Protection of the rights of migrant workers: key issues

In their role as countries of origin of migrants, most countries in South and South-West Asia face the dilemma of promoting overseas employment and protecting their workers abroad. In a few of these countries, efforts are being made to improve migration policies and make them sensitive to migrants’ rights (MFEPW 2008).

The protection of the rights of migrant workers is therefore a key concern, which is often considered to be the responsibility of the host countries. However, countries of origin can and should also play a role in improving the rights of migrant workers.

---

1 Nicola Piper, Senior Researcher, Arnold Bergstraesser Institute, Freiburg, Germany; Pia Oberoi, OHCHR Migration Adviser, and Heike Alefsen, OHCHR Regional Office for South-East Asia
This chapter discusses protection issues that have emerged as migrants moved within South Asia and from South Asia to the major migrant-receiving destinations in South-East Asia and the Gulf Cooperation Countries (GCC). The discussion is, thus, based on the specific features of this region’s labour migration, and policies and practices accompanying it. Using a social sciences approach, the chapter also emphasizes a human rights framework. It begins by outlining the effects of predominant migration policies on migrant workers’ human rights and outlines specific rights violations, and follows with a discussion on normative and institutional issues that pertain to rights-based governance of migration. The final section considers the role of civil society in the promotion of migrant workers’ rights.

The chapter focuses on the international movement of migrants rather than internal displacement or internal migration. It neither looks at the movements of migrants further afield to Australia, Europe, North America, and other regions, nor in detail at the movement of refugees from and within this region.

**Human rights impact of migration policies**

**Background**

In international human rights law, migrant workers are in principle well protected—through general norms of non-discrimination and equality; substantive rights such as freedom of movement, labour rights, and the right to be free from debt bondage; and through identity rights for specific groups, such as women’s and children’s rights. The list of applicable human rights norms include: International Covenant on Civil and Political Rights, International Covenant on Social, Economic and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture, Convention on the Rights of the Child, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). In addition, there are a number of International Labour Organization (ILO) Conventions relevant to migrant workers.

**Key features of migration policy and migrants’ rights in South Asia**

South Asia displays certain specific features with respect to labour migration, all of which affect the ability of migrants to access and enjoy their human rights:

- A strict temporary labour migration regime with employment tied to one employer with tight contractual restrictions. This is especially prominent in GCC countries.

- A skill profile of migrants dominated by semi-skilled to low-skilled workers (with little professional, highly skilled migration).

---

2 The countries situated in South-West Asia, namely Iran and Turkey, are not extensively covered in this chapter as their migration patterns are significantly different from those in the countries of South Asia. Although, references are made to them in certain sections, particularly in the discussion about international legal instruments.

3 The member States of the GCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

Recruitment and hiring processes dominated by the private sector in both countries of origin and destination.

High incidences of irregular migration.

High share of female migration in the case of Sri Lanka but increasingly so in the case of Nepal (Bhadra 2007) and to a lesser extent in Bangladesh (Siddiqui 2001, Dannecker 2005).

Increased trafficking and forced labour.

Temporary labour migration.

The migration regime that has evolved in Asia—to the GCC countries as well as within Asia at large—is primarily a system of temporary migration largely of low-skilled and semi-skilled workers with contracts typically lasting one to three years (Wickramasekara 2006). 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 on the part of the employer—can change the status of a migrant to the status of an irregular migrant.

In existing temporary labour migration schemes, rights are linked to skill levels and lower-skilled categories. For example, Khadria and others (2010) report that highly skilled workers from India that migrate to GCC countries are allowed to bring their families while migrants classified as semi- and unskilled workers (70 per cent) cannot bring family members along. In the absence of family reunification policies in Asia, most migrant households constitute transnationally split families, either with one parent working abroad or both parents overseas but often in different countries.

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

Lower-skilled temporary migrant workers constitute the majority of labour migrants in South Asia. In general, they are more vulnerable to rights violations than higher-skilled ones, as they tend to work in the informal sectors of the labour market, or in sectors where labour standards are not applied or do not even exist for local workers. In terms of position within the labour market, most male migrants are hired to work in the construction sector, small-scale manufacturing firms, subcontracting companies engaged in agricultural sectors and food processing, on shipyards, in fisheries as well as in service industries. The demand for low-skilled workers exists in jobs such as domestic workers, cooks, gardeners and drivers, where there is typically no protection by any local labour laws.

