significantly since 2001.⁵

3. Migration of Women from Bangladesh

Since the 1980s, along with male workers, women started taking part in the global contractual labour market, albeit in very small numbers. During the early years, most female migrants were doctors, nurses and teachers. Indeed, the migration

Table III.3

Bangladeshi female migrants 2001–2010

Year	Total Migrants	Number of Female Migrants	Ratio of Female Migrants to Totals (%)
1997	231,077	1,762	0.76
1998	267,667	939	0.35
1999	268,182	366	0.14
2000	222,686	454	0.20
2001	188,965	659	0.35
2002	225,256	1,217	0.54
2003	254,190	2,353	0.93
2004	272,958	11,703	4.29
2005	252,702	14,039	5.56
2006	381,516	17,970	4.71
2007	832,609	20,343	2.44
2008	875,055	20,827	2.38
2009	475,278	22,224	4.68
2010	390,702	27,706	7.09
Total	5,138,843	142,562	2.77

Source: Prepared by RMMRU based on BMET Data

of semi-skilled and low-skilled female workers is a new phenomenon, and their numbers have consistently remained very low. During the 1980s and 1990s when semi- and low-skilled women started emigrating, successive Governments of Bangladesh put a partial or a complete ban on their migration as a protective measure.⁶ In 2003, the Government relaxed these restrictions. As table III.3 shows, between 1997 and 2003 female migrants constituted less than one per cent of the total flow, rising after the restrictions were relaxed to almost six per cent in 2005. In 2007 and 2008, the migration of men increased unprecedentedly, bringing the share of women in the total flow down to around 2.4 per cent respectively, although their absolute numbers had been increasing. In 2009 and 2010, the total number of male migrants decreased by almost half and the share of women increased to 4.7 and seven per cent respectively. The GCC countries, along with Jordan, Lebanon and Libya are also the major destinations of Bangladeshi female migrants. Table III.4 shows that since 2005, 88 to 99 per cent of migrant female workers went to these countries.

4. Skill Composition

BMET has classified the temporary-migrant population into four categories: professional, skilled, semiskilled, and low skilled. Doctors, engineers,

teachers and nurses are considered professional; manufacturing and garment workers, drivers, computer operators and electricians skilled; tailors, masons and the like semi-skilled; and domestic workers, cleaners, agricultural workers, labourers, and hotel service staff are considered low skilled. Table III.5 indicates a comparatively high proportion in the semi- and low-skilled categories, which amounted to 54 per cent of the total number between 1976 and 2010.

Table III.4

Female Migration to GCC States, Jordan, Libya and Lebanon

Year	Number	Percentage of total female migrants	Total migration
2005	13,483	99.35	13,570
2006	17,427	96.57	18,045
2007	17,959	94.05	19,094
2008	18,672	89.58	20,842
2009	20,033	90.14	22,224
2010	21,904	88.18	24,838
Total	109,478	92.34	118,550

Source: Prepared by RMMRU from BMET data.

Table III.5

Skill Composition of Bangladeshi Migrants (percentage shares and total number of migrants)

Year	Professional	Skilled	Semi-skilled	Low-skilled	Total
1976–80	11.31	35.05	6.26	47.37	99,189
1981–85	4.85	34.33	7.59	53.23	312,177
1986–90	4.23	36.02	15.95	43.8	416,334
1991–95	4.92	30.56	21.55	42.96	953,632
1996	1.51	30.37	16.38	51.74	211,714
1997	1.64	28.22	18.85	51.29	231,077
1998	3.58	27.91	19.27	49.23	267,667
1999	3.00	36.71	16.76	43.53	268,182
2000	4.79	44.73	11.88	38.60	222,686
2001	3.14	22.62	16.25	57.99	188,965
2002	6.41	24.98	15.99	52.61	225,256
2003	6.24	29.32	11.50	52.94	254,190
2004	4.47	40.36	10.38	44.79	272,958
2005	0.77	44.98	9.71	44.54	252,702
2006	0.11	3.34	86.88	9.66	818,085
2007	0.08	20.13	22.38	57.41	821,223
2008	0.00	32.00	16.00	52.00	875,055
2009	0.30	28.25	17.78	53.67	475,278
2010	0.10	23.19	5.12	71.58	390,702
Total number of migrants	181,723	2,169,849	1,111,782	3,668,535	6,741,187

Source: Prepared by RMMRU based on BMET Data.

Table III.6

Annual Remittance Flow

Year	Remittances (Million US\$)
1999	1,806.63
2000	1,954.95
2001	2,071.03
2002	2,847.79
2003	3,177.63
2004	3,565.31
2005	4,249.87
2006	5,484.08
2007	6,568.03
2008	8,979.00
2009	10,717.73
2010	10,999.16
Total (1999–2010)	62,421.21

Source: Prepared by RMMRU based on BMET Data.

5. Migrant Worker Remittances

Remittance flows to Bangladesh have grown significantly over the past decade, increasing from US\$ 1.8 billion in 1999 to US\$ 11 billion in 2010 (see table III.6). As Table III.7 shows, Saudi Arabia is the single largest remittance-sending country (accounting for around a third of total remittances between 2005 and 2011), with the United States of America coming second (17 per cent in 2010–11). However, the remittances coming from the United States of America do not all originate there, since the Central Bank of the Bangladesh routes remittances from other countries via the United States of America. Altogether, over 60 per cent of the remittances for the fiscal year 2010–2011 came from the GCC countries. Hence, the contribution of the GCC countries to the economic development of Bangladesh is quite significant when compared with that of western aid-disbursing countries.

D. REGULATORY FRAMEWORK

The Government regulates the recruitment agencies under the 1982 Emigration Ordinance and three Rules framed under it in 2001. Recently, the Government took the initiative to reform the Ordinance. The minutes of the meeting of the Emigration Act Reform Committee and various publications, such as Siddiqui (2002 and 2006) and Martin (2009), are the data sources for this section.

Table III.7

Annual Remittance Flow by Country 2005–March 2011 (percentage)

Country	2005–2006	2006–2007	2007–2008	2008–2009	2009–2010	2010–2011	Total (Million US\$)
Australia	0.20	0.19	0.17	0.07	0.08	0.06	53.67
Bahrain	1.38	1.34	1.75	1.62	1.55	1.53	738.94
Germany	0.25	0.25	0.34	0.20	0.15	0.16	102.75
Hong Kong, China	0.12	0.10	0.10	0.09	0.08	0.09	44.95
Islamic Republic of Iran	0.04	0.04	0.04	0.03	0.04	0.02	16.98
Italy	1.77	2.50	2.71	1.93	1.66	1.80	966.24
Japan	0.20	0.17	0.21	0.15	0.13	0.13	75.01
Kuwait	10.26	11.39	10.91	10.02	9.28	9.05	4,768.21
Libya	0.00	0.04	0.00	0.01	0.01	0.02	7.21
Malaysia	0.43	0.20	1.17	2.91	5.34	6.09	1,517.08
Oman	3.46	3.29	2.79	2.99	3.18	2.99	1,466.87
Others	2.09	2.09	1.80	2.50	4.13	4.37	1,432.21
Qatar	3.65	3.90	3.66	3.54	3.28	2.79	1,628.75
Republic of Korea	0.37	0.29	0.25	0.19	0.19	0.22	111.05
Saudi Arabia	35.29	29.02	29.37	29.51	31.19	27.80	1,4301.17
Singapore	1.39	1.34	1.64	1.70	1.76	1.66	773.48
UAE	11.58	13.46	14.34	18.11	17.20	17.04	7565
UK	11.69	14.83	11.32	8.15	7.53	7.94	4,601.07
USA	15.84	15.56	17.44	16.26	13.21	16.24	7,437.51

Source: Prepared by RMMRU based on Bangladesh Bank Data.

1. The Overseas Employment Act 2011

Bangladesh began participating in the international short-term contract-labour market in mid-1970s. In 1982, an Emigration Ordinance was enacted, to support the Emigration Act 1922 in efficiently monitoring and regulating the emigration of workers. The 1922 law was framed when overseas employers used to offer decent wages, holidays, annual vacations, overtime, and commissions to recruiting agencies as part of labour recruitment deals. However, in the last 30 years, labour migration has changed dramatically. Major countries of destination for Bangladeshi labour migrants, such as the GCC and South-East Asian countries, have become a “buyers’ market”. Workers are frequently deceived by intermediaries, and are exploited at every stage of the migration process, both in the origin and the destination countries, with these trends becoming general rules rather than exceptions. Hence, the 1982 Emigration Ordinance has become insufficient to uphold migrants’ rights and ensure their protection. In the meantime, the Bangladesh Government signed the 1990 United Nations Convention on the Rights of All Migrant Workers and Members of Their Families (ICRMW) in 1998 and ratified it in August

2011 without reservation; it therefore became necessary and expedient to reflect the Convention in national legislation.

In 2009, the Ministry of Expatriates’ Welfare and Overseas Employment (EWOE) formed an inter-ministerial committee, including civil society representatives, to update the law.⁷ The committee suggested the revision of four clauses of the law. The Law Commission of Bangladesh initiated another review process, with the Refugee and Migratory Movements Research Unit (RMMRU), a specialist institution focused on migration, providing technical expertise. A high-level committee comprising Government functionaries from the EWOE Ministry and its line agency, the Law Commission, and legal and migration experts drafted a new law and transmitted it to the Ministry of EWOE in April 2011.

The new draft law, the Migration and Overseas Employment Act 2011, has 32 sections, and aims to govern migration by ensuring migrants’ rights and upholding the principle of non-discrimination. It makes provisions for the emergency return of migrants in the case of a crisis in the country of destination. To reduce fraudulent practices and ensure that recruiting agencies are held accountable, the draft law introduces the concept of performance-based licence renewal. It also

creates legal provisions for sub-agents: with prior permission from Government, a recruiting agency will be able to appoint subagents, providing them with identification, and will be liable for their conduct. While a migrant cannot currently take a recruiting agency to court directly, the new law will entitle her or him to file a civil or a criminal case in any court should the Protector of the Emigrant (the Government official concerned) fail to file a case within the prescribed period. In addition, while cases can currently only be filed in four special labour courts, under the draft law, a migrant will be able to file a case in any court in the country. The draft law has gone through civil society consultation, and is now being presented to the Ministry of Law, Justice and Parliamentary Affairs. Its enactment would bring qualitative changes in the governance of labour migration, but the civil society needs to be vigilant so that pressure by vested interest groups does not lead to changes in any of its important sections.

2. Overseas Employment Policy

In response to persistent civil society demands,⁸ the Overseas Employment Policy was enacted on 5 November 2006.⁹ The policy, the first of its kind in South Asia, ensures the right of the Bangladeshi male and female workers to freely choose quality employment. Under it, the Government of Bangladesh is committed to reducing irregular emigration and increasing the scope of regular emigration from all areas of Bangladesh at a reasonable cost. The Government is also committed to protecting the rights, dignity and security of workers within and outside of the country, and to ensuring social protection for the families left behind, as well as the protection of migrants' assets. The policy considers misconduct during the recruitment process as an act against the national interest and, through strong legal action, ensures that all persons involved are held accountable. Remittance flows through official channels are encouraged by ensuring trouble-free quick transfers, and the policy supports their effective and efficient utilization. Moreover, under the policy, the Government is committed to assisting in the social and economic re-integration of returnee migrant workers. Most importantly, the policy provides for the allocation of greater resources to strengthen the existing institutional infrastructure to ensure implementation.

The policy has been in place since 2006. However, successive Governments have not

developed any comprehensive action plan for implementing it. Instead, the Government is pursuing individual sections of the policy. Moreover, there is no monitoring and evaluation process built into the policy. Given the current competition in the global labour market and the need for better protection of workers' rights, it is essential to develop a target-oriented action plan for implementation, with inbuilt monitoring and evaluation systems, as well as mechanisms for suggesting incremental changes to the policy itself.

3. Policy on Female Migration

In 1981, the Government of Bangladesh imposed bans and restrictions on the migration of low-skilled female workers. However, due to continuous pressure from certain civil society bodies, the Government relaxed these restrictions in 2003,¹⁰ and now low-skilled women can work abroad as the principal migrant. Indeed, since 2009, male migration from Bangladesh has been declining, while female migration has been increasing, although it still represents a relatively low share of the total (see Table III.3).

Female migrants face several problems in countries of destination. In many cases, they are socially isolated: they are confined to the residence in which they work, cannot communicate freely with people outside the residence, and so cannot be found during emergency situations. The Philippines has, in the past, put temporary bans on female migration to countries such as Lebanon and Jordan; Indonesia has also stopped migration of females to Saudi Arabia; and Sri Lanka is trying to expand male and reduce female migration. Under such circumstances, Bangladesh has increased its vigilance regarding the security of its female migrant workers. Multilateral agreements involving all receiving and sending countries may help a great deal in resolving problems.

4. The Probashi Kalyan Bank

The Probashi Kalyan Bank (PKB) was established in October 2010 by an act of parliament, and has three aims: the quick transfer of remittances at a low cost, financing labour migration, and financing investment loans for returnee migrants and their families. The total capital of the Bank is Tk 100 million,¹¹ 95 per cent of which was received from the Wage Earners' Welfare Fund, which is a fund generated mostly by contributions from departing

migrants. One of the goals of the PKB, that of providing loans to departing migrants, has been tried in the Philippines, Sri Lanka and Indonesia. All these countries, otherwise reasonably successful in governing labour migration, have failed in that endeavour, with bank loans ending in defaults. In Bangladesh, four remittance-earning banks introduced migration financing loan programmes, but faced difficulties in reaching their targets. Clearly, the challenges for PKB are enormous. In a recent policy dialogue, senior bankers suggested that as a specialized financial institution, the Bank must forge partnerships with commercial banks and NGOs in processing, disbursement and recovery of migration loans, and can use the extensive network of post offices in remittance transfers.¹² Most importantly, it was suggested, banking operations should be completely automated.

5. Migration Regulation in Practice

Migrant labour recruitment in Bangladesh involves various ministries and Government agencies, private recruiting agents and their local and international intermediaries, and potential migrants and their families. The Ministry of Expatriates' Welfare and Overseas Employment, the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of Finance, and the Ministry of Civil Aviation and Tourism are the four ministries dealing with international labour migration. The BMET, technical training centres and district level BMET offices (DEMO), and the Bangladesh Overseas Employment Services Limited (BOESL) are the organizations involved in regulating and processing migration. Private recruiting agencies, their associations, medical centres and their associations, grassroots NGOs and civil society bodies also play an important role.

BMET: BMET, the executing agency of the Ministry of Expatriates' Welfare and Overseas Employment for processing labour migration, was created in 1976 to ensure that the maximum benefits could be gained from labour export. Since the promulgation of the Emigration Ordinance of 1982, BMET has been working as its implementing agency, and currently undertakes a variety of functions. These are: control and regulation of recruiting agents; collection and analysis of labour market information; registration of job seekers for foreign employment; provision of emigration clearance to job seekers; development and implementation of training programmes in response to specific labour

needs, in both national and international labour markets; implementation of apprentice and in-plant programmes in industry; organization of pre-departure briefing sessions; and resolution of legal disputes. BMET also manages the programmes undertaken with the Wage Earners' Welfare Fund.

Private Recruiting Agencies: Recruitment and placement are important stages in the overall labour migration process. In the 1970s, the Government undertook recruitment, but since 1981, as part of private-sector development, private recruiting agents took over. The private agencies work under licence from the Government, collecting information on demands and orders for foreign employment, and after receiving permission from the BMET, recruiting workers from different parts of the country. BMET then processes the cases for deployment and issues each recruited person with a clearance certificate. Over time, the recruiting agencies organized themselves under the Bangladesh Association of International Recruiting Agencies (BAIRA), which was formed in December 1984 by representatives of twenty-three recruiting agencies. More than 800 licensed recruiting agencies are now operating. However, according to BMET data, 60 to 70 per cent of visas are acquired directly through workers deployed abroad, with the rest secured by recruiting agencies. Nonetheless, it is imperative that a systematic study of the role of private recruiting agencies in overseas employment be conducted.

System of Dalals (Informal Agents): Recruiting agencies that purchase visas sell them on to individual migrants at a profit. Almost all recruiting agencies are based in the capital city, Dhaka. Since it is not financially viable for recruiting agencies to have offices all over the country, they operate through a host of informal agents and sub-agents called dalals. More than 10,000 dalals in different migration-prone villages and districts perform functions such as providing information on migration opportunities, recruiting workers and conducting financial transactions. At the grassroots level, recruitment is conducted verbally and payments are made without receipt. The dalal system has not been institutionalized; dalals are not formally registered with the recruiting agents they serve and do not possess any formal identification documents, which has created a situation where both recruiting agents and/or their sub-agents can commit fraud and evade responsibility. Indeed, a good number of prospective migrants are cheated, losing much of their assets in the process.

The 1982 Ordinance empowered the Government to cancel and suspend licences and forfeit security deposits if it is satisfied that the licensee's conduct is improper or is in violation of the law and the prescribed code of conduct. However, it is not always possible for the Government to take action. In 2001, the then-interim Government prepared a strategy document, prescribing the recruitment of migrants through a database or by registering the dalals with the recruiting agents. In 2002, the next Government introduced the system of recruitment from a database, and there is now a database of interested migrants at BMET and BAIRA. Technically, recruiting agencies are supposed to recruit from the database, but in practice they recruit on their own and enter the names of the job seekers in the BMET database.

Civil Society Initiatives: RMMRU, the Bangladesh Rural Advancement Committee (BRAC), the Association of Repatriated Bangladeshi Employees (WARBE), and a few other NGOs disseminate information on migration costs and other important issues to prospective emigrants. However, these campaigns do not cover the whole country. In many areas, families of potential migrants receive information instead from agents, returnee migrants, and travel agents. The Government does not provide guidance on the types of jobs available in different countries, the costs of migration, cost-recovery timeframes, and physical-fitness requirements. Hence, it is rather easy for travel agents or licensed recruiting agents to cheat prospective migrants, as it is almost impossible for potential migrants to assert rights of which they are unaware. While going through emigration processes, they do not have access to the names of licensed recruiting agents, nor do they realize the importance of keeping papers. Before embarking on migration, it is of immense importance for a migrant worker to have specific information about the destination country, his or her rights and obligations under its legal regime, cultural sensitivities and physical environment. Often, the migrant worker is either oblivious to these issues or relies on verbal interaction with the dalals for all information. The BMET conducts briefing programmes lasting only two hours for workers recruited for Saudi Arabia, Malaysia, Kuwait and the Republic of Korea, giving them a limited coverage of the issues.

E. PROBING THE COSTS OF MIGRATION

This section addresses the cost of emigration to various GCC countries, as well as Libya, Lebanon

and Jordan. Breakdown of cost by item, the impact of visa trading on costs, the sources of migration finance, the salary structure of workers and cost recovery are discussed.

1. Costs of Migration

A substantial literature deals with the cost of migration.¹³ In addition to reviewing this literature, a few selected interviews of returnee migrants, Government functionaries and recruiting agencies were conducted. Assessing the actual cost of migration is not straightforward, since it varies according to several factors, such as skills, gender, type of visa, and extent of involvement of intermediaries. This will be discussed below.

Afsar's work (2009), based on 60 interviews of returnee workers, concluded that the average cost of male migration was US\$ 1,980, compared with US\$ 857 for female migration.¹⁴ A household remittance survey carried out by the International Organization for Migration (IOM) in 2009 indicates that, on average, emigrants to the Middle East spent US\$ 2,738. This study also indicates that average cost of emigration varied by country of destination: migrants paid US\$ 2,740 for Saudi Arabia and the UAE, US\$ 2,397 for Kuwait, Qatar and Oman, and US\$ 3,082 for Bahrain. IOM's data, however, do not distinguish between male and female migrants.¹⁵ Recently RMMRU conducted a survey of 10,000 Bangladeshi workers who have been repatriated from Libya, and found that for 74 per cent of them, the emigration cost ranged between US\$ 2,740 and US\$ 4,110.

A Government official in charge of emigration clearance recently maintained that the cost of male emigration to Saudi Arabia has reached its peak, ranging from US\$ 4,000 to US\$ 5,400,¹⁶ compared with US\$ 2,700 to US\$ 3,400 for the UAE, Oman and Libya, and US\$ 2,700 for Bahrain and Qatar. Saudi Arabia is a sought-after destination, since there are prospects of employment for a longer period there. Some, but not all, migrants renew their contracts, in certain cases repeatedly. Indeed, through repeated renewal of the work permit, a migrant may stay with the same employer all his or her working life.¹⁷

Cost by gender: The cost borne by female emigrants is much lower than that by males. According to the Government official cited above, it varies from US\$ 270 to US\$ 950 to the UAE and from US\$ 400 to US\$ 1,000 to Lebanon. The Government of Bangladesh is the sole recruiter

of garment workers migrating to Jordan, at a cost to the emigrant as low as US\$ 140. The reason for the difference lies in the balance of supply and demand. The Philippines and Indonesia have imposed bans on the emigration of women to Saudi Arabia and Lebanon as domestic workers. With the resulting reduction in the supply of workers, employers are willing to pay the commission to the recruiting agent, the airfare and other relevant costs. In addition, the Government of Bangladesh has only licensed a few agents to recruit female workers, while maintaining strict scrutiny over the process through direct interviews of departing women. However, some sub-agents and unauthorized agents are still sending female domestic workers to the GCC countries through irregular channels, at much higher cost to the emigrant. Afsar found that on an average, female emigrants pay US\$ 857.¹⁸

Cost by type of visa: Currently, skilled, semi-skilled and low-skilled Bangladeshi workers emigrate to the GCC states by obtaining four types of visa: a work permit visa for a specific job; a free visa; an *Umra* (pilgrimage) visa in case of Saudi Arabia; and a visit visa, particularly in the case of UAE. Since almost half of the Bangladeshi migrants go to Saudi Arabia, the *Umra* Visa accounts for a significant portion of the total. Afsar found significant variations (Table III.8): on average, the cost of emigrating on a free visa stood at US\$ 2,264, compared with US\$ 1,407 for a fixed-job contract visa and US\$ 1,262 for an *Umra* visa.¹⁹ A free visa is also known as a house visa, or in Saudi Arabia as Visa 20. A citizen of Saudi Arabia can employ up to eight persons in his/her house, for example as drivers, house workers, gardeners and guards. Bangladeshis who are already employed in households usually obtain work permit visas through their employers, to bring in other family members or to sell at home through friends or relatives. The migrants on this visa are tied to the employer. If the employer does not require the services of the workers he recruited, he may allow them to work for others, although this is illegal. In some cases, migrants flee their designated employer, becoming irregular. Moreover, those who arrive on an *Umra* visa or a visit visa are permitted to stay for only a short period and are not allowed to work. Yet, some recruiting agents or sub-agents knowingly send migrants on such visas, and in the majority of cases, the migrants overstay their visa and take up employment through informal processes.

Table III.8

Recruitment cost of overseas migration

Type	US\$	N*
Male	1,980.60	45
Female	856.81	15
All migrants	1,699.66	60
Channel of recruitment		
BOESL	842.47	2
Self	1,455.48	4
Family members/ relative	1,650.34	38
Friends	3,253.42	2
Recruiting Agency	2,418.84	6
Sub agent	1,342.47	8
Types of visa		
Free of kafeel	2,285.92	21
Fixed job contract	1,407.36	32
Umra	1,277.11	7
Destination country		
Bahrain	547.95	1
Kuwait	1,473.44	9
Saudi Arabia	1,654.10	32
United Arab Emirate	1,957.74	18
District of Origin		
Dhaka	2,221.60	15
Laxmipur	2,217.23	15
Narayangan	1,010.51	15
Sylhet	1,349.27	15

* N = number of respondents
Source: Afsar (2009). ILO

Demand in Bangladesh for company visas, which are known as Visa 18 in Saudi Arabia, far outstrips availability. Hence, Bangladeshi migrants already working in a household, ask their employers to get house visas²⁰ for others. In such cases, it is the migrant who pays the hefty application fee and some employers charge an additional levy. Some such visas are used to bring in family members or are sold for profit. Thus, the prospective migrant may have to pay some or all of the following: the visa application fee, the visa fee, the unofficial additional charge levied by an unscrupulous nominal employer, the profit made by the migrant who procured the visa, the air ticket, and the BMET clearance fee.

Cost by skill: Bangladeshi migrants are classified as professionals, skilled, semi-skilled and low skilled. This chapter will not deal with the professionals. The cost of migration varies significantly by skill category. According to BAIRA, a skilled migrant pays 30 per cent less compared with an unskilled migrant.

Some low-skilled workers, such as gatekeepers in hospitals and cleaners in shopping malls, are in great demand. Though the salaries are very low, these positions are sought after, since the workers receive tips from individual customers. Hence, visas for such positions are sold at higher prices, which partially explains the higher cost of migration of unskilled workers.

Cost by type of recruiting agent: RMMRU research on 10,000 returnees from Libya shows that the cost of migration through sub-agents was higher than through licensed recruiting agents. Eighty-two per cent of those who went through a sub-agent paid US\$ 2,000 to US\$ 3,000, whereas only 53 per cent of those who went through a recruiting agent paid such a high price. Interestingly, the small number of workers recruited directly by multinational companies paid only US\$ 1,370.²¹

Market factors: The cost of migration varies according to market conditions. Currently, not many options are available for Bangladeshi workers. Hence, the cost of a Saudi visa is very high, but once the Malaysian market is open for Bangladeshi workers, the cost Saudi visa will likely reduce.

2. Breakdown of Cost

Given the above variations, it is hard to provide the exact costs of migration. Moreover, obtaining data on the cost of migration in the countries of destination is difficult. Nonetheless, this section attempts to develop a detailed breakdown of fees charged by the recruitment agencies in Bangladesh and other charges levied by employers or other intermediaries in the countries of the destination.

Since the 1950s, with some variations, labour migration has been managed in the GCC countries under the *kafala* system, which derives from the Bedouin principles of hospitality that demands protection of a guest.²² Under this system, an application to bring in an overseas worker has to be submitted to the Government by a *kafeel* (sponsor), who assumes full economic and legal responsibility for the employee during the period of the contract. *Kafeels* are supposed to pay the placement fee, if any, to the Government; the air ticket of the worker; commissions to the recruiting agent, if any; and the cost of a medical check-up. Hence, all such costs borne by the migrant are illegal.

Recently, the Government of Bangladesh formed an inter-ministerial, inter-agency and civil society committee to look into ways for reducing the high cost of migration. The committee requested

BAIRA to detail the costs of recruitment. Table III.9 shows that the total costs of migration at origin and destination – as estimated by BAIRA – varies from US\$1,823 in the UAE to US\$ 1,965 in Saudi Arabia. An interministerial subcommittee estimates that the total cost of migration varies between US\$1,280 in the UAE and US\$ 1,580 in Libya (see Table III.10). However, as discussed above the cost appears to be much higher. Moreover, it is also important to note that arbitrary specification of costs will not result in reducing them in reality. Instead, the Government should try to address the practices leading to cost inflation and attempt to curb them.

The Government did not accept the breakdown of costs indicated by BAIRA. Officials in Bangladesh embassies in Saudi Arabia, Libya and the UAE maintained that as per the labour law, employment-visa application fees and visa collection fees should be paid by the employer, as should commission fees for recruiting agencies; and hence there is no legal basis for recognizing them as costs.²³ Moreover, the actual base cost is much higher than that indicated by BAIRA.²⁴

Table III.9
Costs of migration at origin and destination proposed by BAIRA (US\$)

Type of cost		Saudi Arabia	UAE	Libya
Countries of destination	Application fees per visa	533.30	952.90	740.56
	Work permit and medical fees	453.31		
	Intermediaries	133.32	136.12	82.28
Bangladesh	Air fare (average)	463.60	340.60	572.20
	Income tax in advance	13.70	13.70	13.70
	Trade testing (for skilled workers) training and language	13.70	81.80	13.70
	Welfare Fund	3.50	3.50	3.50
	Data registration fee	1.36	1.36	1.36
	Medical check-up	39.60	20.43	28.70
	Recruiting agency service charge	204.50	204.50	204.50
	Miscellaneous (hotel etc.)	68.17	68.17	40.90
	Visa fees at Embassy	37.90	N/A	77.70
	Local sub-agent			136.24
Total (Tk = Bangladeshi Taka)		1,965.96 (141,425 Tk.)	1,823.08 (133,850 Tk.)	1915.34 (150,150 Tk.)

