

# Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States

## A GENDER AND RIGHTS BASED PERSPECTIVE



Photo credit: Saylakham Khayongek

Photo credit: United Nation/Avila, Maria Francesca

Photo credit: UN Women



United Nations Entity for Gender Equality  
and the Empowerment of Women



Review of  
**Laws, Policies and  
Regulations Governing  
Labour Migration**  
in Asian and Arab States  
**A GENDER AND RIGHTS BASED PERSPECTIVE**



United Nations Entity for Gender Equality  
and the Empowerment of Women



# CONTENTS

---

<b>Foreword</b> .....	6
<b>Acronyms</b> .....	8
<b>Executive Summary</b> .....	9
<b>CHAPTER 1</b>	
Concepts and International Frameworks .....	14
<b>CHAPTER 2</b>	
Country Reports .....	39
<i>Receiving Countries</i>	
Kingdom of Bahrain .....	40
Hong Kong SAR (China) .....	62
Kingdom of Jordan .....	82
Republic of Singapore .....	104
United Arab Emirates .....	124
<i>Sending Countries: Southeast Asia</i>	
Kingdom of Cambodia .....	146
Republic of Indonesia .....	170
Lao PDR .....	194
Republic of the Philippines .....	214
Kingdom of Thailand .....	238
<i>Sending Countries: South Asia</i>	
People’s Republic of Bangladesh .....	264
Republic of India .....	284
Federal Democratic Republic of Nepal .....	308
<b>CHAPTER 3</b>	
Good Practices .....	328
References .....	346

# FOREWORD

---

Both men and women migrate but women face different experiences during the migration process and enter into different sectors of employment than men. Women tend to be in the low and unskilled sectors of the labour market. Males migrate into male-dominated sectors of employment which are often recognized in labour laws and codes, better paid and with better working conditions. Women migrate into more traditionally “feminized” sectors of employment like domestic work and care work, which reinforce gender stereotypes. These sectors which are seen as a realm of the private household are still not part of labour laws nor recognized as work. Hence women do not earn adequate wages or have decent working conditions and the informality of the sector renders women prone to violence and exploitation of various kinds. Women migrating to low or unskilled work often do not have adequate education or understanding of basic human rights or means of access to justice in the case of violation of rights.

The recent global economic crisis has made women migrant workers more vulnerable to fluctuations in the global market forces. Unemployment, falling remittances, increased job insecurity are problems women have faced in the aftermath of the crisis though more thorough studies are needed to assess long term impacts.

Of late, both men and women migrant workers are encountering the challenges spawned by the Arab spring. For some sending countries, this implies massive repatriations to keep their nationals out of harm’s way.

On the other hand, migration has undeniably brought social and economic benefits to individuals, households and communities. It has helped alleviate poverty of migrants’ households and remittances have aided community development. Also, skills learned while working abroad have been used by migrant returnees to set up shop and venture into entrepreneurship. The positive impacts of migration cannot be denied but measures to mitigate its negative impacts must be put in place.

Migration Management is a complex issue with several government ministries and departments having a policy influence on the experiences of migrants from a country. Most Asian countries do not have a single agency managing all aspects of migration and even where these exist, the capacity to develop rights based, gender sensitive laws and policies is yet to be developed.

This publication is meant to serve as a ready reference on the country-specific legal protections that exist for women migrant workers in source and destination countries in the programme countries of UN Women’s Asia & Arab States Regional programme on Empowering Women Migrant Workers in Bangladesh, Cambodia, India, Indonesia, Jordan, Lao PDR, Nepal, Philippines. In addition, destination countries and territories such as Bahrain, Hong Kong SAR, UAE, Singapore and Thailand were included.

This publication endeavors to compile existing legal provisions for departing and returning migrants in countries of origin and measures for access to justice for women migrant workers in destination countries. Evidence and/or information on the implementation status of the existing laws were included as far as current data and information would allow.

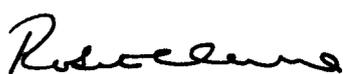
---

It also sought to provide examples of and recommendations for gender sensitive and rights based legal measures that could be adopted to empower women migrant workers to effectively enjoy their rights.