In countries of origin, migrant workers can be subject to abuse by private and public recruitment agencies. Once at the destination, the key issues and concerns of foreign workers, therefore, centre upon workplace grievances and can be broadly classified under two headings: 1) employment-related, and 2) welfare, occupational health and safety issues. Employment-related issues are mainly about non-payment or under-payment of wages and unauthorized deductions. Issues in the second category (welfare, occupational health and safety) pertain to
accommodation, long working hours and workplace hazards. The latter includes work-related injuries and accidents as well as physical and sexual abuse. Official statistics on the numbers and types of the various workplace grievances as well as systematic studies or recording activities by non-governmental organizations on this issue are rare.

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 led to the commercialization of migrant labour flows through the assistance of designated public or private recruitment agencies. Studies have shown that a large portion of the labour recruitment in Bangladesh, India, Pakistan and Sri Lanka is carried out by private agencies. This practice exposes migrants in the low-skill categories to illegal human and financial exploitation (Plant 2008, Rannveig Agunias 2010). It also exacerbates the potential for collusion among members of business and government circles (Piper and Iredale 2003).

Growing share of female migration

The increasing share of women in migration can be attributed to gendered push and pull factors. In South Asia, a subregion characterized by extreme poverty, the trend towards the feminization of migration is directly related to the feminization of poverty. Migrant women find work in traditionally female-dominated occupations, mostly in the health sector and carrying out domestic services. A smaller but considerable number of them work in factories, especially in the garment sector. As domestic workers, they lack recognition as workers and are as a result inadequately addressed by labour legislation.5

Domestic work deserves special attention in a discussion about labour migration because it is a highly significant source of legal employment for women in South Asia, and to a lesser extent for men, with demand for such services steady. Although well regulated through formal migration policies, possession of legal status (entry and work permit) 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 labour standard laws do not recognize domestic work as a legitimate form of labour despite the work permit most of these migrants hold. The ILO Convention Nº. 189 on Decent Work for Domestic Workers, adopted on June 16, 2011 addresses these issues.6

5 For more details, please see chapters on labour migration and gender and migration chapters in this report.

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

All migrants, regardless of their legal status, are entitled to respect for and protection of their fundamental human rights. These rights include the right to life, freedom from torture and other ill-treatment, freedom from arbitrary detention, as well as their social and economic rights, including rights at work, and freedom from any form of discrimination.7

Human rights abuses of migrant workers, especially domestic workers, in the GCC countries and South-East Asia have received a lot of attention in recent years. Reports of different kinds of abuse of migrant workers, including sexual abuse, are frequent (Khadria and others 2010). Of the official complaints received by the Government of Sri Lanka, most come from women working in the GCC countries, with the highest number of complaints between 2006 and 2009 having come from those deployed in Saudi Arabia and Kuwait (SLBFE 2009). The specific abuses, included among others, confiscation of passports or other identity documents, routine withholding of salaries, working excessively long hours, verbal and physical abuse at the hands of the employers, restrictions on freedom of movement, and violations by the host countries when they encounter the justice system, including arbitrary arrest and detention and expulsion (HRW 2009 and 2010). Some examples of concerns related to the protection of the rights of migrant workers are given below:

Civil and political rights

• Detention and deportation of South Asian workers by several South-East Asian countries (Wickramasekara 2004).

Social rights

• Health and safety management in the construction industry, one of the key sectors for male migrant employment, as a whole is poor. The fatal and major injuries rate is one of the highest for any industry, despite the fact that both hazards and prevention measures are well known (IFBWW 2004). There are also numerous incidences of domestic workers falling off high-rise buildings when cleaning windows.

• A study focusing on Indian migrant workers has shown the specific vulnerability of migrant workers to HIV and AIDS. It also cited the inadequate provisions (information and otherwise) to prevent these workers from being exposed to HIV and AIDS (Piper and Yeoh 2005).

• Low-skilled migrants are typically accommodated in crowded labour camps in small rooms with bunk beds which in some incidences have to be shared by at least two workers. The facilities provided to them, such as toilets and kitchens, are inadequate. Generally, the living conditions and amenities provided by large corporations are better than the facilities extended by small companies or

All migrants, regardless of their legal status, are entitled to respect for and protection of their fundamental human rights. These rights include the right to life, freedom from torture and other ill-treatment, freedom from arbitrary detention, as well as their social and economic rights, including rights at work, and freedom from any form of discrimination.
individual employers. Many migrant workers who returned from work in the GCC
countries and NGOs emphasize the need for improvement in both working and
living conditions of low-skilled labour. Live-in domestic workers often lack privacy
or are made to sleep in inadequate places without being provided their own rooms.