Source: BAIRA

Table III.10

Costs proposed by inter-ministerial subcommittee (US\$)

	Type of cost	Saudi Arabia	UAE	Libya
Cost in the country of destination	Overseas Marketing and Liaison office cost	273	273	273
	Training	68	68	68
Costs in Bangladesh	Air fare (average)	464	341	573
	Income tax in advanced	14	14	14
	Trade testing (for skilled workers) training and language	14	82	82
	Welfare Fund	4	4	4
	Data registration fee	1.37	1.37	1.37
	Medical check-up	396	205	205
	Recruiting agency service charge	273	273	273
	Miscellaneous (hotel etc.)	178	178	178
	Insurance	27	27	27
	Visa fees at Embassy	38	n/a	68
	Local sub-agent	x	x	
	Total		1,391.88	1,280.35

Source: Inter-Ministerial Subcommittee on the Cost of Migration

3. Visa Trading in Destination Countries

In most GCC countries, the ministry of labour issues employment permits, except for female domestic workers, where the issuing authority is usually the ministry of interior. Frequently, issued work visas end up being traded. Recruiting agencies and large-scale brokers in destination countries book job visas with a partial payment of placement fees. Once the booking is made, the recruiting agent usually sells the visas to the next tier of intermediaries at a handsome profit and makes the full payment to the issuing authority. The second-tier intermediary, who could be a local, a Bangladeshi, or someone of another nationality, then sells the visas to the highest-bidding recruiting agency in Bangladesh. There is also evidence of third- and fourth-tier intermediaries, buying visas on the market to sell to individuals. Some are Bangladeshi migrants, who are trying either to recover their own recruitment cost or secure extra income.

Shah provides some evidence of the practice of visa trading in some of the GCC countries. She quotes the Saudi Minister of Labour as acknowledging that 70 per cent of the visas issued

are sold in the black market, and expressing his Government's determination to crack down on this practice.²⁵ Similarly, the Bahraini Minister of Labour and Social Affairs regrets that the practice of visa trading has plagued the Bahraini job market for the last 20 years, and says that the Government undertook an investigation in which 43 businesses were found to be engaged in this practice.²⁶ As early as 1997, the Kuwait Human Development Report identified visa trading as one of the factors promoting the influx of foreign workers into Kuwait and advocated curbing the practice.²⁷

The GCC states, Lebanon and Jordan have already initiated some reform processes which aim, among other goals, to reduce the cost of migration and the scope for visa trading. Some countries are thinking of dismantling the *kafala* system, making the labour market regulatory authority the sponsor instead of the employer.²⁸ Other countries are thinking of allowing migrants to change their employers without the consent of the current employer, and some have framed standard contracts for all workers. To avoid non-payment, finally, a system of direct payment of wages into the bank account of the migrant has been introduced, for example in the UAE. These all are important signs of commitment by Governments of countries of destination to enhance the development outcome of migration.

4. Sources of Migration Finance

Profiles of emergency returnee migrants from Libya show that almost 40 per cent have no schooling or no more than five years of schooling.²⁹ They all belong to a young age group and did not have personal savings before migration. Sixty-nine per cent of their families did not possess any arable land, and 10 per cent did not possess homestead land either. In most cases, the migrants did not have the means to bear the costs, but financed their emigration from one or more of six types of sources: the savings of immediate family members; the sale or mortgage of family land; donations from extended family; credit from extended family and social network with or without interest; and credit from money lenders, NGOs and banks.

Siddiqui, Siddiqui and Abrar, Afsar, IOM, and RMMRU reveal that migrants depend heavily on their immediate family for financing part of the cost. Frequently, the immediate family looks at the migration of one of its members as an income-diversification or risk-minimization strategy for the

entire family.³⁰ An important source of finance is mortgaging part of the arable land of the family. The person who takes the land in mortgage buys the right to cultivate it for two to three years. Once the money is returned after the verbally contracted period, the family takes the land back. If the credit is not paid back, the title to the land is lost. A family may also sell part or all of its land holding, homestead, or business. Clearly, the high cost of migration reduces the resource and asset base of most of the families of migrants.

Extended family members, as well as distant but relatively well-off relatives, also contribute. Research work on this phenomenon is not available for Bangladesh, but Dang (2003) showed that in Viet Nam, the family network plays a significant role in mobilizing resources. In addition, anecdotal evidence shows that money taken as marriage dowry is used to finance migration. The family of the migrant also borrows from relatives, co-workers or friends, with or without interest. Occasionally, relatives pay the interest on a bank loan. However, in recent years, such arrangements are becoming less common. An RMMRU study found that 10 per cent of the migrants did not borrow money, nor did they sell land to emigrate. 62.2 per cent collected part or all of the cost from their own and extended family sources; 62.9 per cent by borrowing from relatives with or without interest; 45.8 per cent mortgaged or sold part of the family land; and only 4.8 per cent borrowed from NGOs and banks, while 45.5 per cent borrowed from moneylenders³¹ at extremely high interest rates, ranging from 5 to 10 per cent per month.³² However, Afsar found that only 33 per cent of respondents borrowed from moneylenders.³³

In 2008, four commercial banks, Agrani, Pubali, Uttara, and Mercantile, initiated a migration-finance loan programme, three of them under their corporate social responsibility programme. Recent analysis by RMMRU provides valuable insights. Until 2010, Agrani provided US\$ 7,808 at 10 per cent annual interest to three migrants; Mercantile Bank loaned US\$ 20,548 to 15 migrants at 14 per cent, and Pubali lent US\$ 178,082 to 79 migrants at 13 per cent. The low number of participants taking up these schemes indicates a programme failure. Both the gap between migrants and traditional banks and the procedure of disbursing bank loans through “know your customer” process worked as a hindrance. By comparison, the PKB has provided loans to 100 migrants at an interest of 9 per cent. At 97 per cent, the loan recovery rate is also satisfactory.³⁴

5. Salary in the Countries of Destination

According to information gleaned from contracts submitted for Government clearance, an unskilled worker earns US\$ 133 per month in Saudi Arabia, around US\$ 160 in the UAE, US\$ 170 in Qatar, and US\$ 200 to US\$ 250 in Libya. Female domestic workers earn US\$ 100 to US\$ 150 per month in Lebanon, and garment workers in Jordan earn on average around US\$ 200. Those who work with the companies have free accommodation and house workers receive both food and accommodation. When migrants stay in the country of destination for some time, they try to increase their earnings by doing more than one job when possible, or by changing jobs or by getting involved in visa selling. Hence, various research studies found the actual

Table III.11

Calculation of recovery of cost on basis of cost of migration and salary in country of destination

Country	Cost of migration of male (US\$)	Salary of Male (US\$)	Recovery in monthly salaries for male	Cost of migration of female (US\$)	Salary of Female (US\$)	Recovery in monthly salaries for female
Saudi Arabia	4,771.64	271	17.60			
UAE	3,067.68	271	11.31	272.67 to 954.33	136.21 with food and accommodation	4.5
Oman	3,067.68	271	11.31			
Qatar	2,726.65	271	10.06			
Bahrain	2,726.65	271	10.06			
Libya	3,067.68	300	10.22			
Lebanon				408.99 to 954.33	US\$ 100 to 150	5.44
Jordan				136.33	200	0.68

Source: Data on tentative costs of migration are derived from information from Government officials. Earnings in all countries, except Libya, are derived from the IOM 2011; earnings in Libya from RMMRU 2011.

earnings of a migrant who has been there for a year or so to be higher than the contracted salary. On average, Afsar's interviewees earned around US\$ 200 per month, with men earning around US\$ 220 and women around US\$ 100 per month.³⁵ IOM found the monthly average salary in the GCC countries to be US\$ 271 (see Table III.11).³⁶ Workers in the GCC countries stayed on average for 3 years. The RMMRU study found the average earnings of the returnees from Libya at the time they left to be around US\$ 300 per month and their average period of stay to be around 17 months.³⁷

6. Cost Recovery

Siddiqui (2001), Abrar (2008), RMMRU (2008) and Afsar (2009) give good indications of the number of monthly earnings of male and female migrants needed to recover the cost of emigration. This study makes an estimate by combining information from an interview with a Government official, and IOM (2011) and RMMRU (2011) data on the cost of migration and on the monthly income of the migrants. Table III.9 indicates that in the case of the UAE and Oman, cost recovery would require the earnings of slightly over 11 months, compared with around 10 months for Qatar, Bahrain and Libya, and around 17 months for Saudi Arabia. The apparent anomaly of the Saudi Arabian case is perhaps because the Saudi Arabian Government has stopped migration of male workers; only a handful of migrants were able to go to Saudi Arabia over the last 2 years.

Female migrants are in a much better position. In the case of the UAE, cost recovery would require the earnings of 4.5 months; in the case of Jordan, it is only little more than half a month's salary. Migration of women to Jordan is conducted under a Government-to-Government arrangement that is in its initial stages. If the market is opened to the private sectors of Bangladesh and Jordan, the situation may change dramatically. In the past, the same situation used to exist in the case of migration of male workers. When the market was opened to the private sector, the number of people migrating increased drastically, but the cost of migration also increased considerably and the wages of the workers went down. Over the years, for many, migration has become unviable and risky.

Therefore, the cost of migration varies by gender, type of visa, skill level of worker, and type of recruiting agency used. The breakdown of cost at countries of destination and countries

of origin shows that a large portion of the costs borne by migrants is hidden, and should not be borne by them in the first place. Visa trading and the involvement of layers of intermediaries both at destination and origin have emerged as important reasons underlying the high cost of migration.

F. CONCLUSIONS: RECRUITMENT COST AND SCOPE FOR REFORM

This chapter explored the dynamics of the high recruitment cost of contractual-labour emigration from Bangladesh. Starting with an overview of labour emigration, it highlighted that mostly men migrate for overseas jobs. It is only recently that the number of female migrants began increasing, reaching seven per cent of the total in 2010. Bangladeshi workers emigrate mostly within Asia, with the GCC countries, Jordan, Lebanon and Libya constituting the major destinations. Over the last five years, 90 to 99 per cent of women emigrants went to GCC countries, Jordan, Lebanon and Libya, as did around 80 per cent of all workers in 2005, 2006, 2009 and 2010. Since the global financial crisis of 2009, Bangladesh has experienced negative growth in labour migration, coming down to almost half. Both male and female emigrants undertake employment in mostly semi- and low-skilled work.

The chapter found that in general, the cost of migration from Bangladesh is high; in fact, it is the highest among South and South-West Asian countries. However, the cost of migration varies according to several factors, such as skill, gender, type of visa, recruitment agent, and policies of countries of destination. In the destination countries, major costs are placement fees paid by employers in some GCC countries for bringing in unskilled and semi-skilled workers, medical test costs, airfares and the cuts taken by various tiers of visa traders. At the Bangladeshi end, meanwhile, major costs are the contributions to migrant welfare fund, the data registration fee, the service charges of recruiting agents and sub-agents, the visa purchase fee, and the cost of trade testing in the case of skilled workers. Evidently, a large proportion of the costs are unofficial. There is a need for the whole recruitment sector to become transparent. The current system has left ample scope for illegal trading in visas, allowing recruiting agents and sub-agents and medical test organizations in Bangladesh to make profits. In the process, the cost of migration for poor workers becomes very high.

The Government of Bangladesh has undertaken various legal reforms. It has also attempted to fix the highest limit of migration costs to be charged by the recruiting agents. Unfortunately, this will remain ineffective, unless the core issues are resolved, in collaboration with the GCC countries. Effective reform of the migration process could strengthen the GCC countries' relationship with countries like and enhance their productivity through the presence of a motivated workforce. The following are recommendations towards this goal.

Scope for Policy Reforms

For Bangladesh:

- The Ministry of Expatriates' Welfare and Overseas Employment should either eliminate the subagent system, or formalize subagents through linking them to the recruiting agencies. If the Government is indeed keen to eliminate intermediaries, it should establish a nationwide system for the online registration of jobseekers.
- The Government of Bangladesh should reward the recruiting agencies that are bringing in job contracts at a lower cost.
- Money lending is illegal in Bangladesh. The Government needs to take strong action against the moneylenders who lend money to the families of migrants at astronomical interest rates.
- The Government has established a migrant bank, the Probashi Kalyan Bank (PKB). PKB is not just a bank for the migrant, but is also a bank of the migrant, since 90 per cent of its capital comes from the migrants' contributory fund. Migration finance loans should be its main activity. It should develop a set of credit principles to govern the loan programme, so that intended beneficiaries can avail themselves of the low interest loans. This will reduce the loss of assets many migrant families suffer, and free many migrants from debt.
- The Government of Bangladesh should make Governments of the GCC countries aware of the ill effects of visa trading, and how intermediaries in both the GCC countries and Bangladesh charge placement fees, plane fares and medical-test fares to poorer migrants.
- Bangladesh needs to collaborate with other countries of origin of migrants in an attempt to reach agreement on common minimum standards, covering, among other things, costs and wages. Bangladesh may also wish to take

the lead in convincing other countries of origin to jointly promote multilateral, rather than bilateral, negotiations with the countries of destination on issues such as costs, entitlements and wages.

- The civil society of Bangladesh, in collaboration with global civil-society fora, such as Migrant Forum in Asia and Migrants' Rights International, needs to mount a global campaign against visa trading and for re-establishing the system of payment of plane fares and placement fees by the employer.
- Moreover, the Government of Bangladesh should sign and ratify the ILO Domestic Workers' Convention (No. 189).
- In the compulsory 21-day training provided by BMET, females should be supplied with country-specific brochures, with general information on problems and redress mechanisms, as well as information on the norms and rules of the particular job to be undertaken in the country of destination.

For GCC Countries:

- Various GCC Governments are considering substantive reforms to better govern the immigration of contractual workers. ESCWA can organize inter-Governmental meetings to encourage sharing of experience in reducing the scope for visa trading, reforming the kafala system, and ensuring that placement and other fees are not charged to the migrant. Such an initiative should eventually result in a new pragmatic system of migration governance in the Gulf.
- An in-depth empirical study of the operation of intermediaries at both ends needs to be conducted.
- The wages of low-skilled and semi-skilled workers have remained static for quite a long time. Bangladesh along with other countries of origin can collectively urge the GCC countries to look into increasing wages.
- A large number of women migrate as domestic workers. To bring them under labour laws, governance of migration of domestic workers needs to be brought under the Ministry of Labour instead of the Ministry of the Interior of the Gulf Countries.
- ESCAP and ESCWA can consider commissioning collaborative research by scholars from the GCC states and from countries of origin to develop recommendations in the interest of both parties, as well as of migrants and employers.

CHAPTER IV

REFORMING THE *KAFALA*: CHALLENGES AND OPPORTUNITIES



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CHAPTER IV

REFORMING THE *KAFALA*: CHALLENGES AND OPPORTUNITIES¹

A. CONTEXTUAL OVERVIEW

One observer of migration trends in the region aptly explained that “labour migration governance in the [Gulf Cooperation Council (GCC)] is [at] a historic crossroad” between the status quo and incremental or even comprehensive reform.² Countries can either continue to pursue past policies with partial improvements in some areas or embark upon a comprehensive, critical and constructive review of the whole policy paradigm in dealing with the challenges of the labour market.

This chapter introduces the sponsorship system (known as the *kafala*) used in several countries in the Middle East region, assesses the level of reforms attempted to date, and provides key recommendations on a possible way forward that will benefit not only the migrant workers themselves, but also the countries of origin and destination. It will seek to show why countries of destination should work towards comprehensive reform. The chapter focuses primarily on countries receiving large numbers of migrant workers, namely the GCC States, as well as Lebanon and Jordan in the Mashreq region, all of which have variants of the *kafala* system.

It is important to recognize that the *kafala* system has its roots in the time-honoured Bedouin tradition of hospitality, which sets the obligations required for the treatment and protection of foreign guests. Unfortunately, this noble tradition no longer has the same meaning. Instead, it is being denounced globally as a system of structural dependence of migrant workers on their employer that leaves room for violations of fundamental human rights.

For the majority of migrant workers in the Mashreq region and the GCC countries, life is governed by the *kafala* system.³ There are some variations, however. The *kafala* is typically most strictly enforced in the GCC States for all workers across occupational categories.⁴ In both Lebanon and Jordan, the system is more nuanced. In Lebanon, it regulates low-skilled workers coming primarily from Asia and Africa, but not those coming from the Syrian Arab Republic, who enjoy cross-border freedom of movement. In Jordan, the system applies to migrant workers recruited by nationals,

but not to those working in the Qualified Industrial Zones that operate with foreign capital⁵ or in the Special Economic Zone of Aqaba, which relies on its own procedures.⁶

The system aims to meet the demand for labour with migrant workers while ensuring that they are only temporarily resident in the country. Over the years, it has become the legal basis for migrant workers’ residency and employment.⁷ Under the system, employers are, for the most part, the *kafeels* (sponsors)⁸ who determine their demand for labour and meet it either directly or through intermediaries such as private employment agencies. Based on specific job vacancies, a *kafeel* obtains authorization for selected migrant workers to enter the country. The Ministry of Labour issues employment permits for the selected workers through an administrative process that includes health screening. Upon their arrival into the country, the migrants are considered the responsibility of the *kafeel*, with their residency status being dependant on their continued employment by the *kafeel*.

As the main system of labour migration management in the region, the *kafala* system affects the lives of millions of migrants. Indeed, it is estimated that the number of migrants in the countries covered by ESCWA stood in 2010 at around 25 million, roughly 14 per cent of the global migrant stock.⁹ The annual average growth rate in migrant stock in the region is 4 per cent, making the ESCWA region one of the fastest growing migrant-receiving regions.¹⁰ However, these estimates do not account for the high number of irregular migrants¹¹ working in the major destination countries of the region, who are estimated to make up at least 10 to 15 per cent of each country’s workforce.¹²

Another feature of labour migration to the region is its size, which is also increasing far beyond world averages. With the exception of Oman, migrant stock growth rates in the GCC surpass by far the international levels, and these countries have some of the highest percentages of migrants to total population.¹³ In Qatar, for instance, migrant workers made up 87 per cent of the total population in 2010, while in the United Arab Emirates, they accounted for 70 per cent.¹⁴

An unusual characteristic of the migration to these destination countries is that it cannot clearly be classified as a “south-north” movement, or as a “south-south” migration. On the one hand, the countries of destination have industrial structures that are less diversified than those from which the migrant workers come; on the other, they have capital-rich economies, whose financial wealth rivals and exceeds (on a per capita basis) that of many developed market economies.

In the GCC countries, the earlier migration streams hailed mainly from other Arab countries, but after the first oil boom of 1973, these migrants were subsequently replaced by large flows of Asian migrants to work mainly on large-scale infrastructure programmes.¹⁵ In subsequent years, as the economies matured, the demand for labour diversified. The essentially “male” migrant streams of the earlier period were supplemented in the more recent phases by inflows of large numbers of female migrants who came to work as domestic workers.

As the number of domestic migrant workers increased exponentially, Governments in the region opted to apply the *kafala* differently in their case. While the need for a sponsor remained, a decision was made to make the Ministry of Interior (rather than the Ministry of Labour) responsible for managing their employment. Labour law is, therefore, not applicable to this category of workers, which in effect means that corrective measures envisaged to resolve labour disputes are not available to them. With total power over their employment and stay in the country in the hands of their employers, deprived of remedial mechanisms in cases of labour dispute and without inspection of their living and working terms and conditions by the Ministry of Labour, many female domestic workers are in highly vulnerable states, living at the absolute mercy of their *kafeels*.

B. WHAT IS THE KAFALA?

All migration to the GCC countries is mediated through the *kafala* system. The notable characteristic of this labour migration is the nature of the relationship that sponsors have with migrant workers. Under the current immigration and residency system, the *kafeel* assumes full economic and legal responsibility for the employee for the period of the contract. Once the employment relationship is terminated, there is no legal basis for the worker to stay on in the host country, as

foreign migrant workers are generally not eligible for permanent residency status or citizenship.

As a result, *kafeels* typically determine the terms and conditions of residence and work. Since their immigration status depends on a contractual relationship, migrant workers can be made to accept terms and conditions of employment at variance with those they were promised before departure from their countries of origin. Many low-skilled migrant workers live in collective households, as determined by their *kafeels*, typically receiving inadequate housing. The density of inhabitants in these lodgings, which lack basic amenities and are often unsafe, is high, with up to ten workers sharing a room. Moreover, in these dwellings, cleanliness is often wanting and living conditions are particularly gruelling in the hot summer months.

The close relationship between migrant worker and employer can also make the worker more vulnerable to abuse and exploitation. Migrant workers may suffer underpayment, non-payment, or delay in payment of their wages and unwarranted additional costs. Cases exist where two contracts are made; one for official procedures and another for practical implementation, with a lower wage and poorer working conditions. Workers who face this situation upon arrival are forced to accept contract substitution, having borne the high costs of recruitment and emigration. Other examples exist of *kafeels* deducting medical insurance payments, administrative expenses for the issuance of work and residence permits or even the costs of clothes, food or lodging from wages due to workers. Wages can also be delayed for weeks or months, and often no advances are made in the first weeks of employment to help workers meet their basic needs.

The *kafeel* is expected to bear costs such as those for medical insurance and the issuance of employment and residence permits. Yet *kafeels*, or intermediaries such as recruitment agencies, often charge these expenses to the migrant, in addition to indemnities for delays in registration. Some *kafeels* partially withhold final payments to migrant workers at the end of their employment. In recent years, many *kafeels*, who can only be nationals, have taken on the role of “sleeping partners”, entering into financial arrangements with expatriate business persons whereby they do no more than facilitate the paperwork for foreigners needing the manpower. Such business arrangements, where the *kafeels* play a passive role, have introduced new complexities into an already-complex system.

Migrant workers may also suffer exploitative working conditions, since labour law provisions are often not respected. Low-skilled workers are frequently made to work in arduous conditions for longer hours than prescribed by the law, without overtime payments. They may be deprived of weekly rests, annual leave or home leave with paid flight tickets to countries of origin. Such exploitation is sometimes tantamount to forced labour and human trafficking. Migrant workers may also be victims of physical and sexual abuse and exploitation by their sponsors. The workplaces of low-skilled migrant workers often lack adequate health and safety conditions, and workers may lose their lives because of collapse of buildings, fires or work accidents.

In addition, the mobility of migrant workers is typically constrained. If the *kafeel* is unwilling, the worker cannot leave for other more favourable employment. In fact, workers can be victims of blackmail by unscrupulous *kafeels*. If they protest or call into question the terms and conditions of employment, the *kafeel* can have them deported. Moreover, under the system, the *kafeel* often chooses to retain the worker's passport, making her or him a "hostage". Thus, at times, the travel document is used to blackmail the worker. Public authorities forbid the retention of the passport and recognize the right of the migrant workers to complain and recover their passports. However, workers are aware that such a move would be considered a hostile challenge by employers and may result in punishment, reduction in wages, non-renewal of contracts, false accusations, or, ultimately, deportation. Passport retention may produce its most perverse effects when there is a change in *kafeels* or when leaving the country of employment. In extreme cases, *kafeels* exchange passports for declarations by workers that they have received all their dues, especially the end-of-service payments and wages in arrears.

C. THE SPONSORSHIP SYSTEM UNDER REFORM?

In recent years, the *kafala* system has been under growing scrutiny by civil society and international organizations, which have taken the lead in advocating and defending the rights of migrant workers. The initial calls focused on abolishing the sponsorship system. However, the emphasis nowadays tends to be more on promoting reform instead. By adopting an approach that calls for

incremental reforms, aimed at removing the most restrictive elements of the *kafala*, such as the lack of labour mobility, advocates of change hope that Governments will pay more heed to their demands.

Indeed, in response to the widespread concern over the treatment of workers, as well as concerns about the perverse effects of the *kafala* on domestic labour markets, since 2009 several countries in the region have taken (ad hoc) initiatives to bolster the protection of migrant workers. Their motivations are varied. Policymakers in the region are aware of the continuing bad press their countries receive in international media over the treatment of migrant workers, and are not indifferent to the poor rankings of their countries in the annual *Trafficking in Persons* report issued by the United States of America State Department. Some also have demonstrated a genuine willingness to improve the protection of migrant workers, and some may have regarded moderate reforms as a better approach than abolishing the system altogether, given the financial stakes for nationals.

There is, however, an important difference between taking steps to improve the working and living conditions of foreign workers, such as introducing a standard contract, and revamping and/or reforming the *kafala* system. This chapter seeks to determine what has been done to date by the countries of destination to transform the *kafala*. To do this, the pronouncements and actions of individual countries in the Mashreq and GCC regions are assessed.

In **Bahrain**, in May 2009, the Minister of Labour announced that the country would dismantle the *kafala* in August 2009, so that the Labour Market Regulatory Authority (LMRA) would become responsible for sponsoring migrant workers rather than employers.¹⁶ This change is yet to materialize. The LMRA continues to regulate nothing more than the post-recruitment work process, leaving the *kafala* system in place. Nonetheless, a constraint of the *kafala* has been eased: foreign employees are now allowed to change employers without the consent of the current employer.¹⁷ This is a major policy milestone in the region, serving to protect migrant workers better from abuse and exploitation and respect their right to freedom of movement. Moreover, migrant workers who give advance notice that their contract is ending are given a period of one month to look for new employment. This measure helps break the strong link between employment and residence, which exists under the *kafala* system. Bahrain also stands out as a leader in the region for

committing itself publicly to dismantling the *kafala* in its current form, and has sought technical advice from the International Labour Organization (ILO) on how to implement reforms.

In **Kuwait**, in September 2010, the Minister of Social Affairs and Labour announced the decision of the Government to mark the 20th anniversary of the liberation of Kuwait during the first Gulf War by abolishing the *kafala* in February 2011. The Minister did not provide particulars on an alternative law nor the mechanisms for abolishing the current one.¹⁸ Subsequently, an under-secretary of the same ministry explained that the Government would not abandon the system, but only amend it to make it easier for migrant workers to transfer sponsors.¹⁹ Since then, the Ministry requested and received technical assistance from the ILO in December 2010 on policy measures to improve its management of labour migration. After Bahrain, Kuwait is the country in the region that has the most actively sought to consider a range of policy options. It has now reached a crossroad and must decide which way to proceed.

In **Jordan**, the Government has not sought to change the *kafala* system in its current form and seems unlikely to do so soon. Indeed, the commitment of the Ministry of Labour to reform labour migration management has waned over the last few years, due to frequent changes in the Executive. The same is true of **Lebanon**, which has not put into question the overall continued reliance on the *kafala*. Both countries have made modest attempts at reform, such as by introducing a standard contract, but these measures do not represent changes to the current sponsorship system.

In **Oman**, the Government introduced a law in 2003 that made it illegal for employers to lend migrants working for them to other employers.²⁰ This evidently was designed as a first step towards eliminating incidences of human trafficking and forced labour. The Government has not, however, sought to change the *kafala* to better protect migrant workers from exploitation.

In **Qatar**, in October 2010, the Government considered a move to secure the financial security of migrant workers by requiring private companies to provide monthly details of their salaries. Such a move would, in theory, allow the authorities to ensure that workers are paid on time and that no unwarranted deductions have been made. It would also help identify workers who have not been paid.²¹ However, this measure has not been implemented. The Government also recently announced that they

had no intention of abolishing the *kafala* system or of following in the footsteps of other Arab countries in this regard, arguing that each country has its own specificity, sovereignty and decisions to make.²²

Such pronouncements are worrisome, given the continued challenges facing migrant workers and the fact that Qatar will likely recruit large numbers of additional migrants to build the required infrastructure for the 2022 World Cup, including twelve football stadia, additional hotels and new rail and subway networks, as well as a new city with 200,000 residents.²³ It is precisely during the run up to the World Cup that the Qatari Government should strive to make changes to the *kafala*, to ensure that the reputation of the country is not tarnished by stories of abuse of migrant workers and to live up to its commitments to respect human rights.

In **Saudi Arabia**, the Government has not signalled any willingness to change the *kafala* system. Indeed, the Ministry of Labour announced on 20 June 2011 that the country did not intend to reform it.²⁴

The **United Arab Emirates** (UAE) has implemented a Wage Protection System designed to monitor payments to migrant workers, to ensure that they receive the amounts due to them.²⁵ In addition, the authorities announced in May 2009 that migrant workers would be able to switch jobs if their employer delayed wages by more than two months, and would be entitled to visa extensions in order to find other work in the country if they were made redundant. No details, however, were given about when these new measures would come into effect.²⁶ In addition, much like in the other countries in the region, these reforms do not represent a comprehensive transformation of the *kafala* system.

D. CURRENT CHALLENGES TO REFORM

With the notable exception of initiatives for reform described above in Bahrain and, to a lesser extent, Kuwait, few countries in the region appear to have signalled any willingness to tackle the issue of labour migration management. Indeed, announcements of abolition of the *kafala* have not been accompanied with any details of what a new system might look like.²⁷

There are a number of possible explanations for the status quo. It could be the result of a political strategy in the region. Indeed, recent historical trends indicate that Governments opted to rely increasingly on a labour force from Asia and Africa, perceived to be more “docile” than an Arab

labour force that was already making demands for naturalization and assimilation. As one scholar explains, “the Gulf governments were worried about Arab migrant workers bringing and spreading radical social and political concepts.”²⁸ The GCC countries also considered the presence of Palestinians workers to be potentially problematic, as they could push the GCC states into a more active involvement in the politics of the Arab-Israeli conflict. Arguably, the decision to rely more on an Asian and African workforce enabled GCC states and the other countries of destination to keep the *kafala*, since that workforce has less bargaining power than fellow-Arab nationals have.