This publication was intended as an aid to the enhancement of policy, programmes and development actions aimed at increasing the protection of women migrant workers; advocating with regional bodies e.g. South Asian Association for Regional Cooperation (SAARC) and Association of South East Asian Nations (ASEAN) and Governments for appropriate protective measures for women migrant workers; assisting non-governmental organizations (NGOs) and Governments in reporting to the UN Committee on the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW); helping inform migrant civil society, including NGOs/migrant workers associations; and, developing guidelines for recruitment agencies and employers regarding minimum employment standards.

Given the breadth and specificity of this publication, a peer review by experts and specialists in the field of law, women's rights, governance, gender, migration and CEDAW was conducted on 18th October 2011 at the Grand Millennium Tower, Bangkok, Thailand. Specialists in migration, gender and development from several of the key countries were invited to review the research findings and to attend the Experts' Group Meeting (EGM) to share their observations.

The EGM served to enhance the accuracy of the country reports and ensured that the publication will serve as a useful analytical tool for both development practitioners and policy makers. The experts' review aided in defining the information gaps and updating the country situation relative to human rights, migration, gender and the interfaces. The Experts' Group committee consisted of five to seven migration and/or gender specialists/experts who are academics, NGO representatives and international organization representatives. The specialists critically reviewed the publication's coverage of laws, policies and regulations and provided feedback and comments on the current draft with specific attention to the relevance of the report, as well as usefulness of findings. Specialists were asked to read the complete draft report, prepare comments and recommendations and present these observations at the one-day Experts' Group Meeting (EGM) in mid-October at Bangkok, Thailand. Feedback from the experts/specialists and subsequent discussions in EGM were incorporated into the publication to create a more robust, practical, and comprehensive gender sensitive and rights-based review of laws, policies and regulations governing labour migration in Asia and Arab States. ■



*Roberta Clarke*  
*Regional Director and Representative in Thailand*  
*UN Women Regional Office for Asia and the Pacific*

# ACRONYMS & ABBREVIATIONS

AMCB	Asian Migrants Coordinating Body	LFTU	Lao Federation of Trade Unions
ATM	Automatic Teller Machine	Lao PDR	Lao People's Democratic Republic
ARTIP	Asia Regional Trafficking in Persons Project	LMRA	Labour Market Regulation Authority
BAIRA	Bangladesh Association of International Recruitment Agencies	MEWOE	Ministry of Expatriate Welfare and Overseas Employment
BOMSA	Bangladeshi Ovbashi Mohila Sramik Association	MDG	Millennium Development Goals
CARAM Asia	Coordination of Action Research on AIDS and Mobility Asia	MENA	Middle East and North Africa
CAT	Convention Against Torture	MLSW	Ministry of Labour and Social Welfare
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations	MOL	Ministry of Labour
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women	MOSAVY	Ministry of Social Affairs, Veteran and Youth Rehabilitation
CERD	Convention on the Elimination of all forms of Racism	MOU	Memorandum of Understanding
CMW	Convention on the rights of Migrant Workers and their families	MSDHS	Ministry of Social Development and Human Security
CRC	Convention on the Rights of the Child	MWC	International Convention on the Rights of All Migrant Workers and Members of their Families
CRPD	Convention on the Rights of Persons with Disabilities	MWCSW	Ministry of Women, Children and Social Welfare
DFA	Philippines Department of Foreign Affairs	MWPS	Migrant Workers Protection Society
DOLE	Philippines Department of Labour and Employment	MWEP	Ministry of Women's Empowerment and Child Protection
EUR	Euros	NGO	Non-governmental organization
FIDH	International Federation for Human Rights	NWDP	National Women Development Policy
GDP	Gross Domestic Product	RBD	Reverse Brain Drain Project
HIV/AIDS	Human immunodeficiency virus/Acquired immune deficiency syndrome	RTU	Registry of Trade Unions
HKCTU	Hong Kong Confederation of Trade Unions	SAARC	South Asian Association For Regional Cooperation
HKD	Hong Kong Dollars	SSO	Social Security Office
Hong Kong SAR	Hong Kong Special Administrative Region	SEWA	Self Employed Women's Association
HTTCA	Human Trafficking and Transportation Control Act (2007) and Regulation (2008)	SIREN	Strategic Information Response Network
ICCPR	International Convention on Civil and Political Rights	SVWCA	Suppression of Violence Against Women and Children Act
ICESCR	International Convention on Economic, Social & Cultural Rights	THB	Thai Baht
ID	Identity	UAE	United Arab Emirates
ILO	International Labour organization	UN	United Nations
ILO-TIWC	ILO's Mekong Subregional Project to Combat Trafficking in Children and Women	UNESCO	United Nations Education, Social and Cultural organization
IOM	International organization for Migration	UNFPA	United Nations Population Fund
IPC	Indian Penal Code	UNHCR	United Nations High Commissioner for Refugees
ITPA	Immoral Traffic (Prevention) Act	UNIAP	UN Inter-Agency Project on Human Trafficking
JOD	Jordanian Dinars	UNIFEM	United Nations Fund for Women
		UNTIP	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women & Children
		UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
		UPR	Universal Periodic Review
		US	United States
		USD	United States Dollars