- In most destination countries in Asia, including Western Asia, low-skilled foreign
workers are excluded from social security systems. In Qatar, for instance, nationals
have free access to a government-supported health-care system while non-citizens
must generally pay for these services. The labour law stipulates that employers
must provide health care for their workers but these relatively new regulations are
not often carried out in practice (Breslin and Jones 2009).

Work and labour rights

- A major issue resulting in, or the first step toward, the violation of labour rights is
recruitment. Various reports show that the high majority of foreign job placements
are done by private recruitment agencies. The ILO Convention No. 181 on private
agencies encourages the non-collection or non-payment of fees from migrant
workers. Unlawful deductions from wages also often include “training expenses”
and accommodation and food even if stipulated in the contract that this would be
for free or a lower amount.

- The employer-sponsored system, kafala, is often considered to be one of the
causes for rights abuses against migrant workers. Due to the system’s limitations,
Bahrain has announced plans to abolish it while Kuwait is looking into ways to
reform it. Under this system, workers come to these GCC countries (or depart from
them) through an invitation of their employers and their residency is subject to
the signature of a work contract with an employer who can be an individual, an
enterprise or even the State for a post in the public sector, such as a doctor or
a nurse. Migrant workers are not allowed to change jobs or in some cases leave the
country without the employer’s consent. The employers, on the other hand, are
made accountable for actions by the migrant workers (for example, if the worker
disappears, employers must pay a fine). For these reasons, employers often withhold
the migrant workers’ passports. This system restricts workers as well as employers.

- On the issue of wages, a recent study on Pakistani and Bangladeshi migrants
working in GCC countries found that their main concern involved actual wages.
Many workers received their wages on a regular basis, but said that there was
a discrepancy between the promised and the actual wage (Plant 2008). This was
prevalent for female domestic workers as well as male workers in other sectors.
One male respondent stated that he received less than 60 per cent of the promised
amount. The sectors where this practice appears to be most widespread are
cleaning, construction, domestic service and farm work (Plant 2008).

- There is also evidence of contract workers being misinformed as to the nature of
the job to be carried out upon arrival. For example, through a personal interview
conducted by the main author of this chapter in Kuala Lumpur in 2005, many
workers indicated that they had been promised work as tailors or tilers, but ended
up having to do arduous jobs of heavy loading or similar (Plant 2008).

---

8 Please refer to chapter on labour migration in this report.
9 See www.ilo.org/ilolex/cgi-lex/convde.pl?C181.
**Rights-based migration governance**

**National level**

Most governments in South and South-West Asia either actively or passively promote labour migration. To this end, legal and administrative structures dealing with the labour market sector have gradually been put in place in one form or another with some countries reported to have adopted measures to provide certain safeguards for migrant workers, and against abusive recruitment practices.\(^{10}\)

**Bilateral approaches**

The most common mechanisms for regulating interstate labour migration are various types of bilateral agreements. A formal bilateral agreement sets out each side’s commitments and may provide for quotas. Less formal is a memorandum of understanding (MOU). Most countries prefer MOUs, probably because they are non-binding agreements and therefore are easier to negotiate, implement and modify according to changing economic and labour market conditions (Wickramasekara 2004).

In most cases, the main concerns raised regarding these MOUs are that they do not contain specified minimum standards for conditions of work; workers typically have no explicit right to join trade unions; and employers can keep workers’ passports (Wickramasekara 2006). Moreover, the monitoring and enforcement mechanisms of these agreements are weak and with greater focus being on recruitment procedures and the regulation of migration flows, provisions for worker welfare and protection are sidelined. They typically lack gender sensitivity as domestic workers are often excluded, and there is no involvement of social partners in their formulation and implementation (Go 2007).