The lack of impetus for transforming the *kafala* could also be due to the lack of civil liberties in several countries in the region, especially in the Gulf States. Trade unions, for instance, which are allowed to operate in certain countries, such as Bahrain, Kuwait and Oman, typically do not include migrant workers in their ranks. There are also very few independent human rights organizations in the Gulf States able or willing to inform on and defend migrant-worker rights. In Lebanon and Jordan, NGOs and trade unions play a more prominent role, but they have focused their advocacy on increasing the protection of migrant workers (through advocating the use of a standard contract, awareness raising campaigns, and lobbying) and not on dismantling the *kafala* entirely. As a result, Governments are not under a great deal of internal pressure to make changes to the current labour-migration governance system.

Another possible reason could be the largely unchallenged prejudice in the region against migrant workers, primarily those coming from Africa, but also from East, South and South-West Asia, making nationals less inclined to speak out for individuals considered as second-class citizens. Analysis of the reports of the Commission for the Elimination of Racial Discrimination suggests that anti-discrimination laws, which would strengthen the position of migrant workers, do not exist in several countries of the region. Where they do exist, they fall short of international standards, and there is little information on their implementation. In Jordan, for instance, there is an anti-discrimination law, but it does not cover foreigners in the country. In Lebanon, a small group of activists have tried to respond to this racism by creating an anti-racism movement, condemning the fact that, according to their estimates, “250,000 migrant workers in Lebanon are suffering from the ugliest forms of

segregation, based on their skin colour and their working conditions.”²⁹ This type of discrimination against foreigners, especially those holding low- or semi-skilled positions, is also present in other large countries of destination of the Middle East.

One could also look at the economic interests at play in the countries of destination for probable clues. The gap between professed statements and actual realities reveals the continued ambivalence of the countries of the region towards pursuing a sound migration strategy. Indeed, the lack of comprehensive reforms to date speaks in part to the powerful lobbies that believe they would lose from any change in the system. One renowned scholar noted that, “facilitating the entry and maintenance of Asian workers to the Gulf is more than a billion dollar industry.”³⁰

Lobby groups defending important business interests have at times been so powerful as to thwart successfully those with a more reformist agenda. Indeed, a change in executives is not uncommon when a high-ranking official expresses interest in reforming the *kafala*. The lobby groups have also certainly benefitted from the political upheavals underway in the Middle East and North Africa. These have shifted attention away from the daily abuses inflicted on migrant workers by employers towards the aspirations of the people in the region to have their own rights respected and towards the need to provide aid to stranded migrant workers caught in the crossfire.

Part of the reason for the endurance of the status quo could also lie in countries of origin themselves, which have refused to band together to articulate collectively their demands to countries of destination in the Middle East. This unwillingness to form a bloc is almost certainly due to the considerable economic interests at stake, with remittances forming a large part of the gross domestic product of many of the countries of origin. The latter have preferred to pursue international cooperation, mainly through non-binding memoranda of understanding, and to a lesser extent through bilateral agreements, meant to strengthen the regulation and coordination of international labour migration. However, these documents often fail to guarantee key aspects of migrant workers’ rights. Advocacy groups in Asia have even argued that bilateral cooperation of this type may promote unhealthy competition in practice, since if one country establishes stronger protection for its nationals, employers and recruiters from the host country may opt to work with another country that is willing to send its workers without

such protection.³¹ A case in point would be Saudi Arabia, which recently implemented a hiring freeze for domestic workers from the Philippines and Indonesia, due to the new hiring guidelines set by the two nations to protect their migrant workers.³² In stark contrast, Nepal has decided to lift its ban on domestic workers travelling to the Gulf States.³³

E. OPPORTUNITIES OF KAFALA REFORM

The *Realpolitik* of labour migration to the Middle East suggests the need for the type of action needed to reform the sponsorship system to be strategic and precise. It is in the interests of the countries of destination to introduce incremental reforms, since current abuses undermine the rule of law in these countries and negatively affect their relations with the countries of origin and other partners.³⁴ Countries of origin must also respond to the needs of their citizens abroad, and obviously, reform is in the interest of migrants, who should have decent working and living conditions.

Two premises underlie the following policy advice. First, migrant workers will be needed for many years to come in the Gulf States to make up for the overall shortage of national labour supply and skill gaps in particular areas. Lebanon and Jordan depend on the migrant labour force for the construction and garment industries, as well as for domestic help and care for the elderly, given the absence of effective state provision of social services. Thus, migrant workers are needed for the effective and efficient operation of the labour market and, indeed, for the functioning of the economies of countries of destination. Secondly, migrant workers will continue to be considered temporary contractual labour, as per the expressed wishes of the countries of destination. Such a premise is in line with the Multilateral Framework on Labour Migration of the ILO, which underscores the sovereign right of countries to determine and manage migration flows.

An alternative to the current *kafala* system would have to achieve several policy objectives in the countries of destination, including:

- Formalizing the recruitment process;
- Allowing workers the right to orderly labour mobility, in other words to change employers for justifiable reasons while preserving the interests of employers and the efficiency of the labour market;
- Increasing the safeguards against abuse and exploitation by improving the terms of employment and working conditions of

temporary contractual workers; and

- Strengthening implementation, monitoring and dispute settlement mechanisms.

1. Measures to formalize the recruitment process

One important policy objective of the countries of destination should be to formalize the recruitment process, since it is the informal nature of the *kafala* system which allows abuses to be perpetuated. The problems emerge in part because many migrant workers are brought to the region through individual agents, many of whom are not licensed in the countries of origin, making it very difficult to monitor their activities. Migrant workers often incur the costs because the employers in the countries of destination select agents to whom they pay no fees and therefore save on costs. There may already be established procedures in some countries, but if people do not follow them then problems can emerge. Hence, it should be made incumbent upon employers to go only through accredited Private Employment Agencies (PEAs) in their countries who deal only with accredited PEAs in the countries of origin, thereby marginalizing independent agents.

There is also an important role for inter-State cooperation in preventing and punishing unscrupulous recruiters and agents in both the countries of origin and the countries of destination. The harmonization of standards between the two parties would be beneficial, as would be building the capacity of enforcement agencies and promoting information sharing and cooperation among them to uncover and bring to justice those abusing the system and facilitating irregular migration. Such cooperation should be formalized in either bilateral or multilateral agreements that ensure better protection for migrant workers. International cooperation is also needed to disseminate information on rights and responsibilities throughout the migration process, thereby empowering migrants against being forced into irregularity or becoming irregular unintentionally.³⁵

2. Promoting the mobility of migrant workers

A second policy objective is to ensure the mobility of migrant workers, to protect them from the threat of expulsion at little or no notice by the employer. Without this threat, migrant workers will be better able to assert their rights under the law of the land.

Ensuring that migrant workers are able to change jobs in the labour market should have two beneficial consequences. First, the greater flexibility and effectiveness in the operation of the labour market would benefit the economy of the country of destination, since workers would move to where their labour is most needed. Secondly, enabling migrant workers to leave unscrupulous *kafeels* reduces the possibilities for exploitation.

Any alternative needs to preserve the interests of employers without disrupting the operation of the labour market. One means of reconciliation would be to entrust the Ministry of Labour with the responsibility for overseeing the recruitment process, in coordination with the countries of origin. The Ministry would act as a clearinghouse for complaints by migrants and employers, ensuring that appropriate action is taken, and would intervene in verifying allegations of mistreatment.

To improve the operation of the labour market and to allow enterprises to make the best use of available experience and expertise, workers could be allowed to stay for a period of three to six months after the end of their employment to offer their labour to other employers. Job searches could be confined to the same sector or be allowed freely. Clearly, administering the mobility of labour, in the best interests of the labour market of the host country and of foreign workers, would require a strong interventionist role for Government, supported by employers and workers. The Government would also need to determine a financial threshold for migrant workers that would enable them to support themselves while seeking work. Such a scheme would plainly be also in the interest of the employers, who would gain from having access to workers who have already developed their skills in the country, are more familiar with its language and cultural norms, and are eager to find work.

3. Improving working and living conditions

A third policy objective should be to improve the living and working conditions of migrant workers. Setting a minimum wage would certainly introduce an improvement. Most aspects of the living and working conditions of migrant workers are already regulated by specific provisions of the labour law. Those that are not require new regulatory measures. The principles of international labour law, as provided for in relevant international labour standards and in the ILO Multilateral Framework on Labour Migration, can guide the formulation of such

measures. Governments should also ensure the coverage of all workers, irrespective of occupational category, by the labour laws of the country under the auspices of the Ministry of Labour.

Regulatory measures alone are not sufficient, however. They would have to be backed up by strict enforcement measures. The institutional capacity of the Ministry of Labour, including particularly in relation to labour inspection, would have to be greatly strengthened. This would require allocating sufficient financial and human resources, as well as training and coordination with the authorities of countries of origin in investigating specific complaints. Labour inspection would apply to the work places, as well as to the living conditions of foreign workers. Workers also need access to grievance and complaints procedures without fear of intimidation or retaliation.

In carrying out the enforcement measures, representatives of employers and workers can usefully support the Ministry of Labour by negotiating and agreeing programmes to improve terms and conditions and following up on implementation. Such participation would also help set up a sort of early warning system of disputes over living and working conditions. The representation and participation of migrant workers in the articulation of their interests through trade unions are the best guarantees of peaceful and orderly settlement of labour disputes.

Addressing the specific situation of domestic workers and their terms and conditions of employment requires separate treatment.³⁶ A first measure to be contemplated is to put them under the protection of the labour law. The Ministry of Labour would then be responsible for their employment contracts, providing them with the protective measures envisaged by the law. Questions such as inspecting their terms and conditions of employment and their work environment would still need to be taken up. The new International Convention Concerning Decent Work for Domestic Workers, adopted at the 100th Session of the International Labour Conference in June 2011 by Governments, employers and workers' associations, should serve as a guide to policy and lawmakers.³⁷

4. Implementation, Monitoring and Dispute Settlement and Grievance Procedures

A fourth policy objective could be for the Government to formulate and apply strict enforcement measures of the labour laws, with a central role for

labour inspection. Training for Ministry of Labour and other officials of relevant ministries in relation to their new functions and to the administration of the new system could be undertaken.

Central to this is the development and implementation of the employment contract. Besides spelling out the standard articles applying to wages and benefits, rest periods and other entitlements, such a covenant should also clearly state the responsibilities of the employer and that of the employee. It should also describe the procedures relating to the articulation of grievances and their resolution, as well as the procedures to be pursued in the event of wrongful dismissal and the appeals process.

The Ministry of Labour could and, as the main regulatory authority on work, should investigate and rule on all allegations of mistreatment or violations of the labour law or employment contracts. If the worker infringes the contract or labour regulations, the result would be loss of employment and residency permits, but with the possibility to lodge an appeal with a labour court. During the appeal process, the Government would provide accommodation to the worker temporarily. If the court refused the appeal, the worker would be liable for the associated costs; otherwise, the employer would have to bear the cost of accommodation and the earnings lost during the legal/mediation process. The worker would then be allowed to stay in the country to seek employment within the same economic sector for the remaining duration of the employment and residency permits and would be entitled to the unemployment benefits envisaged

under the social security law. The new employer would pay the remaining costs of the original recruitment for which the previous employer would be reimbursed.

Depending on the gravity of the infringement, sanctions against unscrupulous employers could be strengthened by non-reimbursement of the costs of recruitment and transportation and the suspension of the authorization to bring in migrant workers for a number of years, in addition to any criminal sentence that the court system might deliver.

F. THE WAY FORWARD: IMPLEMENTATION OF AN ALTERNATIVE POLICY

In many GCC countries, the *kafala* system is difficult to decouple from the overall labour market setup. Hence, any change in the system would affect other parts of the labour market. Under the circumstances, and given the major stakes that employer and worker organizations have, it would be useful to discuss and agree any proposed alternative to the current system with their representatives.

The implementation of an alternative policy that serves the interests of the countries of origin, the countries of destination and the migrants themselves will only come about if there is adequate political conviction among senior policy makers. Time will tell whether the debates over labour migration to the Middle East would evolve successfully to ensure the rights of all workers, or whether the Governments will miss a historic opportunity to improve the governance of labour migration.

CHAPTER V

THE SITUATION OF MIGRANT DOMESTIC WORKERS IN ARAB STATES: A LEGISLATIVE OVERVIEW



CHAPTER V

THE SITUATION OF MIGRANT DOMESTIC WORKERS IN ARAB STATES: A LEGISLATIVE OVERVIEW¹

A. MIGRATION FOR DOMESTIC WORK

In the past two decades, for many middle- and upper-middle class households in Arab states, migrant domestic workers have become the main providers of care in the home. The increasing demand has been attributed to reasons ranging from the lack of affordable, well-regulated social care infrastructure responsive to demographic shifts and the transformation of families, to changing income and working patterns and related social norms, including gender roles.

It is mostly women from Asia and Africa who migrate to Arab states for employment as live-in domestic workers. Some men also work as domestic workers, especially in countries of the Gulf Cooperation Council (GCC), as cooks, gardeners, security guards and drivers. In 2008, 38 per cent of approved domestic workers in Saudi Arabia were men.² While nationals and residents also work as domestic workers, they do so in much smaller numbers and are unlikely to live in the household of the employer. Domestic workers often come from poor households, mainly from Ethiopia, Indonesia, the Philippines and Sri Lanka, but more recently also from Bangladesh, Madagascar, Nepal, Tanzania and Viet Nam. As many as 60 to 70 per cent of Sri Lankan workers and more than 90 per cent of the Indonesian migrants in the Middle East are women.

Due to a lack of adequate statistics, the exact number of domestic workers in the Middle East is not known. While their presence in the traditionally labour-receiving countries of the GCC is expected to be widespread, even countries that are traditionally considered as countries of origin, such as Jordan and Lebanon, host them in large numbers. This chapter focuses on the six countries of the GCC, in addition to Jordan and Lebanon. However, many of the conclusions are also valid for other Arab countries.

B. EXPERIENCES OF MIGRANT DOMESTIC WORKERS

The transnational movement of female domestic workers who work for an independent income, evidenced by the feminization of migration

and remittances, can be interpreted as a sign of agency and empowerment. Yet the widespread abuses reverse the empowerment benefits these women gain. Indeed, migrant domestic workers often find themselves at the losing end of highly asymmetric relations. These are exacerbated by patriarchy; class, race, nationality, citizenship, and language differences; and, in particular, by the live-in arrangement imposed by the individual sponsorship system (*kafala*), under which it is difficult for the worker to change employer beyond a trial period.

An underlying cause of labour abuses is that households hiring domestic workers are often unaware of the actual costs involved beyond the basic salary. Estimates from the International Labour Organization (ILO) suggest that the cost of employing a live-in migrant domestic worker is often two to three times higher than the actual yearly salary received by the worker. The costs incurred by the employer include fees for the private employment agency, entry visa, work and residence permits, medical examination, health insurance, and notary services, as well as the costs of accommodation and a return ticket. Employers may also be required to provide financial guarantees redeemable upon the return of the worker home. Many households sponsor migrant domestic workers even though they cannot afford the full costs. Even when they can, there may be incentives to “cut costs” to the detriment of working conditions. In the absence of a prior financial assessment to ensure the eligibility of employers, the truth about their inability to fulfil their contractual obligations may go unnoticed and unaddressed for years. Many employers in Lebanon reportedly pay placement agencies in instalments.

The high initial payment to bring a live-in migrant domestic worker is perceived as the price of having a domestic worker serve the household 24 hours a day, seven days a week. The worker is expected to be on call anytime, day or night. The employer has the power to decide when and where the live-in domestic worker sleeps, when and what she eats, whether and when she can communicate with her family, or whether and when she can go out of

the house. Overtime work without compensation, long working hours without proper daily or weekly rest, leave and days off and out of the household are among the most commonly-cited complaints. Restrictions on the movement of migrant domestic workers are in part reinforced by the withholding of their passports and other identity documents by the employer, and in part by locking the worker inside the home and other forms of threat or violence. In such circumstances, violations of the privacy of domestic workers are widespread, and they lack effective protection from psychological, physical, and sexual abuse (see Table V.1).

Table V.1

Types of Abuses Faced by Migrant Domestic Workers

Types of Abuse	Description
Economic abuse	When the employer violates the terms and conditions of the work contract, or when the worker is not paid on time, is underpaid, or is not paid at all.
Psychological abuse	When the employer forbids the live-in domestic worker from communicating with his or her family, or restricts his or her movements by withholding his or her passport and personal documents.
Verbal abuse:	When the employer uses degrading words and insults; humiliation of the worker; or making fun of her or his race, religion, clothes, or communication or personal style.
Physical violence	When the worker is slapped, punched, hit, pinched, kicked, or burnt; when food, rest, sleep, or healthcare are withheld; or when the worker is locked in the home against his or her own will.
Sexual abuse	When the worker is forced to have sex against his or her own will, or someone makes unwanted sexual advances towards him or her.

Underpayment for domestic work is widespread across the eight countries. Although a minimum wage is not set in most of these countries, there are agreed-upon lower limits that apply to nationals; however, these limits exclude foreign workers. Moreover, although a migrant domestic worker may have signed a contract specifying a wage of US\$ 150/month, the actual received wage may be as low as US\$ 50/month. Furthermore, the wages of female migrant domestic workers are depressed even in comparison with those of other women workers. For example, the average wage of the former in Bahrain in the first quarter of 2010 was 72 Bahraini Dinars, compared with 312 Bahraini Dinars for migrant women who work in private sector.³

The undervaluation of paid domestic work is intrinsically linked to the undervaluation of unpaid domestic work. In particular, care work

is undervalued because of a disregard for the emotional efforts required. The human efforts and needs of domestic workers become invisible when they are perceived and treated like domestic appliances, and the relationship carries the risk of becoming less human, more mechanized, and more unequal.

In a number of countries, like Jordan and Lebanon, freelance arrangements are widespread, even though they run counter to the terms of the residence and work permit, which tie the worker to a specific employer. Such arrangements spawn a market for fictitious employers or fake sponsors who charge the workers for renewing their residence and work permits.

There are cases of “live-in” migrant domestic workers who, in agreement with their employers, offer their services to other households, revealing a demand for hourly or daily services by households that do not want or need full-time house-help and/or do not have the space to accommodate a migrant domestic worker. In both Lebanon and Jordan, “run-away” workers may also start working for one or more employers who cannot afford the expenses of bringing in a live-in a domestic worker.

In such cases, the worker may enjoy more mobility and secure a higher income, often with word-of-mouth referrals, but to the detriment of their legal residency and employment status. Freedom of choice is a basic right for migrant domestic workers in the region. The right to choose whether to live in or out of the household the employer needs to be introduced into the existing systems, doing away with imposing live-in arrangements; that is, live-out arrangements need to become an available option built into the legal frameworks in the countries of destination and safeguarded by employment contracts.

In this regard, the ILO Domestic Workers Convention defines domestic work as “work performed in or for a household or households ... within an employment relationship” (Article 1) and gives the worker the full right to choose whether to reside in the household or not (Article 9).⁴ However, there is no clear international labour standard addressing the vulnerable working conditions of freelancers in general, and freelance domestic workers in particular. In order to legalize their status of residency and formalize their employment, the need to recognize the existence of freelance domestic workers is critical. However, this does not obviate the need for comprehensive legal reforms, nor for an alternative to the sponsorship system.

C. INTERNATIONAL HUMAN RIGHTS AND LABOUR STANDARDS

All states need to develop coherent and comprehensive national policies to manage labour migration effectively. While all states have the right to determine and implement labour and migration policies in their national interests, such policies need to protect the rights of all workers, as defined by international Conventions, and take into account the various types of discrimination faced by different groups of workers. Migrant workers in general, and migrant domestic workers in particular, face discrimination on the basis of sex, race, national origin, ethnicity and religion.

International human rights and labour standards can motivate the development of national legislation, policies and practices. The United Nations and the ILO have several standards that emphasize the rights of international migrant domestic workers. These international principles

fix minimum thresholds, although national laws and practices may well take a broader, more comprehensive approach. An initial step toward the recognition of international standards by nation states is the ratification of these standards, followed by the harmonization of national laws, reporting on progress, putting in place policy commitments and plans of action with specific targets, institutional mechanisms for follow up, and the allocation of budgetary resources.

The multiple discriminations confronting the rising numbers of domestic workers around the world gave rise to the need for international labour standards specific to domestic workers. The ILO Convention No. 189 and Recommendation No. 201 concerning Domestic Workers were adopted at the International Labour Conference in June 2011, to address the particular work conditions, working situations and vulnerabilities of domestic workers (see Box V.1). Given the significant attention and support expressed for the new ILO

BOX V.1

Decent Work for Domestic Workers Convention 189 and Recommendation 201

After years of struggle, the members of the ILO finally recognized domestic workers, until then an invisible, unregulated and vulnerable group of workers, by extending basic labour rights to them. On June 16, 2011, delegates from Governments and workers' and employers' organizations adopted the Domestic Workers Convention, 2011, with 396 votes in favour, 16 against and 63 abstentions, and the accompanying Recommendation with 434 votes in favour, 8 against and 42 abstentions. The adoption of the new standards was the result of a decision taken in March 2008 by the ILO Governing Body to place the elaboration of an instrument on the agenda of the Conference, in order to address the exclusion of domestic workers from the labour protections guaranteed to other workers. In 2010, the Conference held its first discussion and decided to proceed with drafting a Convention, supplemented by a Recommendation, which were the ones finally adopted. The negotiations over the preceding two years witnessed intense debates on, among other subjects, working hours for live-in domestic workers and labour inspections in private homes. The new ILO standards, which were elaborated in a spirit of dialogue and consensus, set out that domestic workers, like other workers, must benefit from fair terms of employment and decent work conditions. The Convention calls for ensuring equal treatment of domestic workers, as regards to normal working hours, overtime compensation, and daily and weekly rest periods. It also calls for the inclusion of domestic workers in minimum wage coverage; for conditions no less favourable than for other workers in respect to social security, including maternity; and for the respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining among others. Importantly, the new Convention puts forward specific measures to protect migrant domestic workers, such as ensuring their freedom of movement; clarifying that stand-by hours are to be regarded as hours of work and remunerated; and to provide protection against abusive practices by employment agencies. Arab delegates constructively contributed to the elaboration of the Convention and Recommendation and largely supported their adoption. In the last round of negotiations and final vote, the members of the GCC reversed their early opposition to a legally binding Convention and expressed their support. Lebanese employers are the only ones who voted against the Convention and abstained on the recommendation. All delegates representing Arab employers abstained on both, whereas all delegates representing Governments and workers' organizations voted in favour. Having been passed with large support from Arab delegates, the next step will be to submit the new labour standards set by the landmark Convention to the competent national authorities, with a view to their ratification and implementation. Arab countries now have a clear and specific road map for safeguarding the rights and dignity of migrant domestic workers on the basis of a set of dedicated international legal standards.

Source: Available from: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_157836.pdf.

standards by countries of origin and destination, United Nations agencies, as well as human rights activists, NGOs, domestic-workers organizations and female activists, the new instruments can be expected to have a significant impact on discourse and action relating to domestic workers. Convention 189 will enter into force once two countries have ratified it.

Generally, international human rights and labour standards cover domestic workers unless they specifically exclude them. Although Convention 189 will become legally binding on the countries of the region only upon ratification, the Convention and the Recommendation already set out authoritative guidance for the improvement of relevant laws and policies. However, a range of other international human rights and international labour Conventions remain of critical relevance to protecting the rights of migrant domestic workers, in particular those that have been ratified by countries from the region. Where ratified, the Governments concerned have an international obligation to include the principles of these Conventions in their legal frameworks.

Relevant International Human Rights Conventions

- Convention on the Elimination of Discrimination Against Women (CEDAW)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- United Nations Convention against Transnational Organized Crime (UNTOC) and the Palermo Protocol
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Relevant International Labour Standards

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)

1. Relevant International Human Rights Conventions

Except for the ICRMW, the other three international human rights Conventions have been ratified by all eight countries (see Table V.2). In the case of CEDAW and ICERD, the countries of the region have registered some reservations.

Table V.2
Relevant International Human-Rights Conventions

Country	CEDAW	ICRMW	UNTOC	ICERD
Bahrain	Ratified 18/06/02	No	Ratified 07/06/04	Ratified 27/03/90
Jordan	Ratified 01/07/92	No	Ratified 22/05/09	Ratified 30/05/74
Kuwait	Ratified 02/09/94	No	Ratified 12/05/06	Ratified 15/10/68
Lebanon	Ratified 16/04/97	No	Ratified 05/10/05	Ratified 12/11/71
Oman	Ratified 07/02/06	No	Ratified 13/05/05	Ratified 02/01/03
Qatar	Ratified 29/04/09	No	Ratified 10/03/08	Ratified 22/07/76
Saudi Arabia	Ratified 07/09/00	No	Ratified 18/01/05	Ratified 23/09/76
UAE	Ratified 06/10/04	No	Ratified 07/05/07	Ratified 20/06/74

Source: United Nations Treaty Collection, <http://treaties.un.org/Pages/ParticipationStatus.aspx>

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and Its Protocols

As discussed in chapter II, CEDAW assures equal rights for women and protection from gender-based discrimination covering rights to liberty and security of person, including protection from trafficking, just and favourable conditions of work and equal access to justice, education, employment and healthcare. It also aims for the elimination of all forms of discrimination against women in the realm of economic rights. It specifies that discrimination is “any distinction, exclusion or restriction made on the basis of sex”.⁴ However, it does not elaborate on the interface with other types of discrimination based on race and nationality. All eight Arab states have ratified CEDAW without any reservations on the articles relating to employment, but all have reservations on Article 2, regarding the commitment to adopt concrete policies and instruments to eliminate all forms of discrimination against women. Until recently, national women bodies in Arab states put an exclusive emphasis on nationals or Arab women only in the coverage provided in the national CEDAW reports, without mentioning the plight of non-Arab migrant women.

However, in recent years this trend has begun to change, with national reports providing coverage of the difficulties faced by migrant domestic workers.

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)

As discussed in chapter II, the ICRMW seeks to eliminate all forms of discrimination against migrant workers and members of their families in their country of residence that may arise from their migrant status, ranging from cultural to social, political and economic discrimination. Of relevance to domestic workers are the articles on the economic and social rights that migrant workers should enjoy, including equality between migrant workers and nationals in terms of economic rights, especially with respect to remuneration, conditions of work, and freedom of association; and on protection by the state from violence, physical injury, threats, intimidation, torture and any degrading treatment.

None of the eight Arab countries under consideration has ratified ICRMW, despite its relevance; in fact, of all Arab League countries, only Algeria, Egypt, Libya and the Syrian Arab Republic have. The ratifying countries are mainly countries of origin that are happy to see the rights of their migrant nationals protected in the countries of destination. All GCC countries, which are countries of destination, continue to be reluctant to recognize migrant domestic workers as workers, hence the handling of their affairs by Ministries of Interior rather than Ministries of Labour. Lebanon and Jordan are both countries of origin, with their nationals working mainly in the GCC countries, but also receive large numbers of Asian and African workers.

United Nations Convention against Transnational Organized Crime (UNTOC) and the Palermo Protocol

UNTOC is the main instrument in the fight against transnational organized crime and is supplemented by three protocols targeting specific organized-crime domains. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is the most relevant to protecting migrant domestic workers from becoming victims of trafficking in persons. According to Article 3 of the Protocol, trafficking in persons means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or

of a position of vulnerability”.⁶ In its definition of trafficking, the Article also includes giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, and the removal of organs.

All eight countries have ratified the Palermo Protocol. Jordan and all the GCC countries, except Kuwait and Qatar, have also followed ratification with national trafficking laws. In Lebanon, there is a draft trafficking law that is waiting for a decision from parliament to go into effect. Often, however, the translation of the protocol to national trafficking legislation has put more emphasis on sexual exploitation rather than on forced labour, largely excluding the plight of migrant domestic workers.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The ICERD is a United Nations Convention adopted on December 21 1965, which entered into force on January 4 1969. The Convention is a human rights instrument that binds its state parties to end all forms of racial discrimination and to promote understanding among racial categories. It also stipulates that member states must ban hate speech and implement the proper measures and policies for ending all forms of racial discrimination, be it political, economic, social, cultural, or in any other field of public life.

The ICERD can be a crucial instrument for the protection of the rights of migrant domestic workers. In the case of migrant domestic workers from Asia in Arab states, several attributes overlap (gender, class, race and national origin) to act as impediments to their enjoying their full rights as workers and human beings.

All Arab states have ratified the Convention with reservations, especially on the dispute resolution mechanisms. Nonetheless, women migrant domestic workers in these countries face blatant discriminatory practices based on race, gender, class and national origins, and no policies or affirmative measures have been enacted in order to counter these inequalities.