Photo credit: UN Women

# EXECUTIVE SUMMARY

This Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States was undertaken by UN Women from a human rights and gender perspective. Gender and human rights in relation to migration are the minimum civil, cultural, economic, political, and social entitlements that every migrant worker, man or woman, should enjoy as human beings, in order to ensure human development, well-being, and empowerment. States, and increasingly non-state actors including the private sector, are obligated to respect migrant workers' human rights, and in light of the feminization of migration, it is critical that stakeholders ensure that laws and policies are gender sensitive.

A rights-based approach to migration uses human rights standards as a road map to identify problems faced by men and women workers throughout the migration cycle, and the changes needed. This road map identifies the long-term political, economic, social, and cultural causes of the marginalization, discrimination and abuse suffered by migrant workers. A gender-responsive rights-based approach should be at the core of any credible migration strategy in order to redress unequal power relationships, and ensure that women migrant workers have a voice and are able to claim their rights. Such an approach also provides objective benchmarks to measure government actions and hold governments to account.

The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) guided this review, particularly the relevant articles on discrimination, policy measures, trafficking, employment, equality before the law and access to justice. National laws and practices of countries of origin and destination were reviewed using the CEDAW as the main guide. Other relevant treaties were also analyzed including the International Convention on the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention), relevant conventions of the International Labour Organization (ILO), the Universal Declaration of Human Rights (UDHR), the Convention on Civil and Political Rights (ICCPR), the Convention on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In the course of the review, efforts were geared towards establishing where migrant workers' rights were being respected or violated, and identifying gender-responsive practices in each country.

The study reviews three receiving Arab states and three receiving Asian states, namely Bahrain, Jordan, United Arab Emirates, Hong Kong SAR – China, Singapore and Thailand. Thailand is a country of both destination and origin, but for the purpose of this paper, focus was given to its role as a receiving country. Countries of origin reviewed in the study are the South Asian countries of Bangladesh, India and Nepal and South-East Asian countries of Cambodia, Lao People's Democratic Republic, Indonesia and the Philippines.

## KEY FINDINGS

Discrimination, poverty and joblessness remain the main drivers of migration toward more developed states. Underdevelopment and low national incomes characterize most labour-sending countries. Due to lack of jobs in the sending countries, overseas migration serves as an employment promotion strategy, which can benefit individuals and the country as a whole. Many Asian women migrate voluntarily to Arab States and more economically developed Asian countries to work as nurses, caregivers, domestic helpers and entertainers. Some also work in construction and service sectors. Migrant workers' remittances contribute significantly to national wealth and in some countries such as the Philippines, they are regarded as modern heroes.

---

Yet migrant workers too often experience indignities and violations of their human rights throughout the migration cycle. For example, in some countries of origin girls are considered a burden, especially for poor households, and thus are at risk of early marriage, malnutrition and having limited educational and employment opportunities. Furthermore, violence against women makes them socially vulnerable and prevents them from fully participating in society. All of these factors may cause women to migrate in search of better opportunities.