**Subregional processes**

**South Asian Association for Regional Cooperation**

The South Asian Association for Regional Cooperation (SAARC),\(^{11}\) is a key subregional body that focuses on economic, technological, social and cultural development. The Association has yet to develop a framework that fully protects the rights and interest of migrant workers. However, the SAARC Social Charter, adopted by the twelfth SAARC Summit in Islamabad in January 2004, is primarily an agreement that is used to exert moral pressure on governments. The objective of the charter is to establish a people-centred framework for social development to guide efforts to build a culture of cooperation and partnership. The Charter does not recognize labour as a distinctive group and consequently workers are not even mentioned in the document nor does it mention rights and freedoms of individuals in the subregion. In addition, it provided no explicit commitment by SAARC member States to respect the ILO Core Labour standards, Declaration on Fundamental Principles and Rights at Work or, the United Nations Declaration on Human Rights (in particular Article 23) (Khatri 2007).

---

\(^{10}\) For more details please see chapter on labour migration in this report.

\(^{11}\) SAARC was established in 1985 with seven member States—Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka and then extended to eight members States in 2006 with the addition of Afghanistan.
SAARC has made concrete steps in combating trafficking in persons. The adoption of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002 at the eleventh SAARC Summit in Kathmandu is viewed as significant initiative in combating and preventing trafficking in South Asia, especially as it recognizes the need for extraterritorial application of jurisdiction. The Forum for Women, Law and Development, however, pointed out some problems with the definition provided by this Convention, stating that it focuses too narrowly on sex work and, thus, leaves no room for application to a broader scenario of trafficking cases. Moreover, the Convention lacks a strong treaty body and perspective on the rights of victims (Wickramasekara 2004).

Regional consultative processes

In Asia, regional consultative processes (RCPs) on migration and state-owned and state-led forums, have contributed to migration governance on a regional and global basis.  

Three types of legal instruments set rules aimed at protecting the rights of migrants, namely international human rights law, international labour standards set by the International Labour Organization (ILO) and conventions, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Table 1 shows the main international instruments on migration and their status in terms of being signed, ratified and acceded to by countries in South and South-West Asia.

Ratification of various legal instruments

To date, eight out of the forty-five State parties that have ratified the ICRMW are in Asia and the Pacific, with three of them located in South and South-West Asia. The eight countries are Azerbaijan (in 1999), Timor Leste (in 2004), the Philippines (in 1995), Kyrgyzstan (in 2003), Tajikistan (in 2002), Turkey (2004), Sri Lanka (in 1996), and the latest addition Bangladesh (24 August 2011; after having signed the Convention in 1998), with Cambodia and Indonesia (both in 2004) and Palau (in 2011) having only signed the Convention.

The first two ratifications by Asia-Pacific countries were among the 12 that took place in the 1990s and occurred before the global ratification campaign was launched. Despite its overall population size and migration volume, Asia and the Pacific is surprisingly underrepresented among States parties to the Convention. Yet, one phenomenon consistent with the rest of the world is that so far no major migrant host country in Asia and the Pacific has ratified the Convention. The obstacles to ratification are complex and their assessment needs to be approached from a holistic framework, whereby the protection of migrant labourers through international human rights law is seen in relation to politics and practices at the national level (intra-State) as well as at transnational or regional level (inter-State).

12 For more details see chapter on migration policies and regional cooperation in this report.
Table 1. Main international instruments on migration signed, ratified and acceded to by countries in South and South-West Asia

<table>
<thead>
<tr>
<th>INTERNATIONAL INSTRUMENT</th>
<th>MIGRANT WORKERS</th>
<th>MIGRANT WORKERS AND FAMILIES</th>
<th>SMUGGLING AND TRAFFICKING</th>
<th>REFUGEES</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>acceded 2005</td>
<td>acceded 2005</td>
<td></td>
</tr>
<tr>
<td>Bangladesh</td>
<td>-</td>
<td>-</td>
<td>ratified 2011</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Bhutan</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>signed 2002</td>
<td>signed 2002</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Iran (Islamic Republic of)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>acceded 1976</td>
<td>acceded 1976</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Maldives</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Nepal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>-</td>
<td>acceded 1996</td>
<td>signed 2000</td>
<td>signed 2000</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

Source: ILO (no date), United Nations (no date).
Ratification of non-migrant worker specific instruments, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) must also be noted because their treaty bodies have begun to pay greater attention to these Conventions’ application to the plight of migrants (ICMC and December 18 2007). During a visit to Bahrain, Oman and Qatar in October-November 2006, the Special Rapporteur on Trafficking of Persons especially Women and Children raised concern that many domestic workers were victims of trafficking and that access to justice for migrant workers, including domestic migrant 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 of international organizations to improve the situation with regard to migrant workers (Amnesty International 2007).  