2. Relevant International Labour Conventions

International Labour Standards (Conventions and Recommendations) are the primary means of

action to improve the working and living conditions of women and men and promote equality in the workplace for all workers. These standards apply equally to women and men, with the exception of standards addressing issues relating to maternity and the reproductive role of women. Table V.3 provides information on the status of ratification of relevant international labour Conventions in the eight countries covered by this chapter. It is worth noting that the impact of any ILO Convention extends beyond its ratification. Where socio-economic conditions and realities might not be ripe for immediate ratification, it becomes a framework of reference that helps member states to prepare the ground for eventual ratification.

ILO Convention 29 on forced labour, and Convention 105 on abolition of forced labour

Forced labour occurs where work or service is exacted by the state or by individuals who have the will and power to threaten workers with severe deprivations, such as withholding food, land or wages, or physical violence or sexual abuse, or restricting the movements of people or locking them up. Conventions 29 and 105 are interlinked and aim to suppress and prevent the use of all forms of forced or compulsory labour, including those based on “racial, social, national or religious discrimination”.

A migrant domestic worker may be in a situation of forced labour when the employer takes away his or her passport or other identity papers; forbids him or her from to go outside; or threatens him or her with physical mistreatment, or non-payment of salary in case of disobedience. When the worker

works for an unbearably low wage, or faces other substandard terms and conditions of work, then the situation may also be one of forced labour. However, if the worker were free to leave, none of this would not constitute forced labour, but, rather, labour exploitation. All the eight countries have ratified both ILO Conventions. However, the harmonization of relevant national legislation and enforcement are lagging in all cases. The issues related to the relevant legislative frameworks will be discussed in the national legislation section of this chapter.

ILO Convention 87 on freedom of association and protection of the right to organize, and Convention 98 on right to organize and collective bargaining

Convention 87 states that workers and employers have the right to establish and join organizations of their own choosing without previous authorization. Freedom of association is about ensuring that workers and employers can set up, join and run their own organizations without interference from the state or one another. Along with this right comes the responsibility of people to respect the law of the land. However, the latter must also respect the principle of freedom of association, which cannot be ignored or prohibited for any sector of activity or group of workers. Kuwait is the only one of the eight countries that has ratified this Convention.

Convention 98 stresses that worker’s rights should be protected from anti-union discrimination; in particular, from the refusal to employ a worker

Table V.3

Relevant International Labour Conventions

Country	Forced Labour		Right to Organize		Migrant Worker		Discrimination		C181
	C 29	C 105	C 87	C 98	C97	C143	C 100	C 111	
Bahrain	Ratified 11/06/81	Ratified 14/07/98	No	No	No	No	No	Ratified 26/09/00	No
Jordan	Ratified 06/06/66	Ratified 31/03/58	No	Ratified 12/12/68	No	No	Ratified 22/09/66	Ratified 04/07/63	No
Kuwait	Ratified 23/09/68	Ratified 21/09/61	Ratified 21/09/61	Ratified 09/08/07	No	No	Under review	Ratified 01/12/66	No
Lebanon	Ratified 01/06/77	Ratified 01/06/77	No	Ratified 01/06/77	No	No	Ratified 01/06/77	Ratified 01/06/77	No
Oman	Ratified 30/10/98	Ratified 21/07/05	No	No	No	No	No	No	No
Qatar	Ratified 12/03/98	Ratified 02/02/07	No	No	No	No	No	Ratified 18/08/76	No
Saudi Arabia	Ratified 15/06/78	Ratified 15/06/78	No	No	No	No	Ratified 15/06/78	Ratified 15/06/78	No
UAE	Ratified 27/05/82	Ratified 24/02/97	No	No	No	No	Ratified 24/02/97	Ratified 28/06/01	No

Source: ILO NORMLEX, <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0>

because of union membership or participation in trade union activities. Measures appropriate to national conditions should be taken to encourage and promote the development and utilization of voluntary collective bargaining as a means of regulating terms and conditions of employment. Kuwait, Jordan and Lebanon have ratified this Convention.

Trade unions and strikes are banned by law in Saudi Arabia, Qatar and the United Arab Emirates (UAE), with the law in all three only allowing workers' committees. In the other countries where trade unions exist, only Bahrain, Kuwait, Lebanon and Oman allow migrant workers to join them, but not run for elections. However, domestic workers are not allowed to join trade unions in any of these countries, on the argument that the labour law does not apply to them. Some also suggest that live-in domestic workers lack the necessary conditions for joining unions because of restrictions imposed on their right to movement by employers.⁷

In most cases, trade unions in the Arab region are not independent of or free from interference by political authorities and ruling political parties, and lack internal democracy. They often represent only a very small percentage of workers and are not representative of workers in the informal economy and migrant workers. The attitude of trade unionists in these countries to live-in domestic workers is more that of employers than that of worker rights advocates. Indeed, the need for domestic workers in these countries to organize and secure a collective voice in defence of their own rights remains critical for ending their isolation, which has also been clearly stated in the new Convention (189) and Recommendation (201) on domestic workers.

ILO Convention 97 on migration for employment, and ILO Convention 143 on migrant workers

Convention 97 asks for measures to be taken as appropriate to facilitate the departure, journey and reception of migrants for employment, and to ensure adequate medical services. The Convention confirms that treatment no less favourable than that which applies to nationals in respect of remuneration, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation and social security should be applied to migrants, without any discrimination based on nationality, race, religion or sex.

Convention 143 emphasizes the trafficking of persons dimension of labour migration and underlines the need to respect the basic human rights of all migrant workers. It also underscores

the need for necessary and appropriate measures to be taken to suppress clandestine movements of migrants for employment and the illegal employment of migrants. In order to prevent and eliminate abuses, the State should take measures against the organizers of illicit or clandestine movements departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated illegally. The Convention also mentions that the status of the migrant worker should not be considered illegal merely due to loss of employment.⁸ Moreover, it also stresses that whatever their legal status, migrant workers have the right to be treated equally in respect of rights arising out of past employment, as regards to remuneration, social security and other benefits and in respect of access to justice in cases of dispute.

None of the eight countries has ratified Conventions 97 and 143. In fact, no Arab League state has, except for Algeria, which is a country of origin. Even though these two Conventions do not address the specific working and living conditions of migrant domestic workers, they tackle critical issues of migrant-workers' rights, including trafficking and legal status.

Convention 100 on equal remuneration between men and women for work of equal value, and Convention 111 on non-discrimination in employment and occupation

Convention 100 aims to promote equal remuneration for men and women for work of equal value. Remuneration include not only the ordinary, basic or minimum wage or salary but also any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment. Work of equal value is not limited to the same or similar job, the same employer or the same economic sector, but is rather evaluated based on responsibility, skill, effort and working conditions. Domestic work commonly suffers from gender discrimination in respect of remuneration, due to its being dominated by women, the undervaluation of the tasks involved, and the invisibility of the skills and efforts needed in undertaking it.

Bahrain, Kuwait, Oman and Qatar have not ratified the Convention. The Kuwaiti Government has indicated its interest in ratifying the Convention. Yet, it has also voiced concerns as to the compatibility of the Convention with the

provisions of sharia, in relation to the various benefits accruable to women, compared with men (for example, child and housing allowances).

In Jordan, the average monthly wage for a woman was seven per cent lower than that of a man after adjusting for the average number of hours worked (2010). In elementary occupations, the gap was eight per cent, while for professional occupations; it went up to 33 per cent. However, the calculation of the gap in elementary occupations did not take into account the remuneration of migrant domestic workers. Had that been considered, the gap would have increased significantly, considering that migrant domestic workers are paid 110JDs/month, which is significantly lower than the minimum wage of 150JDs/month. A National Committee on Pay Equity has been formed under the leadership of the Ministry of Labour and the Jordanian National Commission for Women, with a view to establishing gender-neutral job evaluations.⁹

Convention 111 defends equality of opportunity or treatment in employment and occupation – including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment – without any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin. Discrimination in employment or occupation may be direct or indirect. Direct discrimination exists when laws, rules or practices explicitly cite a particular ground, such as sex or race, for denying equal opportunities. Indirect discrimination occurs where rules or practices appear on the surface to be neutral, but in practice lead to exclusions. Oman is the only country among the eight countries that has not ratified ILO Convention 111.

Domestic workers in all eight countries face pay discrimination, with their salaries often differing by national origin and race. There is, in fact a hierarchy in average salaries received by women migrant domestic workers. For instance, in Lebanon the average monthly salaries of Sri Lankans (US\$154), Ethiopians (US\$204) and Filipinas (US\$340) are determined based on some vague preconceptions of the education, skill level and physical attractiveness, according to national origins and race.¹⁰

Countries that have ratified this Convention have to report on their progress to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) every two to three years. None of the seven countries under

consideration who have ratified the Convention have declared or pursued national equality acts, policies or commissions to promote equality of opportunity and treatment in respect of employment and occupation. A number of these countries have national women empowerment or gender and development action plans or strategies, with components on the economic empowerment of women that mention non-discrimination in employment and occupation, including pay equality. However, these fall short of ensuring the prevention and elimination of discrimination in the world of work, as their formulations, which revolve around promoting gender equality, remain limited and vague and require better elaboration and articulation.

ILO Convention 181 on private employment agencies

Convention 181 provides a framework for regulating the activities of private employment agencies and for preventing fraudulent practices and abuses in relation to migrant domestic workers. It allows both private and public employment services and agencies to exist, and states that the private employment agency should be monitored by the country's authorities to ensure adequate protection for the workers placed by them.

The Convention insists that private employment agencies should treat workers without any form of discrimination; should protect the personal data of workers and ensure respect for workers' privacy; should not charge directly or indirectly, in whole or in part, any fees or costs to the workers; and should not employ underage workers. Moreover, states should ensure basic labour rights for workers employed by private employment agencies in relation to freedom of association, collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits and occupational safety and health.

Migrant domestic workers face deception, abuse and exploitation by recruitment agencies in countries of origin and countries of destination. The agencies often engage in abusive practices, such as giving incomplete or false information about the terms of employment, substituting the employment contract signed by the worker in the home country with a different contract that has poorer terms, coercing domestic workers to stay in exploitative employment situations, burdening domestic workers with heavy debts, and, in some cases, using physical or sexual aggression.

Although there has been discussion with a number of countries in the region regarding the ratification of Convention 181, none of the eight countries under consideration has ratified this Convention. Lebanon has declined to ratify it on the grounds that private employment agencies are prohibited from operating in the country. This claim is based on a loophole, where agencies that bring in domestic workers are not called private employment agencies (*istikhdam*), but private placement agencies (*istikdam*). Of the Arab League States, only Algeria and Morocco have ratified Convention 181. The political connections of the owners of private employment agencies in the countries of destination mean that there are limited checks and balances on their unscrupulous practices, allowing them to make large profits at the expense of migrant domestic workers.

D. NATIONAL LEGAL FRAMEWORKS FOR MIGRANT DOMESTIC WORKERS

1. National Legislation and Migrant Domestic Workers

In the last few years, Arab states have undertaken legal steps and adjusted their policies in matters related to migrant domestic workers to bring them closer in line with international human rights and labour standards. The impetus is national (media, civil society) and international (Governments of countries of origin and trade partners, international human rights organizations) pressure in response to increasingly visible abuses of, and exploitation faced by, migrant domestic workers. The process in each of the Arab states has been different depending on the national context, the procedures needed to implement new laws; the constitutional jurisdictions of the official institutions; leadership and will among the relevant authorities; and the relative strength of the various interest groups for and against changing the status quo.

A number of countries have drafted specific labour laws for domestic workers. Jordan, however, is the only country where specific labour legislation for domestic workers is currently in place. In Oman, no concrete legislative measures have been proposed for domestic workers. Kuwait, Lebanon, Qatar, Saudi Arabia and the UAE all have drafts of specific legislation on domestic workers at various stages of readiness. Yet, the actual passing of the specific labour legislation for domestic workers is not expected to be

immediate, due to internal political pressures and the reluctance of authorities to enact such laws in the near future.

The result is that in Arab states, women domestic workers are yet to be regarded as having the same rights as other workers. The employment relationship between the domestic worker and the employer is barely recognized and the rights and obligations of the two parties are only vaguely defined. The majority of the eight countries under consideration have elaborated legal frameworks (unified standard contracts) and developed special laws to identify and clarify the employment relationship between domestic workers and their employers (see Table V.4). These emerging legal frameworks and specific labour laws are supposed to “address what can be an unequal bargaining position between parties to an employment relationship”, according to the ILO Employment Relationship Recommendation (R198), 2006.¹¹ However, it is notable that national legal frameworks for domestic workers are not formulated such that the two parties, the workers and the employers, are on an equal footing. In fact, even though neither party is organized, domestic workers are disadvantaged due to their lack of bargaining power as foreigners, coupled with the fact that the national Governments almost always favour the interests of national employers.

Thus the current legal framework further disadvantages domestic workers, with the unified standard contracts and the draft laws in effect reinforcing the power differentials in favour of the employers. In the wording of the recommendation 198, the current contractual agreements “can have the effect of depriving [domestic] workers [in Arab states] of the protection they are due”.¹²

The explicit exclusion / inclusion of domestic workers in coverage of labour law

As indicated in the first column of the below table, migrant domestic workers are explicitly excluded from the labour law in all eight countries under study.

In Bahrain, although explicitly excluded under section 2 of the Labour Code for the Private Sector No. 23 of 1976, a new labour law containing several provisions that include domestic workers was drafted in 2007 and Parliament began discussing it in 2008. However, as of May 2011, it still had not gone to vote.¹⁵ If passed, this would be the first labour law that specifically includes domestic workers in its main text. Many have praised Bahrain’s draft labour law as a major

Table V.4

Relevant International Human-Rights Conventions

Countries	Are DWs excluded explicitly from coverage of Labour Law?	Does specific labour regulation on DWs exist?	Are DWs included in Social Security Law?	Do provisions against gender discrimination in employment & occupation exist?	Do trafficking in persons laws exist?
Bahrain	Explicitly excluded under section 2 of the Labour Code for the Private Sector No. 23 of 1976 ¹³	No	No	Yes, but partial	2008 Anti-Trafficking Law, No 1
Jordan	Explicitly excluded under section 3(c) of the Labour Code No. 26 of 2010 amending Labour Code No. 8 of 1996	Domestic Workers Regulation no 90, 01/10/2009, Ministry of Labour	Yes, under section 4 (c), Social Security Law No. 7 of 2010 (draft).	Yes, but partial	2009 Anti-Trafficking Law, No 9
Kuwait	Explicitly excluded under section 2 of the Labour Code for the Private Sector No. 30 of 1995	Draft Legislation on Domestic Workers	No	No	No
Lebanon	Explicitly excluded under section 7 of the Act of 23 September 1946 issued under the Labour Code	Draft Legislation on Domestic Workers	No	Yes, but partial	Criminal Code (Art 524; 569 & 649)-Draft Anti-Trafficking Law
Oman	Explicitly excluded under section 2 of Labour Code, 2003 (Royal Decree No. 35)	No	No	No	2008 Anti-Trafficking Law, No 126
Qatar	Explicitly excluded under section 3 of the Labour Code No. 14 of 2004	Draft Legislation on Domestic Workers	No	No	No
Saudi Arabia	Explicitly excluded under section 7(b) of the Labour Act, 2006 (Royal Decree No. M/51)	Draft Regulations on Domestic Workers	No	Yes , but partially	2009 Anti-Trafficking Law
UAE	Explicitly excluded under section 3 of the Federal Act No. 8 of 1980, regulating employment relationships	Draft Legislation on Domestic Workers	No	No ¹⁴	2006 Anti-Trafficking Law

Sources: CEACR, 2010. Convention No. 111 Bahrain; CEACR., 2011. Convention No. 100. Jordan; Abubakar, I. 2010; CEACR, 2011. Convention No. 111. Kuwait.; Hamill, K. 2011; CEACR., 2010. Convention No. 111. Lebanon; Toumi, H., 2010; CEACR., 2009 Convention No. 111. Qatar; HRW, 2009; CEACR., 2009 and 2011. Convention No. 100 and 111. Saudi Arabia; Salama, S., 2007. Gulf News

step towards securing decent work for domestic workers. ILO's CEACR has noted its hope that the provisions on domestic workers in the new Labour Code will provide effective rights and protection, including addressing the undervaluation and the disadvantaged position of domestic workers.¹⁶

However, in many of its provisions, the draft still excludes domestic workers, citing "the special relationship between the domestic worker and the employer in the household sphere",¹⁷ which reflects a common reluctance among the Governments of the region to regulate the employment relationship taking place within the household.

Specific labour regulation on domestic workers

Despite the explicit exclusion of domestic workers from labour legislation, six Arab countries have started to draft separate labour regulations for migrant domestic workers. Jordan is the first to enact legal provisions for domestic workers through "the regulation of domestic workers, cooks, gardeners and whoever comes under this category". While Jordan's specific domestic workers regulation has been in effect since late 2009, laws in Kuwait, Lebanon, Qatar, Saudi Arabia and the UAE are still at the draft or discussion stage (see Table V.5).

The language of the draft laws specific to domestic workers oscillates within the same document for the same country regarding the target group. In almost all cases, even when the regulations use the all-inclusive larger category of "domestic worker", they in fact mean live-in migrant domestic workers only. The title of the draft legislation in Lebanon refers to domestic workers, and the definition in the draft includes Lebanese and non-Lebanese domestic workers. However, throughout the text, there are numerous references to migrant domestic workers; in fact, when reviewed closely, the provisions turn out to regulate the specific case of live-in migrant domestic workers only. Similarly, while the Jordanian law refers to domestic workers in the title and the definition, the provisions often refer to migrant domestic workers; and, in fact, the requirements are about live-in migrant domestic workers only.

Some argue that having legislation specific to migrant domestic workers represents a considerable improvement compared with the legal void surrounding their work and goes a long way towards ensuring better legal protection for them. The draft legislation on "the organization of decent work for domestic workers" in Lebanon includes

Table V.5

Status Update on Specific Legislation on Domestic Workers in Arab Countries

Country	Current Status of the Specific Legislation on Domestic Workers (as of June 2011)
Kuwait	Early in 2010, a Member of the Kuwaiti Parliament presented the domestic work draft law through the Committee on the Defence of Human Rights. The draft went through amendments, since it was considered favourable to the placement agencies at the expense of the domestic workers. The Kuwaiti Minister of Social Affairs and Labour declared that the law would be promulgated in May 2010. However, it is still to be put to a vote in parliament. Kuwaiti officials constantly declare their will and hope to adopt a new domestic work law, since the current situation "is causing international embarrassment for Kuwait". The Ministry of Interior proposed the law be adopted by the Government.
Lebanon	The ex-Minister of Labour, who is also an MP, has indicated his plans to take the draft legislation specific to domestic workers to Parliament. The legislation (drafted by a National Steering Committee set up by the Ministry of Labour) was announced by the then-Minister of Labour in April 2011.
Qatar	In 2008, the Advisory Council in Qatar approved a draft law on domestic workers. The council only has an advisory and consultative authority and cannot legislate; the draft was therefore passed on to the Council of Ministers for amendment and finalization. The draft is expected to be part of Qatar's National Strategy to be enacted after approval by the Emir. Little information has been made public regarding the drafting process.
Saudi Arabia	In 2005, the Government drafted an annex to the labour law, specifying the rights and duties of domestic workers, to enhance their legal protection in Saudi Arabia. The consultative Shura Council approved the annex in 2009, but it is still awaiting approval by the Council of Ministers.
UAE	In October 2007, the federal cabinet of the UAE issued a decision to form a taskforce to draft a law regulating the work of domestic workers, in which the Ministry of Interior would take the lead, as the ministry that proposed the law and is in charge of managing the employment of migrant domestic workers. The draft was passed by the Technical Legislative Committee and referred to the Ministerial Legislative Committee. It was adopted on 16 May 2011, but before it can go into effect, it has to be approved and signed by the State President.

Sources: Al-Jareedah, 2010 (Arabic); The Kuwaiti Al Qabas Newspaper 2010 (Arabic); Al-Seyassah Newspaper, 2010 (Arabic); Mahni, 2011 (Arabic); Al Qabas Newspaper, 2011 (Arabic); The Lebanese Al Akhbar Newspaper, 2011 (Arabic); The Official Government News Portal of Sri Lanka, 2008; Al Arab Newspaper, 2010 (Arabic); Toumi, H., 2010; Gulf News, 2007; The Kuwaiti News Agency, 2011 (Arabic).

a number of positive provisions and declares an intention to protect this category of workers from forced labour and labour exploitation (Article 3).

Nonetheless, these texts contain regressive legal measures in a range of areas, including provisions for workers' day off (and day out), working hours, rest time, and wages. Tying the basic right of the domestic worker to mobility to the permission of the employer, for instance, constitutes direct discrimination compared with other categories of workers. Table V.6 below highlights some of the regressive measures contained in the texts of the specific laws for domestic workers in Jordan and Lebanon.

These specific laws may serve to reinforce the inherently powerful position of the employer, which is further compounded if the employee is a migrant domestic worker living in the home of the employer and is in the country under the sponsorship system. The limited provisions become less protective when they are articulated in general and vague terms without spelling out detailed conditions and when they include a number of exceptions. This is especially the case when the migrant domestic workers do not have the right to form their own unions or join unions and have no access to collective bargaining mechanisms and very limited and imperfect access to justice through the judiciary system of the country of destination.

To conclude, in cases where steps towards inclusion are being taken, the terms further

reinforce the imbalanced power relation against domestic workers. Weaknesses in such partial steps include their relatively easy reversibility, as well as the treatment of migrant domestic workers on an unequal footing compared to workers more generally. Hence, specific legislation to regulate domestic work must be tackled in a more systematic and comprehensive manner.

Domestic Workers and Social Security Law

Domestic workers are not covered by social security laws in any of the eight countries. However, a draft social security law (2010) under consideration in Jordan indicates (Article 4) that the provisions under Article 3 (work injuries insurance, old-age, disability, and death insurance, maternity insurance, unemployment insurance, health insurance and family allowances) will apply to domestic and agricultural workers. It also indicates that this inclusion was based on a decision issued by the Council of Ministers upon a recommendation from the Social Security Corporation Board of Directors. All affairs related to coverage of these workers are to be organized by instructions issued by the same Board of Directors.

Domestic Workers and Provisions against Discrimination in Employment and Occupation

This section reflects on the level to which harmonization of national labour laws with practice has been achieved in relation to the prohibition of

Table V.6

Highlights from the Specific Legislation for Domestic Workers (DWs) in Jordan and Lebanon

	Convention C189 concerning decent work for DWs	Jordan	Lebanon
Mobility	Domestic workers are free to choose whether to reside in the employer's household. In any case, they are not obliged to remain in the employer's household during periods of daily and weekly rest or annual leave, and they are entitled to keep in their possession their travel and identity documents (Article 9).	The regulation does not allow the domestic worker to leave the employer's place without his/her permission, even in her off-duty hours or day-off (item 5, Article 5). There is no regulation prohibiting employers from withholding the worker's passports, residence papers or work permit, which infringes on the worker's basic human rights.	The draft legislation leaves the day off and day out to be negotiated between worker and employer. With the power differentials being what they are, this is a significant concern.
Privacy	If residing in the household of the employer, a domestic worker should enjoy decent living conditions that respect their privacy (Article 6). In this regard, the related recommendation (R201) clarifies the meaning of an accommodation respecting the privacy of the worker: "a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock..." (Article 17).	The regulation obliges the employer to provide suitable living conditions for the worker, but it does not specify the meaning of "safe and healthy working conditions", and how the "privacy" of the worker in the house is to be ensured (item 4, Article 4).	The draft legislation does not explicitly define the expressions of "the rights and the privacy of the worker", "suitable living place", "proper treatment" (Article 5) leaving these critical matters open to interpretation.
Minimum Wage	Domestic workers should enjoy minimum wage coverage (Article 11).	Article 3 of the regulation states that minimum wage for domestic workers and workers at Qualified Industrial Zones will continue to be determined by legal decision 4761 at 110JD. The Jordanian minimum wage level of 150JD is set by a legal decision (further to the labour law) excluding workers in domestic work and garment manufacturing.	No indication of the right to remuneration no lower than the official minimum wage (Article 15), based on Article 44 of the Labour Code
Working Hours	The Convention guarantees an equal treatment between domestic workers and workers generally in relation to normal hours of work and overtime compensation. It is worth noting that periods during which domestic workers are not free to dispose of their time (stand-by time) should be regarded as hours of work (Article 10)	The regulation states that the maximum working hours is 10 hours (item 2, Article 4), the working time is determined by the employer which means that he/she can control the hours of sleep and rest of the domestic worker (item 1 & 2, Article 6).	The draft legislation states a maximum of 10 daily hours of work and a week of 60 hours of work (Article 10) which contradicts the ILO's Minimum Wage Convention of no more than 48 hours per week to which Lebanon has been a signatory since 1977. The draft also indicates that the daily rest may be shortened on an exceptional basis if resulting from "work circumstances" (Article 10).
Rest Period	The Convention ensures an equal treatment between domestic workers and workers generally in relation to periods of daily and weekly rest and paid annual leave. Weekly rest should be at least 24 consecutive hours (Article 10).	The regulation guarantees the worker a weekly day off and fourteen days of paid annual leave to be agreed upon between worker and employer. If the employer needs the worker in the weekly day-off or annual leave, the employer should compensate the worker with another day off or with annual leave agreed upon between both parties (Article 7). By not specifying "employer need", this Article offers a large margin of flexibility that, in the absence of bargaining power on the worker's side, could be at the expense of the rights of the worker to rest.	The worker is entitled to a period of weekly rest not less than 24 consecutive hours (Article 11). This is not aligned with what applies to all workers, generally 36 hours as per Article 36 of the Lebanese Labour Code. Moreover, the number of paid annual leave days should be increased from 6 days (Article 12) to 15 to ensure equal treatment with other workers.
Termination	The Convention stipulates that laws, regulations and other measures should declare the conditions under which migrant domestic workers are entitled to repatriation on expiry or termination of the employment contract for which they were recruited.	The regulation does not address the issue of optional termination of the contract, in particular when the employer violates the law or the terms of the contract.	Article 18: "If termination of contract is originated by the employee for reasons other than those mentioned in this law, and if this caused damage or embarrassment to the employer, the compensation to the employer is estimated to equate to the monthly salary and does not exceed four times the monthly salary and the price of a return ticket." This opens the possibility of the worker being in situations of forced labour. The proposed law allows the employer more options for terminating the contract than the worker. Article 24: The employer can terminate the contract when the worker "commits a serious mistake or wilful neglect or damage to the employer". This is vague and leaves room for arbitrary judgment. The employer can terminate the contract if the worker commits an act punished by the Lebanese law. The conditions under which the worker is entitled to terminate the contract are not specified.

Sources: Al-Jareedah, 2010 (Arabic); The Kuwaiti Al Qabas Newspaper 2010 (Arabic); Al-Seyassah Newspaper, 2010 (Arabic); Mahni, 2011 (Arabic); Al Qabas Newspaper, 2011 (Arabic); The Lebanese Al Akhbar Newspaper, 2011 (Arabic); The Official Government News Portal of Sri Lanka, 2008; Al Arab Newspaper, 2010 (Arabic); Toumi, H., 2010; Gulf News, 2007; The Kuwaiti News Agency, 2011 (Arabic).

gender-based discrimination in employment and occupation in the countries being considered. Bahrain, Jordan, Lebanon and Saudi Arabia have specific provisions in their labour legislation towards this end, while Kuwait, Oman, Qatar and UAE do not. Every two years, the Ministries of Labour send reports regarding progress on the application of the Conventions their countries have ratified in their respective laws and practices where there is a specific reference to migrant domestic workers to the CEACR. The following analysis highlights the comments of the Committee on these reports.

The reports of the Ministries of Labour often indicate that labour laws apply equally to all workers, irrespective of gender or nationality. In response, the Committee draws the attention of Governments to the fact that absence of discriminatory provisions in legislations is not sufficient for promoting equality of opportunity and treatment in employment and occupation. Hence, the Committee strongly urges the Governments to take steps to include provisions explicitly defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation, covering all workers, including domestic workers.

The Committee urges the Governments of the region to act to ensure that migrant workers have effective legal protection against discrimination in employment and occupation, particularly based on race, colour, religion or gender. An overall comment of the Committee is that the insertion in labour legislation of an explicit provision prohibiting all forms of discrimination in employment and occupation ensures a more direct and effective application of the Convention. The Committee points out that the labour laws in the region are inadequate in ensuring the full application of the principle of equal remuneration for work of equal value, which hinders progress towards eradicating gender-based pay discrimination. While labour legislations in the region include “same pay for the same job” provisions, they do not address the undervaluation of and underpayment for jobs where women are concentrated. Moreover, while criteria such as quality and quantity may be used to determine the level of earnings, their exclusive use may impede an objective evaluation of the work performed by men and women on the basis of a wider range of criteria that are free from gender bias, which is crucial for eliminating effectively the discriminatory undervaluation of jobs traditionally performed by women,¹⁸ such as domestic work.