No countries in the subregion have signed, ratified, or acceded to the ILO Convention Concerning Migration for Employment (rev 1949; №. 97) or the ILO Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions; №. 143).

The ICRMW consists of nine parts: scope and definitions; non-discrimination with respect to rights; human rights of all migrant workers (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; application of the Convention; general provisions; and final provisions. It is considered the most comprehensive international treaty covering the rights of migrant workers beyond the realm of work, inspired by existing legally binding agreements, United Nations human rights studies, the conclusions and recommendations of meetings of experts and debates and resolutions on the migrant worker question in United Nations bodies over two decades.

The main contributions of the Convention to existing international human rights instruments are as follows:

- Bridges a gap in protection due to the situation of vulnerability in which migrant workers and members of their families frequently find themselves, owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment.

---

13 The results of this were unknown at the time this report was published.
• Views migrant workers as more than labourers or mere economic entities.

• Provides, for the first time, an international definition of migrant workers, and categories of migrant workers.

• Guarantees minimum universal human rights standards for all migrant workers, both documented and undocumented.

• Extends further rights to regular migrant workers 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.

In contrast to the ratification of the ICRMW by only 45 countries, 171 countries have ratified the other six core human rights treaties, among them the CEDAW. Given this imbalance and the feminization of migration in some countries in the subregion, efforts have been made to promote the CEDAW as an instrument to protect the rights of migrant women (UNIFEM 2003).

A study on treaty bodies’ reference to migrant worker-related issues shows that the CEDAW Committee’s main concern with regards to women 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 regards emigration. The Committee also lists minimal labour rights women migrants should enjoy, with special attention given to typical 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 the CEDAW, to ensure the full enjoyment of migrant women rights under the Convention, host countries should put in place information and awareness-raising programmes about the availability of social services, information on rights of women, residence permits, legal remedies and language classes. The Committee stresses that migrant women, including those that are classified as irregular migrants, 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 or citizenship. The CEDAW advises that culturally and gender-sensitive measures are necessary and that the specific needs of women should be taken into account in the areas of health and protection against violence (ICMC and December 18 2007).

The main obstacles to ratification of the ICRMW revolve around the following issues (UNESCO 2003):

---

The International Covenant of Civil and Political Rights (ICCPR) was ratified by 167 (signed by 72); the International Covenant on Economic, Social and Culture Rights (ICESCR) by 160 (signed by 69); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) by 174 (signed by 85); CEDAW by 186 (signed by 98). The Convention Against Torture by 147 (signed by 77) and the Convention on the Rights of the Child (CRC) by 193 (signed by 140).
• In some States where migration is limited on their territory, the Governments do not see a need to legislate.

• The Convention is not well known and therefore not high on the political agenda.

• Some States lack the necessary infrastructure 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.

• Concerns regarding the need to extend protection to members of migrants’ families.

• States do not wish to extend protection to undocumented migrants.

• Concerns that ratification would send out a signal to potential migrants and spur immigration.

Non-ratifier countries of origin of migrants

According to the ICRMW, the main obligations for origin countries are to provide information on conditions of admission and remunerated activity; to give 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 sending countries are 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. The ratification and implementation processes of any United Nations convention are complex undertakings and the governmental budgets and expert staff assigned to such matters are often limited.

In addition, the sheer number of private recruitment agencies, and the allegedly high level of collusion between government circles and recruitment agencies obstruct any serious efforts to regulate and monitor out-migration from the perspective of migrants’ protection.

Another serious obstacle to ratification, as expressed by government officials in a study conducted in 2003, is the misgiving of losing out on the regional job market as host countries might be disinclined to employ foreign workers who would be perceived as too ‘rights conscious’. This concern particularly affects countries of origin which highly depend on a small number of destination countries and the majority of whose migrants are mainly low-skilled workers (Piper and Iredale 2003).

Non-ratifier countries of destination of migrants

According to the ICRMW, destination countries are obliged to observe the right to join trade unions for any migrant and the right to form associations and trade
unions for legal migrants; provide minimum social welfare (such as medical care); ensure equality of treatment in respect of remuneration and conditions of work and employment; allow documented migrants to be temporarily absent without affecting the authorization to stay or work; allow liberty of movement, of choosing the residence and access to alternative employment for legal migrants; give the right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; and work towards providing family reunification and extend to children of migrants the right to education.\footnote{16}

Ratification of the ICRMW would also mean that many countries of destination, such as GCC member States, would have to redesign their temporary labour migration schemes, which are tied to one specific employer. Yet, these countries consciously designed these temporary labour migration schemes with the intention to not let migrant workers become permanent residents. For example, GCC countries usually prefer to use the term ‘temporary contract worker’ instead of ‘migrant worker’. Similarly, many other countries of destination of migrants in Asia do not consider themselves as countries of immigration. Governments hold that if they ratified the ICRMW, this would result in a large-scale influx and eventual settlement of foreign workers.