Domestic Workers and Trafficking Frameworks: Necessary but Insufficient

Trafficking in the region is mainly for the purposes of forced labour and sexual exploitation. At the time of writing, most Arab countries have adopted laws on human trafficking in accordance with international norms; among them Jordan¹⁹ and the GCC countries (except for Kuwait and Qatar), while Lebanon has a draft law. These laws, however, focus more on sexual exploitation, rather than forced labour. In a number of cases, trafficking laws do not cover domestic workers. Hence, despite the potential value of trafficking laws and strategies in the region, they, in their current forms, fall short of being optimal tools for eliminating trafficking practices that result in forced labour for migrant domestic workers.

2. Unified Standard Contracts

Recognizing that domestic work is an invisible and poorly regulated occupation, several Governments in the region have introduced mandatory unified standard contracts in order to formalize the employment relationship. In the absence of coverage by labour law, these contracts are the only legal cover for migrant domestic workers in all of the countries under consideration (with the exception of Jordan). The standard contracts also serve to put an end to the multiplicity of contracts with different provisions that were being used by different agencies and embassies. In some cases, the standard unified contracts have also been harmonized with the contracts migrant domestic workers receive in their countries of origin. Hence, these contracts have helped formalize an otherwise largely informal and unprotected employment relationship between the migrant domestic workers and their employers.

The unified standard contract is established by Ministries of Labour or Ministries of Interior and can be further reinforced by laws. A contract is normally negotiated between the parties concerned, namely the employer and the employee, in order to determine the working conditions and the terms of employment and regulate the relations between them. In the case of collective agreements, the contract is negotiated between an employer, or a group of employers, or one or more employer organizations on the one hand, and one or more employee organizations on the other. In contrast, the unified standard contract is devoid of the employment relationship dimension, since it is

set by a Governmental body without “consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers”.²⁰ It could be argued that this is due to the absence of collective organizations representing employers and domestic workers. However, as in the process of developing specific domestic worker regulations, ministries of labour are setting contract provisions according to the interests of the employers, albeit while taking into consideration the various international and national pressures advocating for the rights of migrant domestic workers.

Nonetheless, questions regarding the logic behind the unified standard contract remain. Is it to avoid legally covering this category of workers by the labour laws? If so, why have several Governments taken the step of enacting or drafting specific regulations for domestic workers after introducing the unified contracts? What is the value added by such specific regulations, given that they include almost the same provisions as the standard contract?

With its Ministerial decision (617 of 1992) by the Ministry of Interior, Kuwait was the first country to come up with a model employment contract (see Table V.7). In 2006, Kuwait revised the standard contract, which agencies, employers, and domestic workers are legally required to sign during the process of recruiting a domestic worker.²³

In Jordan, the Minister of Labour endorsed a “Special Working Contract for Non-Jordanian Domestic Workers” in 2003.²⁴ The United Arab Emirates introduced a standard contract for domestic workers that went into effect on April 1, 2007.²⁵ In Lebanon, the Ministry of Labour adopted a unified contract for migrant domestic workers in 2009.²⁶ Oman put into effect an optional unified contract for both domestic and commercial migrant workers.²⁷

Favourable Conditions in Standard Unified Contracts

Arguably, such contracts serve to ensure minimum entitlements for domestic workers. By spelling out the rights and responsibilities of the two parties in the employment relationship, they can help correct for the large power differential between worker and employer.

The standard contract in Jordan outlines the responsibility of the employer for applying for the

work and residency permit and for paying the fines in case of failure to do so (Article 3). It forbids the confiscation of passports by either the employer or the private employment agency (Article 10); prohibits employers from withholding salaries (Article 4); sets a weekly day off (Article 7) and 15 days leave for every two years; guarantees life insurance and medical care, 50 per cent of which is to be paid by the worker (Article 12). It also holds the employer responsible for the arrangements over repatriation costs (Article 2).

The Kuwaiti standard contract of 2006 includes rest breaks for every three hours of continuous work, a weekly day off, and two months of paid leave for every two years of service. It indicates that employers must provide food, accommodation, and medical treatment, and also bear responsibility for arrival and return air tickets.²⁸ However, it bans domestic workers in abusive employment relations from changing employers. Under this contract, a domestic worker who wants to leave his or her employer would automatically be deported.

In Lebanon, the unified contract extends the period of employment from two to three years. It stipulates that the workday should not exceed 10 hours²⁹ and that the workers are entitled to eight hours of continuous rest (Article 11), and guarantees them 24 hours of rest per week and the right to six days of annual leave (Article 12), as well as sick leave (Article 15). In addition, the contract sets out the right of domestic workers to receive payment of their monthly salary in cash or through a bank account (Article 6) and to have insurance and medical care (Article 9). It contains provisions on termination in serious cases of abuse, harassment, and maltreatment (Article 17) and on the lodging of complaints with the Ministry of Labour and the courts (Articles 18 and 19).

The Pilot Contract of Employment for Housemaids and Equivalents in Oman sets out the rights of domestic workers to: payment of a monthly salary (Article 2); appropriate food, accommodation, and medical care paid for by the employer; one weekly day off (or to payment in lieu); and to 15 days of annual leave (or to payment instead).

In the UAE, the unified contract includes protective provisions for domestic workers such as the duration of the contract, salary, accommodation, healthcare, repatriation ticket, dispute settlement, recruitment fees, coordination with concerned embassies,³⁰ “adequate breaks” and one month of paid vacation every two years.³¹

Table V.7

Contractual Arrangements for Migrant Domestic Workers (DWs)*

Country	Do Unified Standard Contracts for DWs exist?	Are Contracts signed between		Are Unified Standard Contracts signed between		What languages are contracts available in?	What ministry is responsible for implementation of contracts?
		Worker and employer?	Worker, Employer, and Private Employment Agency?	Worker and employer?	Worker, Employer, and Private Employment Agency?		
Bahrain	No	Yes	No	—	—	—	—
Jordan	Special Working Contract for Non-Jordanian DWs, Jan 21, 2003	—	—	No	Yes	Arabic and English	Labour
Kuwait	The Standard DWs contract for Kuwait, October 2006	—	—	No	Yes	Arabic and English	Interior
Lebanon	Special Working Contract for DWs, Jan 31, 2009	—	—	Yes	No	Arabic, English and French ²¹	Labour
Oman	Pilot Contract of Employment for Housemaids and Equivalents	—	—	Yes	No	Arabic and English	Manpower
Qatar	No	No	No	—	—	—	—
Saudi Arabia	No ²²	Yes	No	—	—	—	—
UAE	The Standard DWs Contract for UAE, April, 2007	—	—	Yes	Yes	Arabic and English	Interior

Sources: : Bahrain Center for Human Rights, 2010.; HRW, 2010; Doha News, 2011; Saudi Arabia, 2006; Al Bayan Newspaper, 2007. (Arabic).

Undermined By Regressive Measures

Arguably, standard unified contracts represent a significant step towards ending the legal exclusion of migrant domestic workers. However, the protection stipulated in articles such as the ones mentioned above is significantly undermined by regressive measures in other articles, regarding hours of work, daily and weekly rest, day off and out (of the house of the employer). These articles leave these critical matters to the “permission of the employer” or to “negotiation between the two parties”. In other cases, the standard unified contracts do not make any mention of critical labour rights, such as the minimum wage, overtime pay, worker compensation, safety and health requirements, and annual and sick leaves. Considering the power differentials, migrant domestic workers are thus left with less favourable working conditions.

In Jordan, according to the standard contract, a migrant domestic worker is not allowed to leave the workplace (the employer’s house) without the employer’s permission (Article 8). In addition, the contract contains vague terms, such as “workers are not allowed to violate social norms” and “appropriate accommodation and food”, without providing the specifics of such parameters, leaving them wide open to interpretation at the expense of the party who is in a less powerful position, namely the worker. Moreover, Article 11 violates the

principle of equality of treatment in employment, for it stipulates that sick workers or pregnant women should be repatriated at the expense of the private employment agency.

In the UAE, the standard contract calls vaguely for “adequate breaks”, but does not limit working hours or provide for a weekly rest day, overtime pay, or worker compensation.³² In Kuwait, the contract fails to restrict the total number of hours of work per day and lacks overtime and sick leave provisions. It thus falls short of labour protection enjoyed by other private sector workers in Kuwait, as well as of the protection recommended under international labour standards.³³

In Lebanon, the standard contract provides for a weekly rest day, but leaves it to the employer to negotiate the conditions of this arrangement (Article 12). In addition, provisions regarding adequate food and accommodation “with which his/her dignity and right to privacy are respected” (Article 8) are vague and fail to establish clear minimum standards. Like the standard unified contract in Jordan, the contract in Lebanon has been widely criticized for failing to grant the worker the right to leave the home of the employer on the weekly rest day. In both cases, the clauses related to termination of contract give employers comparatively more power and place a heavy burden of proof on workers in cases of abuse or non-payment.³⁴

Concerns Over Standard Unified Contracts

While the unified contracts in Kuwait, Lebanon, Oman and UAE address domestic workers in general, the Jordanian contract indicates that it is for “Non-Jordanian Domestic Workers”. Calling for “adequate food and comfortable accommodation” (Article 8 of the Lebanese Contract; Article 5 of the Omani Contract; Article 7 of the Jordanian Contract); or for allowing the domestic worker to communicate with her/his family (Article 14 of the Lebanese Contract), the contracts in fact target live-in migrant domestic workers. When the basic personal freedom of movement of the domestic worker is curtailed, the live-in arrangement turns into forced labour.

An employment contract is usually signed by worker and employer. However, several labour-receiving countries have imposed the private employment agency as a third party, giving them a far-reaching role. In Jordan, the agency takes the financial responsibility if a migrant domestic worker is suffering from any ailment or is pregnant (Article 11). The agency is also expected to play a role in dispute settlement (Article 13), with the contract stipulating that a labour dispute has to be mediated first by the agency and only then if necessary by embassy officials. Consequently, domestic workers do not have access to the labour-dispute resolution mechanisms available to other categories of workers, ending up with disadvantageous outcomes in situations where they have far less bargaining power than their employers.³⁵

While most unified contracts begin with a common statement that “the parties accepted and were satisfied with the terms of this contract”, such contracts are in a language that most Asian domestic workers cannot understand: Arabic and English in Jordan, Oman, and UAE; and Arabic, English and French in Lebanon. In Lebanon, in 2010, the ILO’s Regional Office for Arab States (ROAS) assisted the Ministry of Labour in translating the unified contract into nine country of origin languages. However, the Ministry is yet to disseminate the translated versions of the contract to the notaries public for use by migrant domestic workers.

Several international and national NGO reports confirm that a lack of enforcement severely hampers the effectiveness of these contracts. While such contracts are legally binding, measures to publicize the requirements or enforce the provisions often remain limited.³⁶ In Kuwait, Human Rights Watch found that many workers never see

the contract and have had little success in ensuring the implementation of even its basic provisions.

Under the standard contract, employers must pay all recruitment and placement fees. International labour standards strictly ban burdening migrant domestic workers with any costs. In practice, however, both employers and private employment agencies demand payments from them, and in many cases, salaries are withheld to be given to the private employment agency, sometimes for as long as six months.

While migrant domestic workers in Oman may file a complaint against their employers for illegal practices, most workers are both unaware of their rights and existing protection mechanisms, or are fearful of losing their jobs or being deported.³⁷ Contract guarantees and agency regulations have in numerous cases failed to improve the actual employment conditions of domestic workers. Governments lack mechanisms for monitoring and enforcing employer compliance with contractual obligations.³⁸ Enforcement may be lagging because labour inspections and labour-dispute resolution mechanisms are limited. Furthermore, in the absence of accompanying reforms in labour laws, it is harder to monitor and enforce the provisions on terms and conditions of work in the standard employment contracts.³⁹

The adoption of unified contracts has, in many cases, served to decrease international pressures on the destination countries, even though they may not have resulted in any concrete improvements on the ground. Officials from the region continue to cite unified standard contracts as major achievements toward ensuring the protection of the rights of migrant domestic workers. However, devoid of comprehensive provisions for securing labour rights, and without proper enforcement mechanisms, these contracts fail to improve the situation of migrant domestic workers in real terms.

E. NATIONAL GOVERNANCE FRAMEWORKS FOR MIGRANT DOMESTIC WORKERS

1. Responsible Government Institutions

Government institutions in the region often deal with migrant domestic workers as aliens who pose a security risk, rather than as workers who have rights. This may be linked in part to a reluctance to see the household in which the migrant works as a workplace requiring regulation, but rather to consider it as a

home requiring protection. Only in severe cases of physical and sexual abuse are migrant domestic workers able to access justice, and even then they are treated as victims, without acknowledgment of their labour rights. Jordan and Lebanon are the only countries where Ministries of Labour have a significant number of institutional responsibilities for migrant domestic workers. In the case of the GCC countries, oversight of domestic workers is under the jurisdiction of Ministries of Interior instead of Ministries of Labour (see Table V.8).

The Ministry of Labour issues work permits in Jordan, Lebanon, Saudi Arabia and United Arab Emirates, while the Ministry of Manpower is responsible for this in Oman, and in Qatar, it is the Ministry of Civil Service Affairs and Housing. However, residency permits and regulations related to residency remain under the jurisdiction of relevant departments in the Ministry of Interior. In Bahrain, the Ministry of Interior manages the hotline to receive complaints from victims of trafficking. In Kuwait and the UAE, the Ministry of Interior issues the Unified Standard Contract. The Kuwaiti Government decision regulating private employment agencies with the aim of protecting migrant domestic workers from abusive and fraudulent practices was enacted by the Ministry of Interior, and the Emirati Ministry of Interior is responsible for drafting the specific law regulating the work of domestic workers.

There is still a widespread reluctance to consider the house of the employer as a workplace. Women migrant domestic workers are still perceived as security threats, rather than workers entitled to rights; hence, there is no need to send a labour inspector to a home to see whether the rights of the worker are being respected. In contrast, Governmental authorities are quick to respond when the employer calls in distress because a migrant domestic worker has “run away” or committed a crime, such as theft.

It is worth mentioning that the draft law regulating the work of domestic workers in Lebanon has introduced a new actor in this domain, the social worker. Although it is critical to resolve communication problems that arise in the household, social workers should not replace labour inspectors but complement them. Yet, the draft law, which was drafted under the previous Minister of Labour, assigns jurisdictions and tasks of a labour inspector to social workers (Article 43 of the draft law). Social workers are intended as “less threatening” assessors of the living arrangements

for the migrant workers prior to their arrival in the country. In addition, they are envisioned as an option for reviewing the situation of domestic workers and possibly referring their cases to labour inspectors and other relevant authorities.⁴³

2. Sponsorship (*Kafala*) System

The sponsorship system, which exists in the GCC countries, Lebanon and Jordan, ties the migrant worker’s visa, residency and employment to a specific employer. Several countries have declared their intention to reform or dismantle the individual sponsorship system, and some have taken incremental steps to that end (see Table V.9). However, the changes have not been inclusive of migrant domestic workers.

In 2009, the Bahraini Ministry of Labour announced that the sponsorship system would be dismantled and the Labour Market Regulatory Authority, a Government entity, would be responsible for sponsoring foreign workers, instead of employers.⁴⁴ Concretely, there has been no transfer of responsibility for sponsoring visas, with LMRA merely regulating the labour process, but not replacing the sponsors.⁴⁵

Similarly, Kuwait has been considering a proposal to shift all sponsorship to a single, public-private recruitment agency that would be monitored by a set of stakeholders.⁴⁶ The Minister of Social Affairs and Labour issued a statement in September 2010 announcing that the Government will abolish the *Kafala* system by February 2011, without specifying whether the change will apply to migrant domestic workers. However, to date, the Kuwaiti Government has not cancelled the system but only amended it.⁴⁷ Saudi Arabia is also considering a proposal to transfer sponsorship of domestic workers away from employers to three to four large recruitment agencies. The argument is that such a move will disband all smaller recruitment agencies, leaving the Government in a better position to monitor the large recruitment agencies that remain.⁴⁸ However, no concrete steps have been taken.

Several countries in the region have taken initiatives to reform the sponsorship system by permitting conditional labour mobility. However, none of these reform initiatives has included migrant domestic workers. Bahrain has introduced the right to change employment without the employer’s consent and in the absence of allegations of non-payment of wages or abuse.⁴⁹ However, the reform does not apply to domestic workers.

Table V.8

Responsible Government Institutions

Country	Which institution issues work permit?	Which Government institution issues residency permit?	Is there a hotline for domestic workers?	Are there databases on migrant domestic workers?	Is labour inspection allowed inside households?
Bahrain	Labour Market Regulatory Authority	Ministry of Interior– Directorate of Immigration & Passports	Ministry of Interior ⁴⁰	Ministry of Labour and Social Affairs and Ministry of Interior	No
Jordan	Ministry of Labour	Ministry of Interior– Residency and Foreigners' Affairs	Ministry of Labour	Ministry of Labour & Ministry of Interior – Residency and Foreigners Affairs	No
Kuwait	Ministry of Social Affairs and Labour	Ministry of Interior – General Department of Immigration (GDI)	No	Ministry of Social Affairs and Labour and Ministry of Interior – GDI	No
Lebanon	Ministry of Labour	Ministry of Interior– General Directorate of General Security (GDGS)	Ministry of Labour	Ministry of Labour, Ministry of Interior– GDGS	No ⁴¹
Oman	Ministry of Manpower	Royal Oman Police – Directorate General of Passport and Residence	Ministry of Manpower	Ministry of National Economy	No ⁴²
Qatar	Ministry of Civil Service Affairs and Housing – Labour Department	Ministry of Interior – Passports & Expatriates Affairs	Ministry of Labour	Ministry of Labour	N/A
Saudi Arabia	Ministry of Labour – Labour Offices	Ministry of Interior – Directorate General of Passports	No	Ministry of Labour, Ministry of Interior and MEP – Central Department of Statistics	No
UAE	Ministry of Labour	Ministry of Interior – General Department for Residency and Foreigners Affairs	Ministry of Labour	Ministry of Interior– Nationality & Residency Department	No

Sources: Dito, M., 2010; Bahrain, Report submitted to the 42nd session of the CEDAW Committee, 2008; Moreno, G., and Chanmartin, F., 2005; Olwan, M., 2007; HRW, 2010c; Royal Oman Police. Official Website; UNCT, 2011; Ministry of Interior, Qatar, Official Website; El Amin, A., 2011; Ministry of Labour, Saudi Arabia, 2006; Ministry of Interior, Kingdom of Saudi Arabia, Official Website; HRW, 2008c; United Arab Emirates, Ministry of Interior, Official Website; Salama, S., 2009; Migrant Forum in Asia, n.d.

Likewise, Kuwait has announced that it will allow workers to change sponsors without the latter's consent, but the reform does not cover domestic workers. A previous reform in 2009, which allowed workers to change jobs without their employers' consent after completion of the initial employment contract or after three consecutive years of employment did not cover domestic workers, and in any case did not protect workers facing abusive employment conditions during the first three years of employment.⁵⁰ In the UAE, domestic workers can only change jobs if the employer delays the payment of wages by more than two months. In such cases, visas could also be extended to enable the migrant worker to look for another job. However, there was no clarification as to when this would come into effect.⁵¹

Notwithstanding the statements by GCC States about intending to end to the *Kafala* system, the partial reforms to date serve only to maintain the system for all practical purposes. Moreover, the exclusion of domestic workers from the reforms relating to labour mobility for migrant workers

sustains the status quo that denies domestic workers their basic labour rights as workers.

3. Private Employment Agencies (PEAs)

The transfer of migrant workers from their home countries is undertaken largely by private employment agencies, referred to as recruitment agencies in the countries of origin and as placement agencies in the countries of destination. Agencies in the latter specializing in bringing in domestic workers work closely with recruitment agencies in the former. Labour migration for domestic work from Asia and Africa to Arab States has created a large business sector for PEAs. In each of the destination countries, a certain number of permits are issued to such agencies every year.

Often, as they depart, migrant domestic workers may not have enough information about their rights, or may be misled by unscrupulous agents, who give them inaccurate information on the salaries, and living and working conditions they can expect in the destination country. The agencies may charge

Table V.9

Sponsorship System and Migrant Domestic Workers (MDWs)

Country	Is employment and residence of MDWs regulated by a sponsorship system?	Is any reform of the sponsorship system under way?	Has sponsorship been passed on to a Government entity?	Has sponsorship been passed on to a tripartite institution?	Has sponsorship been passed on to private employment agencies regulated by Ministry of Labour?
Bahrain	Yes	Yes, right to change employers. Reform not inclusive of MDWs	Proposal to transfer to the LMRA the responsibility for sponsoring migrant workers	No	No
Jordan	Yes	No	No	No	No
Kuwait	Yes	Yes, right to change employers. Reform not inclusive of MDWs	No	No	No
Lebanon	Yes	No	No	No	No
Oman	Yes	No	No	No	No
Qatar	Yes	No	No	No	No
Saudi Arabia	Yes	No	No	No	No
UAE	Yes	Yes, right to change employers	No	No	No

Sources: Bahrain Ministry of Labour, 2009, Decision No (79) for 2009 regarding the mobility of foreign employee from one employer to another; Al Jazeera, 2009; HRW, 2010; Richter, F. and Hammoud, A., 2009.

fees as salary deductions for up to six months, even if legislation in the country of origin forbids such practices. Governments and diplomatic missions of the countries of origin may try to curtail unscrupulous agency practices by black listing such agencies and revoking their permits, as well as by informing authorities in the destination countries.

In response to criticisms of their failure to protect the rights of migrant domestic workers, Governments in the countries of destination often tend to point the finger at the recruitment agencies and the recruitment process in the countries of origin as the source of problems. A number of countries of the region are in the second, or even lowest, tier watch list of the highly publicized annual reports of the US Department of State on Trafficking in Persons, which has put pressure on the Governments to revoke the licences of abusive agencies.

As business partners of recruitment agencies in the countries of origin, placement agencies are involved in charging and collecting fees from migrant domestic workers, rendering such workers vulnerable to debt bondage. Although according to international labour standards, such costs are not to be borne by the migrant workers, in practice they often are, even when agencies claim that they do not charge any fees.⁵² Fees paid by migrant workers to secure jobs in Arab States have been estimated at more than half a billion US dollars.⁵³

Legislation regulating private placement agencies has been introduced in some countries, while others have not put in place even basic measures to register agencies, employers and

workers. However, even countries that have passed laws to regulate agencies (Jordan, Kuwait, Lebanon and the UAE) fall short of the principles of international labour standards – particularly ILO Convention 181 and the new ILO Convention 189.

The legislation in place for regulating agencies in the countries of destination has been implemented with varying degrees of effectiveness. Often, the labour inspection systems lack the capacity to monitor the agencies, and this lack of adequate monitoring and enforcement mechanisms gives agencies enormous influence over the lives of migrant domestic workers; they play a central role in setting the conditions of employment, including wages and rest days, and “settling” labour disputes between employers and workers. Since the employers pay them, agencies are more concerned with satisfying their needs than with protecting the rights of migrant domestic workers.

As Tables V.10 and 11 show, Jordan, Kuwait, Lebanon and the United Arab Emirates have put laws in place to regulate and increase the accountability of PEAs. In 2009, Jordan enacted Regulation 89 “organizing the private offices of recruiting and employing non-Jordanian domestic workers”, thus abrogating the previous regulation (No. 3) of 2003. Article 12 outlines the main amendments in the new regulation, which punishes fraudulent practices and abuses of migrant domestic workers recruited by agencies by closing offices and revoking licences.⁵⁴ The punishable practices include: “recruiting workers illegally or with false papers” (Article 12 (a)); “recruiting underage workers” (Article 12 (b)); “economic exploitation of the workers and requiring

them to hand over their wages, in whole or in part” (Article 12 (d)); and engaging in “physical and sexual aggression on workers or abusing them or facilitating such aggression or abuse” (Article 12 (e)). However, item (d) of the article in question related to economic exploitation of workers is vague and under-defined. It does not clearly spell out that the agencies should “not charge directly or indirectly, in whole or in part, any fees or costs to workers” as indicated in Article 7 of the International Labour Convention 181 on Private Employment Agencies, instead using the restricted expression “requiring them to hand over their wages”.

In Lebanon, legislative decree 80 of 1977⁵⁵ established a public institution, “the National Employment Office (NOE)”, mandated to find jobs for applicants in the private sector, as well as to facilitate the recruitment of qualified and expert foreign workers.⁵⁶ The decree prohibits the establishment of private employment offices, since that activity is exclusively for the NOE. Hence, exploiting a loophole, agencies use the term Private Placement Agency (PPA) to bring in migrant domestic workers to work. The fact that domestic workers are not qualified as workers provides further legal coverage for these agencies, and the limited capacity of the NOE allows them to continue functioning. 45 per cent of all PPAs in Lebanon have grouped together to form a syndicate that, among other things, intends to develop a code of conduct to standardize good practices. However, some argue that the PPAs should be abolished and the NOE should be responsible for bringing in migrant domestic workers.⁵⁷

The current legislation regulating PPAs is Decision 89 of 2009, issued by the Ministry of Labour, while the draft legislation proposed by a former Minister of Labour in 2010 is pending. Among the amendments proposed in the latter are the requirements to obtain a licence for setting up a placement agency, including a deposit of 50 million LL and 200 permits per year, double the number specified in the 2009 legislation. However, these amendments do not tackle the protection of the rights of migrant domestic workers.

Furthermore, some provisions of the existing PPA legislation from 2009 are more progressive as far as rights are concerned than the 2010 draft. Article 14 of Decision 13/1 of 22 January 2009 specifically mentions that the agency cannot benefit from any service provided by the worker, whatever the type of service and to whichever natural or legal person, with or without pay, and if it does, its licence

can be revoked. In the 2010 draft, this provision has been removed. The new draft still contains the provisions of the Article 16 of the Decision 13/1 stating “The agency owner is not allowed to get direct or indirect material returns from the foreign domestic workers”. However, the charging of fees to migrant domestic workers remains a common practice between the recruitment agencies in the country of origin and the placement agencies in the country of destination.

The PPA decision of 2009 stipulates that the “agency owner and employees are totally forbidden from beating domestic workers” (Article 17, Decision 13/1, 22 January 2009), and the draft proposed in 2010 states that “The PPA owner and workers at the PPA are restricted from insulting or beating female or male workers” (Article 16). However, limiting the provision to “insulting” and “beating” is not sufficient given that abusive practices range from economic, psychological, verbal and physical abuse to sexual aggression.

Moreover, the current regulation and the proposed draft lack a provision protecting the personal data of the worker as per Convention 181. Infringements of several articles (13, 15 and 17) of the proposed law lead to the revocation of the PPA’s licence. However, there are no explicitly stated sanctions for violations of other articles, particularly those protecting workers from abuses by the PPAs.

Article 21 of Decree 1/5 of January 2003, which is the first decree in Lebanon regulating the work of PPAs, stipulates that the Labour Inspection Department of the Ministry of Labour is responsible for monitoring the activities of the PPAs, as well as for writing regular detailed reports every 6 months to that end. However, Decision 13/1 and the proposed draft do not mention any provisions related to the role of the Labour Inspection Department in monitoring PPAs. In interviews in September 2010, labour inspectors indicated that PPAs are inspected, though on an irregular basis, when complaints reach them through the Ministry of Labour hotline set up in May 2010 for receiving complaints from migrant workers.

However limited in protecting migrant domestic workers from abuse, fraud, and economic exploitation by agencies the Jordanian Regulation 89 of 2009 and the Lebanese Regulation 1/13 of 2009 may be, they are still an improvement over the unregulated markets of agencies in other Arab States. Yet both regulations deal with migrant domestic workers as potential victims in need of

Table V.10

Legislation regulating private employment agencies (PEAs)

Country	Bahrain	Jordan	Kuwait	Lebanon	Oman	Qatar	Saudi Arabia	UAE
Does legislation regulating placement agencies exist?	No	Regulation 89, 2009, Ministry of Labour	Decision 1182, 2010, Ministry of Interior	Decision 1/13, January 2009, Ministry of Labour	No	No	No	Ordinance Regulating private employment agencies, January 2011, Ministry of Labour

Sources: Jordan Ministry of Labour, Official Website; *Al Rai Newspaper*, 2010 (Arabic).

Table V.11

Private employment agencies regulations in Jordan and Lebanon in Light of Conventions 181 and 189

	Country, title of legislation and year of enactment		
	Jordan, Regulation 89, 2009, Ministry of Labour	Lebanon, Decision 1/13, January 2009, Ministry of Labour	
Related provisions of Conventions 181 and 189			
Preventing fraudulent practices and abuses (Article 8, C181; Articles 5 and 15, C189)	Article 12	Articles 14 and 17	
Prohibiting all forms of discrimination in treatment and access to employment (Article 5, C181; Article 10, C189)	No	No	
Ensuring respect for workers' privacy (Article 6, C181; Article 6, C189)	Article 8 (d)	No	
Forbidding charging directly or indirectly any fees to workers (Article 7, C181; Article 15, C189)	Article 12 (d)	Article 16	
Prohibiting employing child labour (Article 9, C181; Article 4, C189)	Article 12 (b)	No	
Ensuring basic worker rights (Article 11, C181; Article 3, 10, 11, 13 and 14, C189)	Freedom of association and collective bargaining	No	No
	Minimum wages and overtime compensation	No	No
	Working time; daily and weekly rest; annual leave	No	No
	Statutory social security benefits	No	No
	Occupational health safety	No	No

Sources: ILO, Conventions 181 and 189; Jordan, Ministry of Labour, Regulation 89, 2009; Lebanon, Ministry of Labour, Decision 1/13, January 2009.

protection, rather than workers who have labour rights. Moreover, they perpetuate discriminatory practices, such as basing the salary of the migrant domestic worker on her national origin, rather than on her qualifications for the job.

Both regulations are devoid of any mention of fundamental principles and rights at work, such as freedom of association and collective bargaining, minimum wage and overtime compensation, working time, daily and weekly rest, annual leave, social security benefits, and occupational health and safety. Since domestic workers are excluded from labour laws, legislative instruments, such as unified standard contracts and legislation monitoring agencies, are the only forms of legal coverage migrant domestic workers have.

Labour inspection is the main mechanism for monitoring agencies. However, the related laws recently adopted by Jordan, Lebanon, Kuwait and UAE are not followed up by the necessary administrative and regulatory steps to operationalize the monitoring mechanisms and enforcement measures. Thus, monitoring mechanisms for

detecting and responding to cases of exploitation and abuse of domestic workers continue to be weak in Arab States.⁵⁸

In Lebanon, a workshop with labour inspectors pointed out the fact that a number of complaints lodged through the ministry of labour hotline were followed up in the form of visits to the agencies, as well as to private homes. However, no specific guidelines have been provided for the labour inspectors to monitor the private placement agencies. An initial meeting was held with the labour inspectors in September 2010 by the ILO, in cooperation with the United Nations Office on Drugs and Crime, to understand the extent of their knowledge and needs, and it was agreed with the Ministry of Labour that the ILO, in consultation with the Labour Inspection Department, would develop guidelines.

4. Access to Justice

Access to justice, a basic right for all, is not just having access to courts and lawyers, but also having better and early access to information and

services to help prevent and resolve disputes. When in labour disputes, migrant domestic workers in Arab States have limited access to information and services. Table V.12 lists selected complaint mechanisms for migrant domestic workers in three ESCWA countries. In addition to effective monitoring and protection mechanisms, legislative reforms promoting the rights of migrant domestic workers need to be coupled with easy and affordable access to impartial dispute settlement procedures, and if necessary, legal redress.

The persistence of abusive or exploitative conditions may result in the escape of the migrant domestic worker from the workplace to become a “runaway”. The reasons given are often related to long working hours; overwork due to working in more than one household; not having time to rest; non-payment of wages; not having time off when sick; not being given enough food; being physically abused; and, in some cases, being sexually harassed and abused. There are also cases where the motive is to earn more money through freelancing.

BOX V.2

The Syndicate of Private Placement Agencies in Lebanon

The “Syndicate of the Owners of the Female Housemaid Employment Agencies” in Lebanon was established in June 12, 2005 by ministerial decree 1/197. In line with international labour standards tending to move away from the term “maid” to “worker”, the name of the syndicate was changed to the “Syndicate of the Owners of Home Workers Recruitment Agencies in Lebanon” (decree 18, 2008). There are 460 agencies in Lebanon, 45 per cent of which are currently members of the syndicate (207). It is estimated that around 150 are “fake agencies”, operating without a working licence from the Ministry of Labour. The syndicate has not yet established a code of conduct to regulate the social responsibilities of the agencies to protect the rights of migrant domestic workers and to promote improved business practices. However, the leadership intends to develop a code of conduct in order to standardize good practices and to establish a blacklist of unregulated agencies to guard against trafficking in persons. As a collective mechanism, the syndicate is a good platform for establishing such sector-specific codes of conduct. In fact, the syndicate has engaged in a participatory policy dialogue with the Lebanese authorities, the embassies of the countries of origin and NGOs in the context of the National Steering Committee on Women Migrant Domestic Workers in Lebanon, which was established in January 2006 under the auspices of the Ministry of Labour in order to advocate for a policy framework that is in line with decent terms and conditions of work for migrant domestic workers. Furthermore, the syndicate has signed a memorandum of understanding with Caritas Lebanon Migrant Centre to ensure protection for the victims of trafficking through awareness-raising campaigns for domestic workers and training workshops for agency staff on how better to protect migrant domestic workers from abusive practices. The syndicate has an ongoing dialogue with officials of diplomatic missions from countries of origin (Ethiopia, Sri Lanka, Bangladesh, the Philippines, Nepal and Madagascar) in order to improve regulations around the recruitment of migrant domestic workers and streamline processes to ensure the protection of their rights. These communications were necessary in the light of the bans put in place by the countries of origin against their citizens working as domestic workers in Lebanon. Such efforts, however, are not a substitute for comprehensive legislative and governance frameworks that regulate and protect the rights of the key parties. The syndicate leadership believes that a legal framework that protects the rights of the workers is not necessarily in contradiction with the interests of employers or private employment agencies.

Sources: Official Website of “Syndicate of the Owners of the House Workers Recruitment Agencies in Lebanon”. Available from <http://sora-lb.com/indexe.html>. Telephone interview with the president of syndicate, Mr. Hisham El-Bourgi, June 22, 2011; *National News Agency*

Table V.12

Selected Complaint Mechanisms for Migrant Domestic Workers

Country	Description
Kuwait <i>Ministry of Interior, Kuwaiti Domestic Workers' Department</i>	The Kuwaiti Domestic Workers' Department, an administrative division of the Ministry of Interior, provides mediation for civil domestic employment disputes, including breach of the domestic labour contract, though participation remains voluntary. The department lacks the authority to follow upon criminal claims and cannot ensure employer participation in resolving disputes. It works only through embassy officials and does not receive individual complaints. This arrangement fails to protect workers whose countries of origin do not maintain diplomatic missions in Kuwait.
Lebanon <i>Ministry of Labour, Migrant Worker Hotline</i>	In June 2010, the Ministry of Labour set up a hotline to receive complaints. Criticized for a lack of dissemination of information on its existence; language barriers (the operators can communicate in three languages: Arabic, English and French); and restricted working hours (Monday to Friday from 8 a.m. to 2 p.m.), the effectiveness of this hotline remains unproven.
Saudi Arabia <i>Saudi Arabia Domestic Workers' Centre</i>	The Ministry of Social Affairs has established a centre in Riyadh for domestic workers who require exit visas, return tickets, or identity documents, and who have continuing wage disputes with their employers. This centre is step forward in providing domestic workers with a mechanism to resolve labour disputes. However, domestic workers must often settle for unfair financial settlements and wait for months in the overcrowded shelter with little information about their cases. ⁵⁹

Sources: HRW, 2008a.

Across the countries of the region, the shelters of diplomatic missions of countries of origin are a common destination for “runaways”. There are also a limited number of NGO- and Government-run shelters, but their capacities are limited. However, due to the inadequacy of available shelter facilities, runaways are often held in detention centres for extensive periods. Since the employer holds the passport of the migrant domestic worker, changing employers and going back home become lengthy processes that require the intermediation by diplomatic missions, security officials, NGOs and religious figures.

Often, complaints are not registered, since the domestic workers are deported before being able to present their cases to the relevant authorities.⁶⁰ Even when workers file complaints, the police and judicial authorities may fail to record them as crimes due to inadequate investigative procedures. In police stations and immigration offices where migrant domestic workers can complain and ask for legal redress, they are often treated with hostility and abuse.

In Kuwait, for instance, there have been several incidents where police and immigration officers admitted to raping migrant domestic workers in their custody. One officer tasked with transporting women from investigative detention to deportation facilities confessed to having been engaged in this practice for fifteen years. Although the Kuwaiti Government responded by prosecuting the offending officers, these cases suggest that other similar abuses do occur and that many victims of violence may fear to approach the police.⁶¹

Furthermore, “runaway” domestic workers often face counter-allegations from their employers who accuse them of theft. In many cases, the court took the fact that the worker ran away to be circumstantial evidence supporting the accusation of theft, even when other legitimate reasons for leaving, such as unpaid wages or ill treatment, were given. The allegations are often difficult to prove or disprove, leaving workers stranded at detention centres until a solution can be found. Moreover, access to translation and legal aid remains random and typically depends on the presence, resources and leadership of the diplomatic missions of labour-sending countries.⁶² In the face of the uncertainty of the conviction of abusers and enforcement of judgments, and the desire of the traumatized worker to return home means that many are not willing to seek legal action against their employers.

Judicial systems in the Arab States suffer from poor redress mechanisms and weak institutional support for migrant domestic workers faced with exploitation and abuse, even when there is extensive evidence supporting their cases. Many of these workers prefer not to pursue legal action because of protracted nature of the process, high filing fees, limited access to legal services, lack of accommodation and employment opportunities during the review period, and doubts that the legal system will provide just solutions.⁶³ Boxes V.3 and 4 describe two separate legal cases that may have set a precedent in the region.

The mishandling of complaints by migrant domestic workers needs to be addressed to ensure improved access to justice. The cases where migrant domestic workers receive justice from courts in Arab States need to go beyond severe physical and sexual abuses to include cases where their labour rights and personal freedoms are abused. Legal precedents have to be registered where migrant domestic workers are recognized as rights bearers and not only as victims.

F. CONCLUSIONS AND RECOMMENDATIONS

The chapter identified critical gaps in the legislative frameworks and governance structures affecting migrant domestic workers in Arab States. Despite the host of measures introduced or announced, violations of the rights of migrant domestic workers remain widespread, both as workers and as human beings. The main messages of the chapter include:

- The exclusion of domestic workers from national labour and social security legislation remains a major challenge, even though national legislation is typically deficient itself.
- Migrant domestic workers face multiple discrimination based, among other things, on the grounds of gender, nationality, race, ethnicity, and religion, but Governments are often hesitant in tackling discrimination comprehensively.
- Governance structures and mechanisms largely deal with migrant domestic workers as security risks or victims rather than as workers who have rights.
- The sponsorship system for migrant live-in domestic workers is fraught with a lack of expertise and inefficiencies, and devoid of rights as a reference framework.
- Partial legislative steps in the form of unified standard contracts and decisions on regulation

and monitoring of private employment agencies often fall short of protecting the labour rights of migrant domestic workers, and remain incomplete, reversible, and unenforced.

- In the absence of comprehensive frameworks, access to justice by domestic workers when confronted by labour abuses and exploitation is restricted and inadequate.

The international Convention and Recommendation promoting decent work for domestic workers, adopted in June 2011, provides a basis for the introduction of legislative initiatives and governance reforms that are rooted in a rights-based approach. Now is an opportune time to revamp national legislation pertaining to migration and employment and to reform governance structures in line with international labour standards to which the Governments of the region are signatories.

Using the larger domestic-worker rights framework of Convention 189 and Recommendation 201 can help de-stigmatize the highly racially-biased perception and treatment of migrant domestic workers in the region. The shift from an insular approach hinging on cultural relativism with respect to worker rights to a rights-based universality approach needs to take place to allow for the recognition and utilization of the benefits deriving from multicultural societies.

The fact that all the Governments and workers organizations of the region have voted for the Convention should be capitalized on for the effective protection of migrant domestic workers, particularly women. The starting point clearly is the ratification of Convention 189, which will show the commitment of policy makers to the protection of domestic-workers' labour rights. On the legislative

BOX V.3

Sumiati Mustapa: The Saudi judicial system refuses to set a precedent

The case of Sumiati Binti Salan Mustapa, an Indonesian domestic worker in Saudi Arabia, could have set a precedent in holding an abusive employer accountable. Mustapa, 23 years old, was admitted to a hospital in Al Medina city with broken bones and burns all over her face and body. In a legal public action, the court convicted the employer, Umm Mohammad, to three years of jail on charges of torture and trafficking in persons. The case received worldwide attention due to the severity of the allegations of physical abuse. However light the sentence might have been, if carried out it could have set a precedent since Umm Mohammad would have been the first employer to be convicted for physically abusing a domestic worker and the first to be convicted for trafficking in persons after the enactment of the trafficking law in 2009. However, the employer appealed the sentence and was acquitted by the Court of Appeals on the grounds that there was insufficient evidence that the domestic worker was tortured and that the judge who issued the first sentence "had committed several mistakes that were sufficient for revoking the sentence". The employer has voiced plans to sue Mustapa for reparations (37 million SR), accusing her of self-harming in order to harm her employer.

Sources: BBC News. <http://www.bbc.co.uk/news/world-asia-pacific-12151454>; <http://www.bbc.co.uk/news/world-asia-pacific-12962400>; Al Arabiya. <http://www.alarabiya.net/articles/2011/03/15/141621.html>; Migrant Rights. <http://www.migrant-rights.org/2011/04/05/saudi-justice-maid-torturer-acquitted/>.

BOX V.4

Filipina Domestic Worker Receives Justice from Lebanese Courts After Three and A Half Years

Jonalin Malibago, a Filipino domestic worker, was employed in Lebanon between February and July 2006 during which time she sustained bruises to her head, chest, back, legs and arms. Her employer brought her to the Philippines Embassy during the Israeli War on Lebanon 2006 to be repatriated and proceeded to beat her inside the embassy to push her to walk faster while carrying her luggage. When the worker fainted at the embassy, she was taken to hospital and her extensive bruises were noted. She told the doctors that her employer physically abused her. Her employer told doctors that she suffers from a blood disease which accounted for the injuries. A medical report commissioned later by the Beirut Appeals Prosecutor confirmed the bruises were in fact caused by direct blows. Malibago returned to the Philippines in late 2006 after filing a complaint. On December 9, 2009, the Batroun court sentenced the employer, based on Article 554 of the Penal Code, to 15 days in jail, a fine of LBP 50,000 (US\$ 33), and LBP 10,000,000 (US\$ 6,666) in damages to Malibago, confirming that the bruises were caused by the continuous beatings she was subjected to by her employer while she worked as a domestic worker the latter's home. Despite the leniency of the abuser's sentence, it set a precedent that an abused domestic worker could receive justice and win her case against an abusive employer.

Source: Human Rights Watch (2010). Without Protection: How the Lebanese Justice System Fails Migrant Domestic Workers, September; Josie Ensor, 2009. "Landmark case lands Lebanese woman in jail for beating migrant maid", Daily Star, 15 December 2009. <http://www.dailystar.com.lb/News/Local-News/Dec/15/Landmark-case-lands-Lebanese-woman-in-jail-for-beating-migrant-maid.aspx#ixzz1OyKC9uOr>; الأخبار Akhbar ، ، بيسانطي ، "الحكمة تعاقب لبنانية ضربت فيليبينية".

front, legislative bodies have a critical role to play in amending the labour laws to cover domestic workers and/or introducing specific legislation for domestic workers. For real change, legislative changes must be fully supported by commitment from national leaders, and need to be followed up by coordinated monitoring and by allocation of resources for enforcement.

A national action plan has been drafted for the protection of migrant domestic workers in Lebanon with inputs from a multi-stakeholder

National Steering Committee appointed by the Ministry of Labour. In addition to the legislative element, this action plan has national capacity building and awareness-raising components. A similar model can be adopted in other countries of the region to develop multipronged national action plans in a participatory manner. The time has come for the region to forge ahead and adopt the rights of migrant domestic workers as a priority for the benefit of all involved, employer and worker alike.

CHAPTER VI

THE MIGRATORY EXPERIENCE OF EX-MIGRANT DOMESTIC WORKERS: THE EXAMPLE OF INDONESIA



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CHAPTER VI

THE MIGRATORY EXPERIENCE OF EX-MIGRANT DOMESTIC WORKERS: THE EXAMPLE OF INDONESIA¹

A. INTRODUCTION

Indonesian international migration started in the 18th century, both as spontaneous migration and as the movement of coolies regulated by the Dutch colonial Government. Spontaneous international migration involved some ethnic groups, such as the Bawean, Balinese, Madurese, Buginese, Makassarese, Banjarese and Minangkabau, moving irregularly to Singapore and Malaya as traders or in search of jobs. During the Dutch colonial period, the Government regulated worker movements under a contract coolie recruitment system. Under this programme, thousands of Javanese coolies were sent to newly-opened plantations by the Dutch Government in Sumatra and the Kalimantan (Borneo) islands, as well as in the Dutch colony in Suriname. Later, the Dutch Government also sent Javanese contract coolies to some British and French colonies. During the Japanese occupation of Indonesia, this movement continued and was known as *romusha*.

Under the contract coolie program, a small number of Javanese women were recruited to work in the plantations in Deli (Sumatera).² Female contract coolies were more exposed to exploitation than their male counterparts were. Some of the women were recruited to provide domestic and sexual services in extramarital relationships with European men who worked in the plantations. These women were referred to as *nyai* in Java and Sumatera. This arrangement was structured into company labour policies to promote permanent settlement among the European staff.³

Since Indonesia gained independence in 1945, the migration of workers, both spontaneous and Government-regulated, has continued. Up to the end of the 1970s, Malaysia and Singapore were the main countries of destination for most migrant workers, with the flow dominated by spontaneous undocumented or illegal movements.⁴ International labour migration from Indonesia increased substantially by the increased demand from the Middle East for male migrant labour from Asia, including Indonesia, to work in numerous infrastructural projects in the 1970s. This was

followed by increased demand for female domestic workers, which led to the feminization of migration as quite a large number of female migrant workers, especially from Indonesia and Sri Lanka, entered the domestic labour market in the Middle East.⁵

From the early 1980s, a large proportion of Indonesian women workers migrated to foreign countries. The increased numbers of women migrating mostly to work as domestic labour was triggered by Governmental policy in the late 1970s.⁶ The main countries of destination for Indonesian women migrant workers are Hong Kong, China, Kuwait, Malaysia, Saudi Arabia, Singapore, Taiwan Province of China, and the United Arab Emirates (UAE), while most male Indonesian migrants move to Malaysia and the Republic

Table VI.1

Indonesian worker migration flows in 2008 to the top ten destination countries

No	Destination Country	Men	Women	Sum	Gender ratio ⁽¹⁾
1	Malaysia	117052	140658	257710	83
2	Saudi Arabia	23020	211623	234643	11
3	Taiwan Province of China	6165	56268	62433	11
4	United Arab Emirates	5531	32669	38200	17
5	Hong Kong, China	12	30195	30207	< 1
6	Kuwait	2962	26262	29224	11
7	Singapore	25	21842	21867	< 1
8	Republic of Korea	12943	603	13546	2,146
9	Jordan	1433	9732	11165	15
10	Qatar	1845	6871	8716	27

Source: BNP2TKI, 2008.
Note: (1) Gender ratio: males per 100 females.

of Korea (Table VI.1). The greater numbers of Indonesian migrant workers working in the Middle East made Indonesia one of the most important labour-exporting countries in Southeast Asia. However, recently, some countries in Asia, such as Taiwan Province of China, Hong Kong, China, and the Republic of Korea have come to assume more importance as destinations for Indonesian female domestic workers. As these countries experience economic development, married

women are encouraged to enter the labour market to augment the workforce. This has opened up the space for domestic workers/care givers to replace the services provided before by women/wives at home and has increased the demand for domestic workers from foreign countries with unemployment problems such as Indonesia. However, for some areas in Indonesia, such as the Indramayu District in West Java, Middle Eastern countries, especially Saudi Arabia, have remained important destinations for female domestic workers.

Between 1994 and 2008, around 6.2 million Indonesian workers worked overseas, in 42 countries around the world.⁷ Data for the period between 1994 and 2008 show that over this period, Indonesian migrant workers in the Asia Pacific region outnumbered those in the Middle East and Africa. The flow was dominated by females, with a gender ratio ranging from 20 to 79 men per 100 women. During the period 1994–2008, there were on average only 36 male migrant workers for every 100 female migrant workers (Table VI.2). The migration flow to the Middle East and Africa was dominated by women with a gender ratio of about 12 men to every 100 women between 1995 and 2005, and among migrant workers to the Asia Pacific region, there were about 79 male to every 100 female migrants.⁸ In 2007, of all Indonesian

workers overseas, about 78 per cent worked in the informal sector. However, among Indonesian migrant workers in the GCC countries,⁹ about 98 per cent worked in informal sector jobs, mainly in the domestic sector.¹⁰

Using both quantitative and qualitative approaches, this study aims to examine the costs and benefits of working as domestic workers among women migrants who returned to Indonesia, focusing on the specific case of the Indramayu District in the West Java Province. West Java is known as one of the important provinces of origin for international labour migration, and within it, the Indramayu District, which is located about 250 km from Jakarta, is particularly known for this phenomenon. In the study area (the District), a survey was conducted of 100 women who had worked as migrant domestic workers in Middle Eastern countries. The respondents were deliberately selected from among those who had returned to Indonesia between 2009 and 2011 (the most recent arrival home was on April 2011, only a few days before the survey).

In-depth interviews were carried out with selected women from those 100 respondents initially interviewed. Secondary data, mainly on the flow of Indonesian migrant workers, was collected from relevant institutions, such as the Ministry

Table VI.2

Numbers and gender ratio of documented Indonesian labour overseas, 1994–2008, by region of destination

Year	Region of destination					Gender ratio ⁽¹⁾
	Asia and the Pacific	Middle East and Africa	Americas	Europe	All regions of destination	
1994	70,733	98,710	4,036	1,708	175,187	32
1995	67,877	48,355	3,600	1,054	120,886	48
1996	380,369	135,336	980	484	517,169	79
1997	101,621	131,734	1,189	709	235,253	20
1998	227,911	179,521	2,928	1,249	411,609	28
1999	267,768	154,636	3,519	1,696	427,619	41
2000	304,186	129,168	1,509	359	435,222	46
2001	178,147	116,597	349	55	295,148	23
2002	238,324	241,961	40	68	480,393	32
2003	109,722	183,770	171	202	293,865	37
2004	160,970	219,699	17	4	380,690	28
2005	297,291	177,019	–	–	474,310	46
2006	326,760	353,240	–	–	680,000	25
2007	351,966	343,487	–	1,293	696,746	28
2008	392,923	334,440	–	1,325	748,825 ⁽²⁾	36
Total 1994–2008	3,476,568	2,847,673	18,338	10,206	6,372,922	36
percent	54.6	44.7	0.3	0.2	100.0	–

Source: Available from <http://bnp2tki.go.id/content/view/180/87/>. Accessed 29 October 2010.

Note: (1) Gender ratio: males per 100 females.
(2) Including 20,137 seamen.

of Manpower and the National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). The information collected from the survey of the 100 returned migrants to Middle Eastern countries includes their household and individual characteristics, their reasons for going to work abroad, the cost of migration, the work they typically performed in the countries of destination, the skill levels required and the training received before departure, and the use of remittances and costs and benefits. The qualitative research through the interviews was meant to increase understanding of the process of decision making related to labour migration.

B. GOVERNMENT POLICY ON THE MIGRATION OF INDONESIAN WORKERS

There are four basic instruments on the recruitment and placement of Indonesian migrant workers overseas:

- Act 13 of 2003 concerning Manpower.
- Act 39 of 2004 concerning the Placement and Protection of Indonesian Overseas Workers.
- Presidential Regulation 81 of 2006 concerning the establishment of BNP2TKI.
- Head of BNP2TKI Regulation 28 of 2007 concerning the Overseas Labour Market Agency (*Bursa Kerja Luar Negeri/BKLN*).

There are also some regulations supporting the implementation of these four basic instruments.

Act 13 of 2003 concerning Manpower states that the placement of Indonesian workers overseas is regulated by a special Act. However, until 2004, Indonesia did not have any comprehensive regulation related to recruitment and placement at the national level that could be used as a basic reference for the protection of Indonesian migrant workers.

In October 2004, the first comprehensive regulatory instrument, Act 39 concerning the Placement and Protection of Indonesian Workers Overseas, was promulgated. Considering that Indonesia started to deploy migrant workers in the 1970s, this law was more than 30 years late. There is also considerable controversy regarding its effectiveness, with some considering that it does not provide enough protection.

As a basic instrument for the protection of Indonesian labour migrants, Act 39 should cover the entire migration process: preparation at and departure from the home country, residence and work in the country of destination, and return to the country of origin upon completion of the contract.

Act 39 was followed by several instruments to support recruitment and placement. These include Presidential Instruction 6 of 2006 on Policy Reform of the Placement and Protection System of Indonesian Migrant Workers, and Presidential Regulation 81 of 2006 on the establishment of BNP2TKI. Article 49 of Act 39 states that six months after promulgation, all documents and activities related to placement and protection of Indonesian migrant workers overseas would be transferred from the Ministry of Manpower and Transmigration to BNP2TKI. Accordingly, the BNP2TKI is the legal institution with the formal authority to register and deploy Indonesian migrants to work overseas, including Government-to-Government (G-to-G) recruitment programs, migration processes handled by private recruitment agencies, and migration arranged by individuals.

C. CHARACTERISTICS OF INDONESIAN DOMESTIC WORKERS IN GULF COOPERATION COUNCIL COUNTRIES

Until recently, Indonesian women recruited to work in Gulf Cooperation Council (GCC) countries worked predominantly as domestic workers, were at the prime working age and had low educational qualifications. Act 39 was the first regulatory instrument to specify prerequisites for working overseas. It stipulates that those who intend to work abroad must be at least 18 years old, while those intending to work in private households (as domestic workers) must be at least 21 years old and have completed junior high school (9 years of education).

Of the 100 respondents surveyed, those between 25 and 34 years old constituted the highest proportion. The data on their age at working first time shows that more than 50 per cent were still below 21 years old, and one respondent even stated that she was younger than 15 (Table VI.3). The data indicates that Act 39 is not comprehensively enforced in the case of recruitment of Indonesian women who intend to work as domestic workers overseas. However, since the Act was promulgated in October 2004, it is probable that those who were recruited when less than 21 years of age departed before then. Another possibility is that in some cases, recruitment agencies falsified the age of the women concerned.

The majority (52 per cent) of the women surveyed completed elementary school (six years of education) and only about 4 per cent had never attended school or did not complete elementary

school. The PPK-LIPI¹¹ study of women migrant workers who had returned from working in GCC countries, conducted in the Indramayu District in 1999, shows that the majority were between 20 and 35 years old. Most had not completed elementary school and had never attended special training related to their jobs overseas, and only a very small number completed junior high school or higher. There is thus a lack of educational selection of women applicants for work as domestic workers in GCC countries. Low educational qualifications imply a limited ability to understand information concerning overseas employment and related aspects. However, there was an increase in the age of female migrants who had returned. In 1991, about 33 per cent were above 30, compared with 65 per cent in 2011 (Table VI.3).

More than 50 per cent of respondents were already married when they first went to work in

Table VI.3

Characteristics of Indonesian women ex-migrants to GCC countries, Indramayu District, 2011

Characteristic	Per cent
1. Current Age	
18–24	11
25–29	24
30–34	24
35 and above	41
2. Age at first time working as domestic worker in GCC countries	
< 21	51
21 years and above	49
3. Marital status at first time working as domestic worker in GCC countries	
Not married	41
Married	53
Widowed	6
4. Education	
Never attended school/elementary school not completed	4
Elementary school completed	52
Junior high school completed	38
Senior high school completed	5
Diploma, College	1
5. Activity during last six months	
Work	9
Job Seeker/Unemployed	21
Taking care of family/household	70
Number of cases	100

Sources: Survey in the Indramayu District. Primary data, 2011.

GCC countries. In West Java Province, a high proportion of women marry young. Hence, it is not surprising for young migrant women to be married and have children. These women leave their children under the guardianship of their husbands or their own parents (grandparents of the child/children). Among the 100 women surveyed, 76 per cent stated that they had left at least one child at home the last time they went to work overseas, and most (60 per cent) were left living with the father. LIPI's study in 2010 finds that when the wife/mother goes to work abroad, there are changes in the roles and responsibilities of family members. In particular, husbands left behind undergo a change in gender roles.¹²

After returning home, most of the women did not work for income; rather, they mainly perform domestic work at home. While many Indonesian women go abroad to work as domestic workers, it is becoming more difficult in Indonesia itself to get household helpers. It seems that Indonesian women do not favour doing domestic work for pay at home, and prefer to work abroad. One important reason is the higher salary abroad.

D. THE MIGRATION PROCESS AND EXPERIENCE

The process of migrating to work overseas starts with the decision to do so, followed by the pre-departure and departure measures. Information on this process was collected mainly from the in-depth qualitative interviews with selected respondents.