Another major obstacle to ratification is that governments are not prepared to extend rights to irregular migrants as they are considered to be violators of immigration laws. However, ways in which the status of migrants can become irregular (at times beyond their knowledge or control) is complex.

Moreover, gaining support for the protection of migrant workers is difficult in many countries of destination, as foreign workers are often perceived by the national population as competitors in the labour market.

\footnote{Ibid.}

**Convention of the Rights of the Child**

Until 2003, the Committee of the Convention of the Rights of the Child (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 migrant workers, regular or irregular, refugee children or asylum seekers, or children under special protection measures. Since 2000, the Committee of the CRC has also developed a strong interest in trafficking, including the situation of trafficked children once 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. 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 irregular migrant children and children born of foreign parents. The Committee also examines child labour and economic exploitation and recommends that the best interest of the child be taken into account. It also expresses concern over the situation of migrant children in detention and immigrant reception centres (ICMC and December 18 2007).
Based on the mandate to protect workers’ rights and uphold labour standards, the ILO conventions pertain to employment and labour relations. Two of its conventions are directly related to migrant workers: ILO Convention Nº. 97 on Migration for Employment and ILO Convention Nº. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. None of the countries in South and South-West Asia have ratified these two migrant worker-specific conventions.

The core labour standards set by ILO are indirectly relevant to migrant workers. Pakistan, Sri Lanka, and Turkey have ratified all eight conventions that constitute the full set of the 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) and the two fundamental ILO conventions on the Right to Organize and Collective Bargaining (Nº. 98) and concerning freedom of Association and the Protection of the Right to Organize (Nº. 87).

In the subregion, Bangladesh and Nepal have ratified at least four ILO conventions. Among the major host countries of temporary labour migrants from the subregion, Jordan, Kuwait, Malaysia and Singapore have ratified at least one of the conventions. Maldives is the only country in South and South-West Asia that has not ratified any of the Conventions while the GCC countries, with the exception of Oman, have ratified ILO Convention Nº. 111 on Discrimination (Employment and Occupation).

The ILO Convention Nº. 189 on Decent Work for Domestic Workers was recently adopted (16 June 2011). Consequently no country to date has ratified it. However, the countries covered in this report that were present at the adoption voted in favour of the Convention. Notably, the post-voting statement delivered by the United Arab Emirates on behalf of the GCC member States expressed support for this new standard.

Treaty bodies

The human rights treaty bodies are committees of independent experts that monitor the implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

All treaty bodies are mandated to receive and consider regular State reports, and issue guidance in the form of concluding observations at the conclusion of their consideration. State reports must set out the legal, administrative and judicial measures that the State has implemented in order to give effect to its treaty obligations. Committees issue guidelines to assist States with the preparation of their reports, such as the list of issues and questions which are transmitted by the committee in advance of the session that considers the States party reports. To assist States in implementing their recommendations, the treaty bodies have introduced procedures to ensure effective follow-up to their concluding recommendations.

For the full text of the statement, see Provisional Record Nº. 30 (p. 30/7 to 30/8) on the following link: www.ilo.org/iic/ILCSessions/100thSession/reports/provisional-records/lang--en/index.htm.
observations, such as the appointment of a follow-up rapporteur, and country visits dedicated to follow-up and implementation.

Treaty bodies also elaborate general guidance to interpret the provisions of the treaty (known as ‘General Comments’ or ‘General Recommendations’), and organize thematic discussions related to the subject of the treaty, many of which will eventually result in the elaboration of a general comment. Most of the treaty bodies have produced some form of general guidance related to the promotion and protection of the human rights of migrants, such as for example Committee on Economic, Social and Cultural Rights General Comment No. 20 on non-discrimination and Committee on the elimination of Racial Discrimination General Recommendation No. 30 on non-citizens.