1. Making the decision to work overseas

Three components of the decision making process are important: choice, the decision maker, and motivation. Among the 100 women surveyed, about 69 stated that there were no job opportunities for them in their hometowns and two stated that working abroad gave them higher status, compared with working in their hometowns (Table VI.4).

Table VI.4

Reasons for working abroad (in GCC countries)

Reason	Per cent
No job in hometown	69
Higher salary compared with working in hometown	100
Following neighbours/relatives already working in GCC countries	55
Higher status than working in hometown	2

Sources: Survey in the Indramayu District. Primary data, 2011.

The majority of women had no alternative to working overseas. The choice of work was also influenced by the economic factor of the higher income opportunity represented by working as domestic workers overseas. This was confirmed by the respondents in the in-depth interviews. The following are examples:

Ms. Len is now 45 years old. The first time she went to work as a domestic worker in Saudi Arabia in 1990, she was 24, married with one child aged 6. She is among the first generation of female migrants from her village to work as domestic workers in GCC countries. She had five stints abroad between 1990 and 2011, and returned home after completing her last working contract in Abu Dhabi in October 2010. She explained that her decision to work overseas was also influenced by factors other than the lack of job opportunities in the country, especially in her village:

Q: Why did you prefer to work overseas?

A: There was an offer of work in Saudi Arabia. At that time, not many women enrolled. Here, in the village, what could I do? There was no work for me as a farmer...

Q: But...before you left, you helped... worked in the fields also?

A: I just helped my parents who were farmers. My parents own agricultural land; a tea plantation. I also worked as a watermelon trader, but as a farmer...

Q: You wanted to earn more? You wanted...

A: Yes, I did not know how much more I would earn but the salary seemed to be higher.

Another woman **Ms. Fd**, was 29 years old, who had completed 12 years of education. She worked overseas just once, as a domestic worker in Oman, from 2007 to 2009. When she migrated, she was already divorced and left her two-year-old child with her mother. Currently, she is re-married, has a 4-month-old child and plans to return to work overseas. She explained her decision to work overseas for the first time, as follows:

Q: Why did you go to work overseas?

A: What work could I do here (in the village). I cannot even work in the rice field. I am too lazy for that.

Q: But your parents own rice fields?

A: Yes, but not much.

Q: Do you think there was no other job that you could do? Not in the village; probably in the city (Indramayu)?

A: Before I went to Oman, I used to work in Bandung¹³ in a textile factory, but after I

resigned because I gave birth to my first child, it was difficult to return to work in the factory. They prefer single women.

Economic considerations are the most important factor influencing the decision of the women to work overseas. All the women interviewed stated that they preferred to work overseas, since they could get higher salaries. The preference of relatives/ neighbours for working abroad also seems to have had quite an important influence on the decision (Table VI.4). In the in-depth interviews, Ms. Len and Ms. Rok explained:

Ms Len

Q: But you were helping your parents in their land at that time. Why did you decide to work as a domestic worker in Saudi Arabia?

A: The only available job at that time was on agricultural land, with uncertain income. I wanted more; more money. I heard that by working in Saudi Arabia, you get a high salary.

Ms. Rok is 37 years old. Between 1992 and 2011, she worked as a domestic worker in Saudi Arabia three times. The first time she went to work in 1992, having divorced her husband, she left her baby son with her parents. The last stint was in 2009–2011, after which she returned home. She explained:

Q: Why did you work in Saudi Arabia?

A: Had I stayed in my village, I would not have had any income. Actually, I would like to work in a rice field, if I could, but I cannot. It is hot and muddy. Tandur (planting the rice) is not an easy job. My friend said that I cannot do it; I made a mess in the rice field. Also it is not like working in Saudi Arabia, where I can get more money.

The study reveals that decision-making process involves members of the nuclear family. Married women involve their husbands, but seem to have the decisive say. When the idea of working overseas came from the women themselves, husbands simply agreed, probably because they could not fully provide for the economic needs of the family. Children are less likely to take part in the decision-making process, even though some might not be happy with the prospect of the mother working abroad. For single women, parents are sought for advice, but most seem to support the idea of their daughters working as domestic workers in the Middle East. Below are some statements from some of the women interviewed:

Ms. Id is 29 years old. She worked in Oman as a domestic worker from 2007 to 2009. When she left her village, she was widowed and left a 2-year-old son at home in the care of her parents

She explained:

Q: The first time you thought about working as a domestic worker abroad, did anybody influence your decision?

A: That was my own desire. My parents left all decision to me and only gave me their blessing. It was up to me. I noticed that many women who went to work to Saudi Arabia, could buy things; my friends, my neighbours. I really wanted to be like them, to have enough money to buy many things with my own money.

Ms. Len

Q: You were married with a child, the first time you went to work as a domestic worker in Saudi Arabia in 1990. How did you come to the decision? What did you say to your husband?

A: I just said to my husband, that I wanted to work in Saudi Arabia. If he agreed I would go; otherwise, I would not. He said that it was up to me. If I really wanted to go, I could and gave me permission.

It seems no “real” decision making process involving the family takes place: no family discussion of the advantages and disadvantages of the daughter/wife/mother working abroad as a domestic worker, and no dialogue on how the family left behind would cope with the ensuing problems, including doing the household chores. The family left behind simply has to survive the problems that arise. LIPI’s Study on the Social Cost of Migration and the Children Left Behind, conducted in the Indramayu District in 2010-2011 confirms this:

My mother simply told me that she would go to Saudi Arabia for work. My parents did not ask for my agreement. All was decided by my parents, particularly my mother. Honestly, I am not happy with my mother’s absence from home, but, in the end, I can accept it. After all, she is not going for own pleasure, but to make money for my education and also for fulfilling our family needs (a 17-year-old girl).

My daughter told me that she would leave for Saudi Arabia to work. She asked me to agree to care for her children, while her husband went back to live with his parents during her absence. I had to accept, since she left to earn money for her family (a 55-year-old woman who cared for her grandchildren left behind).

2. The migrant worker recruitment process

The pre-departure process involves recruitment and skills/language training. The placement of Indonesian migrant workers overseas is only

permitted to countries that have written agreements with Indonesia. Based on regulations related to recruitment and placement, the deployment of formal Indonesian migrant workers involves the Government and private recruitment agencies that facilitate the migration process. BNP2TKI is the main Government institution responsible for the placement and protection of Indonesian migrant workers. The Ministry of Manpower and Transmigration is responsible for providing and improving the relevant regulations, while the main responsibility of BNP2TKI is to give integrated placement services, including pre-departure preparation and rehabilitation after the migrant worker returns home (Chapter 10, Article 94, Act 39, 2004). At the provincial level, BNP2TKI is represented by the Services Unit on Placement and Protection of Indonesian Migrant Workers (BP3TKI). The official agencies involved in recruitment are the Indonesian Private Agency of Overseas Labour Placement (*Pelaksana Penempatan Tenaga Kerja Indonesia Swasta/PPTKIS*) and the Overseas Labour Market Agency (BKLN).

There are two general recruitment routes. The first is to contact directly one of the two official labour recruiting agencies and the second is to use the services of middlemen known as *calo* (sponsor). Most interviewees utilised the services of a *calo*, whose role was as a supplier of prospective migrant workers to PPTKIS.

The registration process before placement is handled by the PPTKIS. At this stage, at least two Government institutions are involved: the Local Government at sub-district level and the Manpower Office at district/city level. Potential migrant workers register at the office at the sub-district and the data are reported to the Manpower Office at the district level. As mentioned earlier, formally, PPTKIS can deploy migrant workers only to a country that already has an agreement with the Indonesian Government, represented by the BNP2TKI (Article 11, Act 39). However, it is not clear what form the agreement should take (for example, a memorandum of understanding or bilateral agreement). In practice, however, Indonesia deploys migrant workers to Saudi Arabia, even though there is no agreement between the two countries.

The preparation of the departure of potential migrant worker is handled by the PPTKIS, including: supervision and handling of medical check-ups, training for certain skills (PPTKIS has some of its own training facilities), the local post-training test, the final test conducted by the National Certification Body, and getting recommendations from the

Police office to obtain a passport and get a work visa. The PPTKIS also has to provide the potential worker with an insurance program. The processing of all requirements for placement is coordinated at the provincial level or at the point of departure by the BP3TKI agency, which issues identity cards for overseas migrant workers (*Kartu Tenaga Kerja Luar Negri/KTKLN*), oversees final preparations and gives recommendations for departure.

According to Act 39, the recruitment of migrant workers should be done through the BKLN. However, quite a large number of potential female migrant workers favour using the services of middlemen/sponsors/*calo*, who come from the village and mostly know the potential migrant workers and their families. In contrast, the Manpower Office, BKLN and PPTKIS are in far-away cities; hence registering with them takes time and involves transportation costs. As a result, one PPTKIS in Indramayu has explored the possibility of direct recruitment in villages by permanent staff there.

Middlemen/sponsors/*calo* intermediate between potential migrant workers and the officially licensed recruiting agency. Generally, the recruiting agency in the capital city has representatives in some districts, and each representative has business relations with a number of middlemen/sponsors/*calo*, known locally as *sponsor dalam*, who have connections with local middlemen, known locally as *sponsor daerah* (local sponsor). In practice, living in or close to the villages of the potential migrant workers, the *sponsor daerah* usually plays a significant role in recruiting and selecting female migrant domestic workers. In building up these business networks, however, cooperation between *sponsors (dalam and daerah)* must also be extended to various labour recruiting agencies PPTKIS, in order to connect the potential migrant workers to the PPTKIS as soon as possible. Generally, *sponsors* recruit as many potential workers as possible, for the more applicants they send to the PPTKIS, the more money they earn as recruitment fees from the PPTKIS.

There are variations in the total cost borne by women workers during the recruitment process. About 77 per cent of respondents paid between 150,000 Indonesian rupees (Rp) and Rp 2,000,000 for the first contract,¹⁴ with the highest number paying between Rp 501,000 and Rp 1,000,000.¹⁵ However, about 69 per cent stated that they did not incur costs for their last contract (Table VI.5).

The cost cited by the respondents represents only the amount of money they paid. They knew

neither the actual cost nor what part of it they were responsible for paying. Such a lack of information puts them in a vulnerable position, rendering them susceptible to financial fraud by the sponsors.¹⁶ Many women had to borrow the money from relatives, friends or neighbours and some took loans from the sponsors. However, about 90 per cent of women paid for the cost of the second contract from their own money or savings that they probably earned from their first work contract (Table VI.5).

In fact, the recruitment fee is paid by the future employer in the host country, which explains why most respondents stated that they did not pay a recruitment cost for their second work contract (see Table VI.5). This is a change from previous practice when the recruitment cost used to be paid by potential migrants.¹⁷ Based on interviews in 2010, the current practice is for the potential migrant worker to be paid after she passes the medical check-up, with the amount depending on the agreement with the recruiting sponsor. Generally, the sponsor is somebody well known to the potential migrant worker, which gives the latter a sense of assurance and security. However, the involvement of several layers of sponsors lengthens the migration process and makes it more commercial.

Table VI.5
Migration cost paid by women prior to departure

Cost (Rp) and source of funding	First Contract Per cent	Second Contract Per cent
Cost, paid to sponsors/middlemen⁽¹⁾	77	24
150,000 – 500.000	(31)	(7)
501,000 – 1,000,000	(44)	(12)
>1.000.000	(2)	(1)
Did not pay anything	18	69
Cost paid by employers		5
Cost paid by sponsor / debt to sponsor	5	2
Number of cases	100	84
Source of funding		
Cash, own money/savings	44	91
Cash, borrowed from relatives/friends/ neighbours	49	–
Cash, own money and also borrowed from relatives/friends/neighbours	5	–
Borrowed from sponsor	2	9
Number of cases	82	22

Notes: (1) Cost paid to the sponsor:
First contract between Rp 150,000 and Rp 2,000,000,
Last Contract: between Rp 200,000 and Rp 1,500,000. (For those working more than one contract).
(2) Current exchange rate: 1 US\$ US= approximately Rp 8,500,-
(1) is number of cases
Source: Primary data, 2011 Survey in the Indramayu District.

3. Pre-departure Training

Of the 100 female migrants surveyed in 2011, 96 stated that they had received skills training before deployment as domestic workers for the first time. Most (75 per cent) of those who received training stated that the training was run by PPTKIS and the rest received training from a training institution under the Ministry of Manpower. There is some varying information concerning the length of, and materials/skills provided in, the training (Table VI.6). Generally, the training ran for 2 to 4 weeks and only 12 per cent stated that it was run for more than one month. It was mostly run in Jakarta, but a few women stated that they received it in other cities (Bandung or Bekasi in West Java).

Almost all women learned some skills during their training, including cooking, using modern kitchen and household equipment, taking care of children, language, general knowledge on the work place and conditions (culture, habits, general rules), and how to get protection if they had problems with their employers. About 90 per cent also stated that they received training on how to take care of old people. However, many felt that the training was not completely in accordance with what was needed in their overseas work places. Clear information on what implements are actually used in the kitchens and houses of prospective employers is necessary, and they need more knowledge on the life styles and daily habits of their employers and family members, for example sleeping and eating habits.

Most women felt that (local) language training was extremely useful and necessary to enable them to communicate fluently with their employers. Some women attended an Islamic School (*Madrasah*) in their villages that provided Arabic language teaching. Receiving formal Arabic language training was stated by some women to have been of much help in preparation for their departure. However, it cannot be said that most had already mastered the local language when they arrived at their destination. The PPT-LIPI¹⁸ Study finds that almost 50 per cent of women were not fluent in the local language the first time they worked as domestic workers in GCC countries. They sometimes felt under pressure because they did not know what their employers wanted and did not know how to protest about their employers if they received rough or unfair treatment from them or their family members.¹⁹ All women who received training before departure also stated that they had to undergo a test afterwards, and were not allowed leave for work if they failed.

Table VI.6

Training received before first-time deployment abroad, institutions and places of training

Skill, institution and place of training	Per cent
Received training before departure to work abroad for first time	96 Yes 4 No
Institution delivering training	
Indonesian Private Agency on Overseas Labour Placement (<i>Pelaksana Penempatan Tenaga Kerja Indonesia Swasta/PPTKIS</i>)	75
Government Skills Training Institution (<i>Balai Latihan Kerja/BLK</i>) under the Ministry of Manpower	25
Duration of training	
2 days	2
7 – 14 days	28
15 – 30 days	58
More than 30 days	12
Place of training (city)	
Jakarta	97
Bandung	2
Bekasi	1
Skills received during training	
Cooking	99
Using modern kitchen/household equipment	100
Taking care of children	100
Taking care of old people	90
Language	100
General knowledge on working place and conditions (culture, habits, general rules)	100
Legal protection	100
Test after training	100

Sources: Survey in the Indramayu District, Primary data, 2011.

E. WORK EXPERIENCES AND WORKING CONDITIONS AS DOMESTIC WORKERS IN GCC COUNTRIES

Working as domestic workers in GCC countries is not a new phenomenon for women in the Indramayu District. Of the 100 surveyed who worked in GCC countries between 1988 and 2011, more than 80 worked there at least twice and 8 had worked there five times (Table VI.7) and all returned home between 2009 and 2011. Saudi Arabia was the most important destination country, followed by the UAE.

The analysis of the work experiences and working conditions of the women surveyed is based mainly on the workload, tasks performed, working hours, and other responsibilities, such as caring for old people. More than 60 of the women worked in

Table VI.7

Countries of destination for surveyed Indonesian women (number of cases)

Countries of destination	1st Contract	2nd Contract	3rd Contract	4th Contract	5th Contract
Saudi Arabia	52	26	13	11	3
United Arab Emirates	18	27	15	4	2
Kuwait	9	8	7	6	1
Qatar	8	8	8	4	1
Oman	7	4	-	-	1
Bahrain	3	1	2	-	-
Other	3	10	7	2	-
Number	100	84	52	27	8

Source: Survey in the Indramayu District. Primary data, 2011.

a home where they were the only domestic worker, and most of the families they served (91) were nuclear families, consisting of parents and their child/children. Only nine worked in a household consisting of two or more families, and only one with four families living in the same house. If there was more than one worker in the house, they mainly had different tasks. The majority of families consisted of fewer than 10 members, with at least one child under 12 years of age, and only 15 families had a member aged 65 or above (Table VI.8). The number of young children and old people in the family had an impact on the workloads of domestic workers, since they might need special attention/treatment.

One interviewee reported on her workload while working as a domestic worker in Saudi Arabia:

Ms. Rok

The first time, I worked in a family with five members, [a] husband and wife and their three small children. I was the only worker at the house, so I had to do all the household work; cooking, cleaning ...everything. First, my female employer taught me how to cook their food. After that she left it to me and all food had to be ready by the time they came home from their work (both husband and wife worked). My duties also included taking care of three children, aged below 10. I could not cope. So after 14 months, I resigned and came home to Indonesia.

As the only domestic worker in the house, most women had very long work hours. About 78 per cent stated that they worked for at least 16 hours a day, leaving only about six to eight hours to rest and take care of their needs (eating, taking a bath, etc.) (Table VI.8). Three respondents said that they could only have three to four hours of rest a day.

The PPK-LIPI Study also had similar findings. Most women had very long work hours, from about six o'clock in the morning into the night. The pattern of work hours was exacerbated by the Arab habit of having dinner late at night, with the workers having to prepare dinner and clean up afterwards.²⁰

In general, the tasks performed did not differ much from those performed by domestic workers in Indonesia. They included cooking, washing, cleaning, and looking after small children. However, some female workers (24) cited "washing the cars" as a daily task.

Table VI.8

Work Characteristics

Characteristic	Per cent
Other domestic workers working in same house	
No (only one)	63
Yes	37
Two	19
Three	14
Four	2
Five or more	2
Number of people living in the house	
1-4	21
5-9	60
10 or more	19
Children under 12 living in the house	
None	26
1-2	40
3-4	29
5 or more	5
Old people aged 65 and over living in the house	
	15
Working hours in a day	
6-8	2
10-12	8
13-15	12
16-18	67
More than 18	11
Daily tasks performed	
Cleaning the house	97
Taking care of children	83
Cooking	64
Taking care of old people	14
Washing clothes	90
Washing cars	24
Looking after pets	2
Number of cases	100

Sources: Survey in Indramayu District. Primary data, 2011.

F. SALARY AND OTHER BENEFITS

The standard salary received by Indonesian female migrant workers in Saudi Arabia is 600 Saudi Riyals per month,²¹ and has not increased for 20 to 30 years, but there has been news recently that it was increased to 800 Riyals.²² As revealed from the in-depth interviews, some women workers received a lower salary, as explained by Ms. Rok, for example:

Q: So, the first time, you worked in Saudi Arabia for only 14 months, even though the contract was for 24 months. Why?

A: Because I got paid only 500 Riyal per month.

Q: Didn't you ask your employer why you got 500 Riyal only?

A: My employer said that this amount was determined by the Agency that recruited/ placed me.

Most of the women surveyed stated that they were paid their salaries regularly, but that does not mean that they were paid monthly. Some were paid only when they asked; usually, when they needed to send remittances home. A small proportion stated that their employer determined when they were paid (Table VI.9). There were also some cases where migrant workers were not paid.²³ The PPT-LIPI Study also reveals that the female workers received no financial reward other than their salary. Many employers would give a small gift at the end of the holy month of Ramadan or at the end of the contract period, but it was unlikely for the workers to be given an expensive present or a large sum of money, if there was nothing behind the gift (such as sexual advances). This finding was corroborated by the present study. Besides

the salary, many female domestic workers did not receive any additional benefits, such as health or other insurance from their employers, though some stated that their employers would cover all medical treatment expenses.

During the period when they worked as domestic workers in GCC countries, the respondents were under limited protection, particularly in terms of legal protection. Usually employers kept their passports to prevent them from running away, possibly to move to another employer. Consequently, they were not protected from accusations of being irregular migrants. In addition, they were vulnerable to such abuses as overwork; psychological, physical or sexual harassment; and late payment of wages or unwarranted wage deductions. Such abuses were found to be more widespread among Indonesian migrant workers working in Saudi Arabia than in other major countries of destination such as Brunei Darussalam; Hong Kong, China; Malaysia; or Singapore.²⁴

Table 10 shows some of the problems faced by Indonesian migrant workers abroad as reported to the Indonesian Ministry of Manpower (2005 data) and by the BNP2TKI (2008 data). The most important were "not getting wages" and "lost contact with family at home" (Table VI.10). Even though the number of cases recorded in 2008 was smaller than in 2005, the problems faced in 2008 were more varied.

The Indonesian embassy in the country of destination is one place many Indonesian domestic workers in the GCC countries seek legal protection when problems with employers arise. However, as explained in the in-depth interviews, it was also difficult for the workers to contact the embassies. Many female migrants stated that they did not have any contact with the Indonesian embassy during their working period in Saudi Arabia, since they were directly placed at their employer's house upon arrival, and were mostly not allowed to have contact with people outside. Most of those who did contact the embassy stated that the embassy was able to provide help.

The PPK-LIPI's study conducted in the same District of Indramayu found that many of the migrant workers who had run away were accommodated at the Indonesian embassy/consulate, often for more than a month while waiting for repatriation. To avoid having to wait a long time, many prefer to be arrested by the police to be deported after being jailed for one week to one month. Data in this study also showed that about 82 of the respondents did

Table VI.9

Method and frequency of salary payment

Method of salary payment	Percentage
Regular payment	
Yes	83
No	17
Periods of salary payment	
Every month	72
Once every two months	3
Once every three months	6
Once every four months	1
Once every five months	1
Salary paid when worker asked employer	12
Depends on employer	5
Number of cases	100

Sources: Survey in Indramayu District. Primary data, 2011.

Table VI.10

Problems faced by Indonesian migrant workers abroad reported to the Indonesian Ministry of Manpower and Transmigration and the BNP2TKI⁽¹⁾

Types of problems	Number of cases (2005)	Number of cases (2008) ⁽²⁾
Not getting wages	372	102
Severance of work contract	140	67
Torture	89	17
Sexual harassment	30	7
Loss of contact with family at home	253	108
Sickness	124	11
Accident	20	3
Involvement in criminality	12	10
Failure to go to country of destination	42	12
Death	–	46
Death of employer	–	3
Job different from that in work agreement	–	5
Problem with recruitment agency	–	1
Sickness because of work	–	4
Total	1082	396

Notes: (1) Depnakertrans - Ditjen PPTKLN 2006. Data for January to December 2005. http://www.nakertrans.go.id/pusdatinnaker/tki/tki_kasus_05.php.29/9/2006

(2) Data from January to April 2008. Source: <http://www.bnpt2tki.go.id>

not have any contact with the Indonesian embassy while in Saudi Arabia. Among those who did, 14 said that the embassy was able to help.²⁵

G. OUTCOMES OF MIGRATION

International labour migration has economic and social outcomes, both positive and negative, not only for families, but also for hometowns. Most studies focus on the economic costs and benefits of migration. The social impact is mostly negative, such as in relation to the family left behind. Most respondents stayed in contact with their family in Indramayu, especially members of their nuclear families. Mobile phones were the most important means of communication. However, not all employers allow their domestic workers to have them. Relationships with the families left behind were also maintained through remittances sent home. These were used mainly for daily consumption needs; only a few could make any savings to build a house, buy agricultural land or start a business.

Seventeen of the respondents did not send remittances back home regularly. Of those who did, most sent them every one to four months. The

Table VI.11

Remittances sent back home by Indonesian female migrants

Frequency	Per cent
1–2 months	30
3–4 months	41
5–6 months	9
7 months or more	3
Not regularly	17
Never sent remittances	2
Amount sent each time (Rp)	Per cent
1,000,000 – 2,000,000	18
>2,000,000 – 4,000,000	47
>4,000,000 – 6,000,000	21
>6,000,000	12
Never sent remittances	2
How remittances were sent	Per cent
Bank	32
Money transfer service company (e.g., Western Union)	65
Friends/family who returned home	1
Never sent remittances	2
Who received the money at home	Per cent
Husband	60
Child/Children	4
Parents	29
Other relatives	4
Never sent remittances	2
Use of remittances	Per cent
Daily expenses	98
Children education	78
Medical expenses (doctor, hospital)	92
Build/renovate house	50
Buy motor bike/car	38
Productive activity	10
Other	5
Number of cases	100

Sources: Primary data, 2011 Survey in the Indramayu District.

amount sent also varied, between Rp 1,000,000 and Rp 6,000,000. Twelve sent more than Rp 6,000,000 each time (Table VI.11). The most common means of sending remittances was the bank services of money-transfer service companies. Western Union is a popular money-transfer company that operates at village level in the Indramayu District.

Most remittances were received by husbands (for married women) or parents (for single women). The survey data show that most remittances sent back were spent on daily expenses, medical

expenses and children. 50 of the respondents used remittances to build/renovate their houses, which seems to be a common purpose of emigration. Only 10 used remittances for productive activities to generate income (Table VI.11).

The negative impact mainly concerned the effects of migration on the migrant and members of her family left behind (Table VI.12). Almost half of the respondents cited separation from the family as a disadvantage of working abroad, while 29 per cent indicated missing their children and a few respondents noted communication difficulties with their families. In a small number of cases, the husband took a second wife.

Table VI.12

Disadvantages of working abroad

Disadvantage	Per cent
Missing looking after child/children	29
Separation from family	45
Husband taking a second wife and using remittances irresponsibly	5
Not getting paid and inability to pay back debt (for money borrowed to cover cost of migration)	2
Difficulties in communicating with family members	3
Uncontrolled child/children left behind	1
Employer did not pay the salary	1
Other/No answer	14

Sources: Primary data, 2011 Survey in the Indramayu District

Some female migrants assessed their overall experience of working overseas as “worthwhile” economically, in terms of financial support for the family left behind, as well as for forming a “base capital” for the next stint of work overseas (with higher wage expectations). The following cases illustrate this:

Case of Ms. Fa.

Ms. Fa is 29 years old. She was a widow, with one child aged 2, when she went to work in Oman as a domestic worker for two years from 2007 to 2009. She said that she did not pay anything to go for work abroad and was paid 50 Omani Riyal per month (approximately Rp 1,200,000,- Indonesian currency). While working abroad, she could send remittances back home, mostly every 4 months to support the daily expenses of her parents, who took care of her child. However, if there was an emergency need she could send money earlier. Such emergencies were usually related to the need to pay labourers working

in the rice field owned by her parents. Upon completing her contract in Oman, she returned and bought a motorcycle from her savings. She has re-married and has a 4-month-old child. She plans to return to work abroad, but with her experience working in Oman, she expects to get a job in an Asian Country, like the Taiwan Province of China, where the salaries are higher. She said that by working abroad she could support the needs of her child from the first husband.

The income earned has a significant impact in supporting the economic lives of the families left behind, including old parents. Mistreatment and bad working experiences do not seem to deter the women from going back to work in GCC countries, occasionally several times, as in the case of Ms. Dar:

Case of Ms. Dar

Ms. Dar is 51 years old. She worked in Saudi Arabia three times, each time with different employers, starting in 1989. She was a widow (and has never remarried) when she went to work overseas for the first time and left 2 children, aged 8 and 10, with her parents. She experienced violence (she was beaten by one of her employers) and for two years did not get paid when working for the second employer. She then ran away and reported her employer to the police. She also never received any news from home, since letters were kept by her employer. The bad experience in the second job did not deter her from going to work in Saudi Arabia a third time. She explained that she had to in order to pay for the education and other daily needs of her children, since she was a single parent, and to support her old parents. Her children finished primary and junior school (9 years of schooling), but she did not have any savings from her stints of working abroad. Now, her son is employed and married, while her daughter is working in the Taiwan Province of China, as a domestic worker. The two children support her now.

The work experiences of the women varied considerably. For example, Ms. Len, in her five stints working as a domestic worker, had good relationships with all her employers. She also could save enough to build a house on land she inherited from her parents. In comparison with Ms. Fa and Ms. Dar, Ms. Len was clearly more successful, which is probably related to her having a supportive husband, who also contributed economically, even though he worked as a farm labourer.

Case of Ms. Len

Ms. Len is 45 years old. She worked five stints as a domestic worker in Saudi Arabia and the United Arab Emirates, between 1990 and 2010, with quite long intervals in between jobs. She left her two children with her husband during her absences. Her parents, especially her mother, also helped her husband to look after the children. Using her cumulative savings, she built a house on land inherited from her parents. She had no bad experiences. She could also give economic support to her husband in bringing up their two children, since her husband was mainly working in the rice fields. Ms. Len stated that she also gained non-economic benefits from working abroad, since she had had the opportunity to know other countries. She also had the opportunity to go on pilgrimage to Mecca. However, she also expressed regret that she had not been able to come home when her daughter got married.