Of the State parties to the ICRMW in the subregion, Sri Lanka, Bangladesh and Turkey are under the obligation to submit reports on the status of implementation. Thus far, only Sri Lanka has done so. The report from Turkey was due in 2006 and Bangladesh needs more time as it only recently acceded to the Convention.18

Sri Lanka identifies itself as primarily a labour out-migration country in the status of implementation report. It is not a destination country for overseas workers “largely because there is sufficient Sri Lankan workforce, including domestic labour, to satisfy overall market demand at all levels.”19 Of its outgoing labour migrants, 90 per cent travel to Western Asia (of whom 63 per cent were women). Pre-departure orientation services are provided together with rights awareness. During an information-gathering trip to Sri Lanka by the main author in 2005, the content of these courses was limited to the most basic information, with no reference to migrants’ rights, and it appears that these courses were improved with the cooperation of United Nations systems and United Nations-affiliated agencies. Measures to regulate recruitment agencies have been set in place, and a welfare fund for migrant workers has been established. To protect the interests of its citizens as workers abroad, the Government has placed labour welfare officers in almost all Sri Lankan diplomatic missions in destination countries. Sri Lankan missions maintain safe houses to offer shelter to domestic workers in distress. In terms of social security, the Government is implementing a contributory pension scheme for migrant workers, which requires them a specified amount of money to qualify for a pension upon reaching the retirement age of 60.20

There are a number of shadow (or counter) reports by NGOs publicly available in the case of Sri Lanka reporting from Israel, Lebanon, and for Asia more broadly.21 The main issues of concern mentioned therein are: the monitoring of recruitment agencies, limited consular support (and adequate training for consular officials), the lack of information on rights in the 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 to seek assistance), and the lack of overseas voting rights.

18 See www2.ohchr.org/english/bodies/cmw/sessions.htm.
19 See www2.ohchr.org/english/bodies/cmw/docs/AdvanceVersions/CMWC.LKA.1.doc, p. 5.
20 Ibid.
21 See www2.ohchr.org/english/bodies/cmw/cmws11.htm for the full texts of the shadow reports on Sri Lanka.
Special procedures is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special procedures are either an individual (called ‘Special Rapporteur’ or ‘Independent Expert’) or a working group usually composed of five members. The mandate of the Special Rapporteur on the Human Rights of Migrants, created in 1999, covers all countries, irrespective of whether a State has ratified the ICRMW.

The Special Rapporteur does not require the exhaustion of domestic remedies to act. When the facts in question come within the scope of more than one mandate established by the Commission, the Special Rapporteur may decide to approach other thematic mechanisms and country Rapporteurs with a view to sending joint communications or seeking joint missions.

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 193 United Nations member States once every four years. UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare the actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, it is designed to ensure equal treatment for every country when their human rights situations are assessed.

The UPR was created through the United Nations General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by 2012, will have reviewed the human rights records of every country. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the new Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

During UPR reviews of countries of the subregion, a number of recommendations were made:

- Pakistan was requested to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

- The efforts of by Nepal to promote the rights of all vulnerable and marginalized groups, including migrants, were welcomed.

- Regarding Sri Lanka, the CEDAW had already expressed concern in 2002 about the increasing number of women who migrate and find themselves in vulnerable situations, often subjected to abuse and sometimes death. Sri Lanka supported recommendations to enter into further agreements with countries hosting its migrant workers. The country was also encouraged to elaborate further on its plans to protect migrant workers, including women.
Trade unions

Trade unions operate in several countries in the subregion, but their impact is often limited. However, of note, Sri Lanka 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” (MFEPW 2008). Workers in the subregion tend to have weak organizational influence and unionization rates are relatively low on a global basis. This is not surprising given the extent of the informal sector (in India, for instance, 90 per cent of the workforce is engaged in the informal sector), which is mostly non-unionized. In addition, migrants are seen as better off for having found employment, making the need for organizational support less pressing. Since practices of collective bargaining rights are weak in countries of origin, unions cannot easily argue for such rights in the host countries (Khatri 2007).

The GCC States in general restrict the right to form a trade union for local and foreign labour and until recently, trade unions were prohibited. In some GCC States, such as Bahrain, trade unions can operate. A step forward was taken by Saudi Arabia 2002, with the approval of regulations on workers councils. However, foreign workers are expressly excluded (IFBWW no date).

At the subregional level, the impact of trade unions is 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.