H. RECOMMENDATIONS: PROTECTION OF INDONESIAN MIGRANT WORKERS OVERSEAS, WITH SPECIAL REFERENCE TO DOMESTIC WORKERS

Increasing numbers of Indonesian women are becoming involved in international migration in search of better job opportunities, but their education and skill levels remain low. The majority end up in low-skilled jobs, especially as domestic workers, making them vulnerable to exploitation. This should prompt the Indonesian Government to provide better management of recruitment and placement, including systematization of regulations, institutions and practices. National regulations are important for protecting the rights of migrant workers, especially for females, who end up working mostly in the informal sector and who are exposed to considerable risks of exploitation and discrimination on the basis of gender, race and class.²⁶ Developing a system for the protection of Indonesian female migrant workers overseas starts in the home country, perhaps even in the home village, by providing gender-sensitive, comprehensive regulations.

The basic legislative instrument concerning Placement and Protection of Indonesian Workers Overseas is Act 39 of 2004. Promulgated 30 years after the start of migration on an appreciable scale, this Act does not provide enough protection for female migrant workers, or, indeed, for migrant workers in general:

- More elaboration is given to administrative and practical aspects of placement of migrant workers, such as rights and obligations of migrant workers, institutions involved in their recruitment and placement, disputes between migrant workers and employers, and supervision and monitoring. These aspects only indirectly affect the protection of migrant workers.
- Out of 16 Chapters, only one (Chapter VI) and eight Articles, out of 109, of this Law focus directly on the protection of migrant workers. The word “female” is only included once (Article 35: “Currently not pregnant for potential female workers”), and there is no emphasis on providing special protection for female migrant workers.
- Some Articles are ambiguous on the authority of the Ministry of Manpower and Transmigration (*Kementrian Tenaga Kerja dan Transmigrasi Republik Indonesia/Menakertrans*) and other Government agencies related to recruitment and placement of migrant workers.
- The meaning of some Articles is unclear. For example, Article 11 on agreements between the Indonesian Government and Governments of host countries on the deployment of Indonesian migrant workers does not clearly specify the form the agreement should take.
- Some Chapters and Articles need to be supported by other Government regulations in implementation. These are still unavailable.

Hence, there is a need to amend Act 39 to focus on providing more protection, especially to female domestic workers, by including provisions on a minimum wage, regulating working hours, the rights of domestic workers, regulation of recruitment agencies, and resolving disputes between domestic workers and employers.

At the time of writing, Indonesia had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW), and some major countries of destination for Indonesian migrant labour have not ratified it either, which impedes the provision of protection for Indonesian citizens working overseas. Indonesia has memoranda of understanding with some countries of destination (Jordan, Kuwait and Malaysia) and is due to sign such memoranda with others. However, a memorandum of understanding is not a powerful instrument. The Indonesian Government needs to ratify the ICRMW, in order to have a legal international instrument protecting Indonesian migrant workers.

The recruitment process and placement of Indonesian migrant workers overseas is regulated by four basic legislative instruments; namely, Act 13 of 2003, Act 39 of 2004, Presidential Regulation 81 of 2006, and the Head of BNP2TKI Regulation 28 of 2007. According to these regulations, many Government institutions and private agencies, at the national and local levels, are involved in recruitment and placement of Indonesian migrant workers. The related problems are:

- Recruitment and placement involve too many Government institutions, at the national and the local levels, creating problems in coordination between sectors and between administrative hierarchies, and confusion and conflict about the authority of the various Government institutions involved. This affects both migration arrangements and the protection that can be provided by the state.
- Middlemen/sponsors/*calo* still play an important role in recruitment of potential migrant workers. For many potential female migrant workers, middlemen/*calo* are an important source of

information regarding overseas employment opportunities. However, the involvement of several layers of middlemen/*calo* makes the migration process longer and more commercial and increases the possibility that female migrant workers are exposed to exploitation long before their departure. Since all the required documents are handled by the sponsor, potential migrants are left unaware of important information regarding qualifications and requirements for work overseas, increasing the possibility of the sponsor providing fake documents.

There is a need for the Indonesian Government to more effectively regulate and control the role and practices of recruiting agencies and empower prospective Indonesian migrant workers by providing them with easy access to information on working conditions abroad. Indonesian embassies should also strongly coordinate with Government of the countries of destination to control local recruitment agencies that partner Indonesian recruitment agencies, with the aim of providing better protection for Indonesian migrant workers.

CHAPTER VII

THE WAY FORWARD: SOME KEY CONCLUDING MESSAGES



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CHAPTER VII

THE WAY FORWARD: SOME KEY CONCLUDING MESSAGES

The collected chapters have covered factors relating to the institutional, procedural and legal dimensions of migration from countries of the ESCAP region to the ESCWA region. They find that, although migration acts as a mechanism for significant social and economic development in countries of the ESCWA and ESCAP regions, considerable challenges remain to maximizing the full benefits of international migration. These challenges limit the positive impacts of international migration for countries of origin and destination, and increase migrants' vulnerability to exploitation and abuse. This concluding chapter reviews the key issues that have been highlighted across the different chapters, and argues that given the broad scope of these issues and recommendations, mainstreaming migration into national development strategies is the best means of encompassing these considerations in a holistic way.

A key cross-cutting theme across the chapters is that of **the need to reform recruitment, employment and residence laws governing international migration in countries of origin and destination to ensure that they are in line with international standards**. In particular, countries of origin should regulate the recruitment process to reduce the costs of migration to migrants, including by reducing the number and clarifying the role of intermediaries and administrative procedures before departure; preventing deceptive practices by unscrupulous recruiters; and ensuring channels for the safe return and sustainable reintegration of migrants. In countries of destination, reform of the labour and residence laws to empower migrants to access their rights would ensure the smooth and regular operation of the labour market, as well as improve relations with countries of origin.

Complementing this reform of national laws, another cross-cutting theme that emerges is **the importance of international dialogue and cooperation on bilateral, regional, inter-regional and international levels to harmonize and regularize recruitment processes, and ensure the protection of migrant workers in countries of destination**. This cooperation takes many forms, including informal dialogues, non-binding Memoranda of Understanding, formal bilateral

agreements and the ratification of international Conventions covering labour and human rights; each has its own benefits and drawbacks. In particular, the chapters emphasize the need for the ratification of international Conventions such as the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Family and the International Labour Organization Convention No. 189 on Domestic Workers which cover many of the concerns raised, including those relating to social protection.

A third theme that is present in the chapters is the importance of **mainstreaming gender considerations throughout migration policy formulation and implementation**. Migrant men and women from ESCAP countries in ESCWA countries face different concerns based on gendered divisions of labour and the various legal regimes covering different sectors of work, among other issues. This is most apparent in the case of the domestic work sector, which is female-dominated and is not covered by labour laws in most countries of the ESCWA region. Mainstreaming gender into migration policies acknowledges how gender conditions the migration experience of men and women and addresses these differences accordingly.

Finally, the chapters find that **civil society (including employers, migrant associations, trade unions and academia) and international organizations are essential partners in formulating and implementing policies on international migration**. Civil society organizations should be involved in legal and policy reform processes to represent the perspectives of their various constituents, while international organizations provide direct technical assistance to support reform processes in line with international standards and support dialogue processes. Civil society organizations also have an important role to play in providing services directly to migrants in both countries of origin and countries of destination.

The preceding chapters identify key issues as well as recommendations for reform of the legal and policy framework governing migration between the ESCWA and ESCAP regions. These key issues and recommendations are situated

across a wide range of topics, with the result that the best way to address these varied topics is through the mainstreaming of migration into national development strategies. Mainstreaming migration is an approach that enables countries to systematically consider the role and impact of migration on development in all relevant policies, laws and programmes at all levels, with a strong emphasis on the human rights of migrants.

Mainstreaming migration also enables States to develop appropriate, coordinated responses across Government, with the support of civil society actors. An inclusive mainstreaming process would enable ESCWA and ESCAP countries to take into account the issues identified above, and will give these countries the best opportunity to maximize the benefits of international migration, and minimize the negative effects, for the benefit of all.

ENDNOTES

CHAPTER I

- 1 The six countries of the Gulf Cooperation Council are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.
- 2 This document uses the terms “labour migrant” as a synonym for “expatriate worker” and “temporary contractual worker”.
- 3 The Economic and Social Commission for Asia and the Pacific covers 62 member States and associate members, of which the following are located in the Asia region: Afghanistan, Armenia, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Hong Kong, China, Macao, China, Democratic People’s Republic of Korea, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Kyrgyzstan, Lao People’s Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, the Republic of Korea, the Russian Federation, Singapore, Sri Lanka, Tajikistan, Thailand, Timor-Leste, Turkey, Turkmenistan, Uzbekistan and Viet Nam.
- 4 The Economic and Social Commission for Western Asia covers: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, the United Arab Emirates and Yemen.
- 15 Wickramasekara, 2006.
- 16 Khadria et al., 2010.
- 17 BWI, 2010; *ibid.* Khadria et al., 2010.
- 18 Verité, 2005; Plant, R. 2008; Rannveig Agunias, 2010.
- 19 Piper and Iredale 2004. During a study trip in 2003, the lead author of this report was informed about nepotistic practices in Bangladesh by high ranking staff within the labour ministry whose close relatives run recruitment agencies.
- 20 Buchan J. and Calman L., 2004.
- 21 Siddiqui, 2001
- 22 Dias, M. and L. Wanasundera, 2002.
- 23 Esim. S. and Omeira, M. eds., 2004.
- 24 see Dannecker, 2005 on Bangladeshi women in Malaysia.
- 25 Bhadra, 2007.
- 26 Siddiqui, 2001.
- 27 Dannecker, 2005.
- 28 ICFTU-APRO, 2003.
- 29 Gurung, 2007, cited in Bhadra, 2007.
- 30 UN, 2010.
- 31 *Ibid.* Khadria et al., 2010
- 32 SLBFE, 2009, p.75.
- 33 Amnesty International Report 2007; HRW, 2009 and 2010.
- 34 Participating countries and territories in the Asia-Pacific region are: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao People’s Democratic Republic, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Viet Nam as well as Hong Kong, China.

CHAPTER II

- 1 Dr. Nicola Piper, Arnold Bergstraesser Institute, Freiburg.
- 2 Afghanistan, Bangladesh, Bhutan, India, Islamic Republic of Iran, India, Maldives, Nepal, Pakistan, Sri Lanka and Turkey.
- 3 MFEPW, 2008.
- 4 HRW, 2010; HRW, 2009; HRW, 2006; Rannveig Agunias, 2010; IFBWW, n.d.; Keane and McGeehan, 2008.
- 5 UNESCO, 2005.
- 6 For a full list of all relevant ILO Conventions, see ILO (2006).
- 7 ICMC and December 18, 2004.
- 8 Satterthwaite, 2005; ICMC, 2004; UNIFEM, 2005.
- 9 UNDAW, 2004.
- 10 UNRISD, 2005.
- 11 OSCE, 2009.
- 12 GCIM, 2005; UNDP, 2009; UNFPA, 2006.
- 13 Bhadra, 2007; Siddiqui, 2001; Dannecker, 2005.
- 14 Together with the Mekong sub-region, the Indian subcontinent is said to represent a major transnational route of trafficking; it is estimated that the region accounts for approximately one-third of the total global trafficking flow (close to 1 million), with 60 per cent of the victims being channelled into major regional cities (UN, 2003, cited in BWI study, n.d.).
- 35 Cited in Wickramasekara, 2004.
- 36 International IDEA, 2007.
- 37 IFBWW, n.d.
- 38 AMI, 2005; see also Piper and Yeoh, 2005
- 39 Wickramasekara, 2005.
- 40 Freedom House, 2009.
- 41 Verité 2005.
- 42 BWI, 2005.
- 43 Demaret, 2006. pp 159-160.
- 44 BWI, 2005.
- 45 HRW, 2012.
- 46 Plant, R., 2008.
- 47 Personal interview, Kuala Lumpur, 2005; Plant, R. 2008.
- 48 Go, 2007.
- 49 Delgado Wise et al., 2010.
- 50 Abrar, 2005.
- 51 Plant, R. 2008.
- 52 Khadria et al., 2010.
- 53 Khatri, 2007.
- 54 *Ibid.*
- 55 *Ibid.*
- 56 Plant, 2008
- 57 MFEPW, 2008.
- 58 Khatri, 2007.

- 59 Wickramasekara, 2004
- 60 Go, 2007
- 61 Ibid.
- 62 The SAARC member states are: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.
- 63 Khatri, 2007.
- 64 Wickramasekara, 2004.
- 65 See <http://www.iom.int/jahia/Jahia/policy-research/regional-consultative-processes/pid/866> for more details.
- 66 See <http://www.colomboprocess.org/index.php>.
- 67 Iredale et al. 2005.
- 68 GATS is the first multilateral and legally enforceable agreement on international trade in services and Mode 4 concerns. Mode 4 concerns the movement of 'natural persons'. In legal parlance, a 'person' is any legal entity, such as a business. Hence, reference to human persons is made by using the term 'natural' persons. For a detailed discussion, see Klein-Solomon, 2007.
- 69 Satterthwaite, 2008.
- 70 The countries of relevance for this report that have national human rights commissions and are members of the Asia Pacific Forum (<http://www.asiapacificforum.net/>) are: Afghanistan, India, Jordan, Malaysia, Nepal, Qatar and the Republic of Korea.
- 71 Since this chapter was written, Bangladesh (2011) and Indonesia (2012) also ratified the Convention, and Palau (2011) had signed it. See the relevant entry at the United Nations Treaty Database at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-13&chapter=4&lang=en
- 72 ICMC and December 18, 2004.
- 73 Amnesty International Report 2007.
- 74 ICCPR has been ratified by 167 countries (signed by 72); the ICESCR by 160 (signed by 69); CERD by 174 (signed by 85); CEDAW by 186 (signed by 98), the Convention Against Torture by 147 (signed by 77) and CRC by 193 (signed by 140).
- 75 ICMC and December 18, 2004.
- 76 Ibid.
- 77 Since the drafting of this chapter, Uruguay and the Philippines have ratified the Convention; it will therefore enter into force in August 2013
- 78 For the full text of the statement, see Provisional Record No. 30 p. 30/7 to 30/8. Available from: <http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/lang--en/index.htm>.
- 79 Sri Lanka, 2008.
- 80 See <http://www2.ohchr.org/english/bodies/cmwc/cmws11.htm> for the full texts of the NGO reports on Sri Lanka.
- 81 UNESCO Information Kit, 2003.
- 82 Piper and Iredale, 2003.
- 83 MFEPW, 2008.
- 84 Khatri, 2007.
- 85 IFBWW, n.d.
- 86 See for example <http://www.mfasia.org/about-mfa/members.html>.
- 87 <http://migrationlinkages.bsr.org/>

CHAPTER III

- 1 Professor Tasneem Siddiqui, Department of Political Science and Chair, Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka.
- 2 Rahman, 2011. The two others are garment manufacturing and the service sector.
- 3 Bangladesh, sixth Five-year Plan.
- 4 The Refugee and Migratory Movement Research Unit (RMMRU) is an affiliated body of the University of Dhaka. It is involved in research, policy advocacy and grassroots service mobilization for the migrant workers of Bangladesh.
- 5 Siddiqui, T., 2011.
- 6 Siddiqui, T., 2001.
- 7 Representatives from EWOE, Ministry of Home Affairs, Ministry of Labour, Ministry of Foreign Affairs, Manusher Jonno Foundation and RMMRU were members of the committee.
- 8 In 1997, in a workshop entitled *National Responsibility towards the Migrants Workers of Bangladesh*, organized by RMMRU on 18 December 1997 at CIRDAP Auditorium, Dhaka, Bangladesh. The demand for a comprehensive national policy on migration was first raised here.
- 9 Through consultation with all concerned persons on behalf of the technical assistance committee, Dr. Tasneem Siddiqui of RMMRU prepared the advanced draft.
- 10 Research conducted by RMMRU on female migrants from Bangladesh (Siddiqui, 2001) showed that a substantial number of women could positively advance their lives economically and socially through migration. This indicated that a large number of women would be able to move out of poverty if they were able to participate in the global labour market. Hence, RMMRU began advocacy work to convince the Government and civil society to withdraw restrictions on female migration — through seminars, workshops, TV programmes, documentary films, newspaper writings, awareness campaign training. The Bangladesh Women Migration Associations (BWMSA), the Welfare Association of Repatriated Bangladeshi Employees (WARBE) and the International Organization for Migration (IOM) also organized campaigns through workshops, rallies and press conferences.
- 11 US\$ 1,357,773.36 according to the exchange rate of 1 June, 2011
- 12 "Policy Dialogue on Probashi Kalyan Bank: Developing Strategies for Serving Migrants", held on 29 May 2011 organized by the RMMRU.
- 13 Abrar, 2008; RMMRU, 2008; Martin, 2009; Afsar, 2009 and IOM, 2009.
- 14 Afsar, 2009
- 15 IOM, 2009
- 16 Saudi Arabia has decided not recruit workers from Bangladesh for the time being. As a result, there are only few very opportunities to migrate to Saudi Arabia. Few recruiting agents obtain very few visas and sell them at an exorbitant price.

- 17 The labour ministry of Saudi Arabia is considering allowing a worker's visa to be renewed after 6 years (*Gulf News* cited in *Prothom Alo*, a Bengali daily on June 1, 2011). If this decision is carried out, then the situation will change.
- 18 Afsar, 2009
- 19 Ibid.
- 20 Visa 20 of Saudi Arabia.
- 21 RMMRU, 2011a
- 22 Khan et al., this volume.
- 23 Meeting minutes of fixing migration cost committee, 27–3–2011.
- 24 Bangladesh Association of International Recruiting Agencies.
- 25 *The Arab News*, Saudi Arabia, 29 April, 2004, cited in Shah, 2008.
- 26 *The Arab News*, 4 August 2004, cited in *ibid*.
- 27 Ministry of Planning, 1997, cited in *ibid*.
- 28 Khan et al., this volume.
- 29 RMMRU, 2011a.
- 30 Siddiqui, 2001; Siddiqui and Abrar, 2003 ; Afsar, 2000 and 2009; IOM, 2009; RMMRU, 2011a; Messey et al., 1998.
- 31 During British colonial rule, in the absence of a formal banking system in rural areas, a distinct group of people known as usurers used to lend money to people in distress by keeping assets such as gold, homestead or agricultural land as collateral. After the partition of the subcontinent in 1947, money lending was made illegal as it was exploitative, as well being prohibited in Islam. However, this practice remains. Migrants who do not own assets have become one of their major clients, with migration itself becoming the collateral.
- 32 RMMRU, 2011a
- 33 Afsar, 2009
- 34 RMMRU, 2011b
- 35 Afsar, 2009
- 36 IOM, 2011
- 37 RMMRU, 2011a

CHAPTER IV

- 1 Mr.Azfar Khan and Ms. Hélène Harroff-Tavel (International Labour Organization, Beirut, Lebanon). The authors would like to extend their appreciation to the body of work of the International Migration Programme of the International Labour Organization; in particular to Ibrahim Awad and Piyasiri Wickramasekara. They would also like to thank Paul Tacon and Zeinab Ribai for their contributions to this paper.
- 2 Dito, 2008.
- 3 Following the regional classification used by the ILO, the Arab Mashreq covers Iraq, Jordan, Lebanon, Palestine and the Syrian Arab Republic. The GCC countries are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Yemen holds an observer status at the GCC.
- 4 The one notable exception is the special free economic zones in the UAE, which play a significant role in supporting the national economy. Although labour law provisions are applicable to them, these zones are subject to their own rules and regulations. Migrant workers are sponsored by the free zones concerned and not by their employers.
- 5 There are currently six Qualified Industrial Zones (QIZs) operating throughout Jordan. These areas are designated by the Jordanian and Israeli authorities and approved by the US Government. The QIZs represent an unprecedented opportunity for goods produced to gain duty and quota-free entry into the US market.
- 6 In the Aqaba Special Economic Zone Authority (ASEZA), the Jordanian labour code applies, but special provisions allow the Authority to be responsible for the recruitment and work of the foreign workers.
- 7 The authors have decided to use the term “migrant worker” in accordance with international norms. The term has been defined in article 2 of the ICRMW (1990) as referring “to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” It is nonetheless important to note that the GCC countries prefer to use the term “temporary contract labour.”
- 8 There are also employers in the GCC who hail from foreign countries but to secure workers must have a partnership with a local, who is technically the *kafeel*.
- 9 ESCWA, 2010. The ESCWA region covers 14 Arab countries in Western Asia: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, the United Arab Emirates and Yemen.
- 10 IOM, *World Migration Report 2010*. Note that the regional classification used by IOM for the Middle East includes also Egypt and Israel, in addition to the countries covered by ILO's regional classification.
- 11 Migrants become irregular if they enter the country through smuggling or trafficking. They can also become irregular if they enter the country legally but overstay the duration of their valid permit, work for an employer other than for their sponsor, or run away from their employer.
- 12 Shah, 2009.
- 13 Dito, M., 2008.
- 14 IOM, 2010.
- 15 International companies, which were involved in the infrastructure development projects in India and Pakistan after the Second World War played a major role in the GCC countries, which needed hard and tested labour that could work under extreme weather conditions. As their prior experience with Pakistani and Indian workers was very positive, they also decided to bring in workers from Asia.
- 16 Harmassi, 2009.
- 17 Migrant Rights, 2009; Al-Jazeera, 2009.
- 18 Al-Shamari, 2010.
- 19 Etheridge, 2010.
- 20 Kerala Monitor, (n.d.)
- 21 Toumi, 2011.
- 22 Qatarshares.com, 2011.
- 23 International Trade Union Confederation (ITUC), 2011.

- 24 Shorouknews.com, 2011.
- 25 Absal, Rayeesa, 2009.
- 26 Reuters, 2009.
- 27 See Human Rights Watch (HRW), 2009. HRW has argued that incremental reforms “are being introduced very slowly and fall short of the comprehensive protections required.”
- 28 Roper, 2009. He adds that in the 1970s and 1980s, numerous immigrant Arab workers were prosecuted, jailed and deported because of their participation in various leftist and radical organizations that called for the destruction of certain GCC regimes.
- 29 For more information about Lebanon’s Anti-Racism Movement, please visit: <http://antiracismmovement.blogspot.com>.
- 30 Quote of John Willoughby in Mohamed Dito, 2008.
- 31 Migrant Forum in Asia, CARAM Asia, Human Rights Watch and Protecting Asian Migrants’ Rights, 2011.
- 32 ABS-CBN news.com, 2011.
- 33 Ghazanfar, 2011.
- 34 Kapiszewski, 2006.
- 35 Rannveig Agunias, 2010.
- 36 For more information, please see the “Situation of migrant domestic workers in Arab states: a Legislative Overview” in this volume.
- 37 For more information, please see the “International Convention on Decent Work for Domestic Workers (2011)”. Available from http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_157836/lang--en/index.htm.

CHAPTER V

- 1 Ms. Simel Esim and Ms. Carole Kerbage, International Labour Organization, Beirut. The authors would like to extend their thanks to Gudrun Jevne, Helene Harroff-Tavel, Mansour Omeira, Martin Oelz, and Nabil Abdo for their valuable comments and inputs on the first draft.
- 2 Ministry of Labour, Saudi Arabia, 2010
- 3 Labour Market Regulatory Authority, Bahrain, 2010.
- 4 ILO, Domestic Workers Convention, 2011
- 5 Convention on the Elimination of All forms of Discrimination Against Women, 1979.
- 6 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 1999.
- 7 Discussion at Meeting of Trade Unions from Arab States on “Decent Work for Domestic Workers” in Beirut, Lebanon, November 2010.
- 8 This provision is in contradiction with the sponsorship system applied to Migrant Domestic Workers (MDWs) in all the Arab States that ties the worker’s visa to a specific employer (*kafeel*).
- 9 The Jordanian National Commission for Women has integrated pay equity in its 2011–2015 National Women Empowerment Strategy. In addition a National Steering Committee on Pay Equity has been established with the leadership of the Ministry of Labour and the Jordanian National Commission for Women toward developing a strategy and action plan (including research, advocacy and legal subcommittees) with support from the ILO to culminate in gender-neutral job evaluations in different

sectors starting with education. The national debate on wage policy also includes a serious look at ending the exclusion of domestic workers and apparel workers from the coverage of minimum wage.

- 10 Jureidini, 2010.
- 11 ILO, Employment Relationship, No. 198
- 12 Ibid.
- 13 In Bahrain, a new labour law, containing several provisions that include domestic workers, was drafted in 2007 and the Parliament began discussing it in 2008.
- 14 CEACR. Convention No. 111. *United Arab Emirates*.
- 15 Akhbar *Al khaleeg*, 2008. (Arabic); The Bahraini *Al Watan Newspaper*, 2011 (Arabic).
- 16 CEACR 2009 and 2010. Convention No. 111. *Bahrain*.
- 17 The Bahraini *Al Watan Newspaper* 2011.
- 18 CEACR, 2011. Convention No 100. *Jordan*.
- 19 Jordan also created the Higher National Committee for the Prevention of human trafficking which has completed a national strategy to prevent human trafficking for the years 2010-2012.
- 20 ILO, Recommendation 201.
- 21 ILO translated the unified standard contract, but the ministry did not take it into consideration.
- 22 In Saudi Arabia, contracts may be formulated and implemented by private recruitment agencies (HRW, 2010).
- 23 HRW, 2010c.
- 24 Middle East and North Africa Initiative, 2009.
- 25 HRW, 2010b.
- 26 Middle East and North Africa Initiative, 2009.
- 27 UNCT Oman, 2011.
- 28 Ibid. HRW, 2010c.
- 29 It is worth mentioning that the Ministry of Labour and the Directorate-General for General Security (DGGs) provide contradictory information regarding the maximum working hours per day mentioned in the unified contract published on their official websites: the Ministry of Labour indicates that the maximum workday is 10 hours, whereas the DGGs specifies 12 hours.
- 30 Migrant Forum in Asia, 2010.
- 31 HRW. 2010c
- 32 HRW, 2010b.
- 33 HRW. 2010c
- 34 Middle East and North Africa Initiative, 2009.
- 35 HRW, 2010a.
- 36 Ibid.
- 37 UNCT Oman, 2011.
- 38 HRW, 2010c.
- 39 HRW, 2010a.
- 40 However, the Government does not provide direct assistance to victims.
- 41 Based on complaints received from the hotline, labour inspectors have been calling and visiting employment agencies, and in some cases households.
- 42 However, labour inspectors may only enter private homes with a warrant from the General Prosecutor.
- 43 The current Minister of Labour who was in power during the drafting and publication of this chapter has recently indicated that new labour legislation would be drafted to replace the existing texts. He has also indicated that the draft law that was submitted during the time of the

- previous Minister of Labour would also be revised in line with the new labour standards (C 189 and R 201).
- 44 *Al Jazeera*, 2009 .(Arabic)
- 45 Khan, et al., this volume.
- 46 HRW, 2010a.
- 47 *BBC Arabic*, 2010.
- 48 HRW, 2010a.
- 49 Ministry of Labour, Bahrain, Decision No (79) for 2009.
- 50 HRW, 2010d.
- 51 Richter, and Hammoud, 2009.
- 52 Rannveig Agunias, 2010.
- 53 ILO, 2009.
- 54 In this regard, the abusive practices of PEAs personnel are only punished as institutions and not on the individual level.
- 55 Council of Ministers, Lebanon, 1977, Legislative decree No. 80 of the year 1977.
- 56 <http://www.neo.gov.lb/>.
- 57 *Al Safir Newspaper*, 2011 (Arabic).
- 58 HRW, 2010a.
- 59 HRW, 2008a.
- 60 HRW, 2010a.
- 61 HRW, 2010c.
- 62 HRW, 2010a.
- 63 HRW.2010c.

CHAPTER VI

- 1 Dr. Aswatini Raharto, Indonesian Institute of Sciences
- 2 Breman, 1997.

- 3 Stoler, 2002.
- 4 Spaan, 1994.
- 5 Asis, 2005.
- 6 World Bank, 2006.
- 7 BNP2TKI, 2010.
- 8 Raharto, 2007.
- 9 The six GCC countries or member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates (UAE).
- 10 Suparno, 2008.
- 11 PPK-LIPI, 2002.
- 12 Raharto et al., 2011.
- 13 Bandung is the Capital City of West Java Province, and the Indramayu District (the study area) is one district under the administration of West Java Province.
- 14 US\$ 17.55 to US\$ 234.06 according to 1 June 2011 exchange rates
- 15 US\$ 58.63 and US\$ 117.03 according to 1 June 2011 exchange rates
- 16 Raharto, 2002.
- 17 Ibid.
- 18 PPK-LIPI, 2002.
- 19 Ibid.
- 20 PPK-LIPI, 2002.
- 21 US\$ 159.99 according to 1 June 2011 exchange rates
- 22 US\$ 213.32 according to 1 June 2011 exchange rates
- 23 PPK-LIPI, 2002.
- 24 Hugo, 2002.
- 25 PPK-LIPI, 2002.
- 26 Raharto, 2002.

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