Migrant associations

Two expanding regional networks—the Migrant Forum in Asia (MFA) and Coordination of Action Research (CARAM) Asia—have member organizations in most of the origin countries discussed in this report, namely Bangladesh, India, Nepal and Sri Lanka and many of the destination countries or territories, namely Japan, Malaysia, Republic of Korea, Singapore and Taiwan Province of China. In a few countries of Western Asia, such as Bahrain and Jordan, some NGOs dedicated to this area have been established. A difference has to be made between organizations formed by migrants themselves or compatriot activists, such as by Filipinos in destination countries, and organizations set up by concerned non-migrant citizens, such as in Singapore.

MFA constitutes the largest and most active regional network in Asia, and is also the driving force behind the global migrant rights movement launched in 2006: the Peoples Global Action on Migration, Development and Human Rights (PGA) whose raison-d’être is to target global governing institutions and the Global Forum on Migration and Development (GFMD). Many of the MFA member organizations are part of national networks, such as the Action Network for Migrant Workers in Sri Lanka. Local organizations engage in a variety of activities, ranging from rights advocacy to service provision, such as shelters and legal aid. The networks not run by migrants themselves are, among others, faith-based or administered by women rights or general human rights organizations.
A number of promising practices are emerging in South and South-West Asia, ensuring greater promotion and protection of the human rights of migrants. But gaps remain for migrants in regular as well as irregular situations.
Employers

There are a limited number of initiatives aimed at employers with regard to the upholding of a rights-based approach to labour migration. One such exception to this is an initiative by the Business for Social Responsibility (BSR) aimed at promoting responsible behavior for businesses. BSR developed a good practice guide in tune with international human rights standards that outlines issue areas from which most migrant rights violations occur, such as the practices of recruitment agencies (suggesting direct hiring in the countries of origin by circumventing the use of private agencies), contracts (the kind of information they should contain), wage withholding, housing and dormitories, food and health and the right to join trade unions (BSR 2010).

A number of promising practices are emerging in South and South-West Asia, ensuring greater promotion and protection of the human rights of migrants. But gaps remain for migrants in regular as well as irregular situations.

At the national level, many out-migration countries have made efforts to regularize emigration procedures, resulting in more migrants enjoying a legal status. On a bilateral level, many bilateral agreements and understandings do not systematically address human rights issues, including issues related to economic, social and cultural rights. Although recruitment agencies have become subject to greater monitoring and pre-departure training schemes subject to some improvement, there are still gaps in this regard. Some countries of origin have begun to collect data on rights abuses. However, more systematic action needs to be undertaken.

On the subregional level, it is laudable that migrants’ rights have been put on the agenda of some regional consultation processes, and it is hoped that there will be concrete outcomes beyond declarations in the future. Civil society organizations should have greater access and opportunities to participate in deliberations on, and implementation of policies and programmes.

In view of the above, the following are non-exhaustive recommendations:

- All migrants, regardless of their legal status, should be able to enjoy their fundamental human rights in law and in practice.

- All countries in the subregion as well as countries of destination outside the subregion that host migrants from South and South-West Asia should be encouraged to ratify and effectively implement all core international human rights instruments, including the ICRMW. Impediments to the ratification of this important instrument must be addressed. Also necessary are capacity-building and strengthening activities on the scope and content of international human rights standards that protect migrants, with Government officials, parliamentarians, national human rights institutions and civil society.

- Countries of origin as well as countries of destination should put in place concrete channels for remedies and redress, including ensuring greater protection of the law

---

22 See http://migrationlinkages.bsr.org/
for all migrant workers. One important avenue in this respect is ensuring effective labour inspections to monitor abusive employer practices.

- National legislation as well as bilateral understandings and agreements on migration should be consistent with international human rights standards. Monitoring them and their enforcement mechanisms need to be strengthened. These instruments should also include provisions for the welfare and protection of workers.

- Destination countries should analyse temporary labour migration schemes to ensure that they are compatible with international human rights standards. Specifically, they should remove the requirements that migrants are unable to change employers, as there is a risk of human rights abuse in such arrangements.

- Domestic work should be defined as work in national labour law. All countries of destination should ratify relevant ILO conventions, including Convention Nº. 189 on Decent Work for Domestic Workers.
References


• ___________(HRW) (2010). Slow Reform – Protection of Migrant Domestic Workers in Asia and the Middle East (New York, HRW).


• International Catholic Migration Commission (ICMC) and December 18 (2007). The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat (Brussels, December 18).


• IFBWW (no date). Migrant Workers in the Arab Gulf States (Geneva, IFBWW).