Before leaving their countries of origin, and during transit, women migrant workers are also at constant risk of exploitation by unscrupulous private recruitment agencies who charge hidden fees, and provide fraudulent visas and travel documents, often without legitimate job orders for the worker. Ineffective migration governance and corruption contribute to the proliferation of such abuses, which heightens the risk of trafficking, sexual harassment and economic exploitation.

In countries of destination, women migrant workers suffer from further rights violations such as: non-payment or underpayment of wages; deprivation of food; denial of access to medical facilities; long working hours with no rest; no free weekends or annual leave; changes in terms and conditions of employment and living arrangements; confiscation of passports and restrictions on movement; lack of control of bank accounts; contract substitution; and physical or sexual abuse. Some migrant women must also work from 6 to 24 months to pay off debts to recruiters, and others are subjected to forced prostitution or forced labour. Women's access to justice is also hampered by: the lack of employment contracts; fear of arrest, detention and deportation for reporting employer abuse; and a lack of awareness of existing complaint mechanisms.

Different cultures and country conditions influence attitudes to, and respect for, human rights and gender equality. On a positive note, all of the countries in this study have ratified CEDAW. However, of the 13 countries studied, only three have ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC), namely the Philippines, Bangladesh, and Indonesia, and none of the countries of destination have ratified ILO Conventions 97 (on migration for employment), C143 (on abusive migration conditions) and C181 (on private recruitment agencies). Additionally, despite the fact that all 13 countries covered in this report have ratified CEDAW, implementation of many areas of the Convention remains weak. For example, many countries lack a clear definition of discrimination in their constitution and domestic laws, as required by CEDAW. Also, many have failed to ensure that domestic laws are in line with CEDAW provisions related to employment, equality of treatment, violence, and access to justice.

Specifically, some destination countries infringe upon migrant workers' freedom of association and freedom of movement, which is inconsistent with CEDAW. For example, Bahrain does not permit collective bargaining; Jordan restricts freedom of assembly and of association for female migrant workers; UAE laws do not protect the right to form unions, bargain collectively, or strike; and Singapore requires employers to pay a security

bond which employers use to restrict migrant workers' movements. Women's access to justice is also limited in many countries.

In the countries studied, there is a notable lack of accessible shelters and support services for migrant workers who are victims of violence and abuse. Additionally, migrant domestic workers are usually excluded from labour laws and have limited access to legal redress mechanisms. Even those who are covered by the law often have limited information about their rights, no means to support themselves while in dispute with employers, and must contend with unethical employers who threaten them job loss and deportation.

Despite continuing challenges there are signs of progress, and each of the countries in this report have enacted a number of gender-sensitive and human rights-based practices in migration governance which deserve to be replicated and emulated. For example, Jordan is the first Arab country to include domestic helpers in its Labour Code, requiring the employer to pay salaries into a bank account, provide medical insurance and 14 days of medical leave, in addition to 14 days of annual leave. Domestic workers now have limits to daily working hours, and a weekly day of rest. Hong Kong SAR – China also covers migrant domestic workers under the national labour laws and regulations. Additionally, Hong Kong SAR – China and Jordan have developed standard employment contracts that contain a number of important provisions relating to the responsibilities of employers and recruitment agents and the rights of migrant workers. Hong Kong SAR – China also ensures that migrant domestic workers get one rest day per week, and by providing for freedom of movement for these workers, enables social and cultural bonds to be built that can develop into a supportive community. In another example of good practice, migrant workers in Bahrain are eligible for free medical care.

Additionally, the Bahrain Resource Centre for Women Migrant Workers aims to make information necessary for safe migration available to potential women migrants and their families, advising on the risks and consequences of migration. The Bangladesh government has also organized campaigns to highlight trafficking and other crimes against women migrant workers, and educated communities about how to assist trafficked persons and reintegrate them into their communities.

However, despite these positive examples, as this report shows, the consciousness of migrants' rights and gender aspects of migration is in the early stages in most countries and there is a long way to go in fulfilling human-rights standards in migration governance at every point of the migration cycle. The report highlights specific actions that have been taken to promote and protect women migrant workers rights, as well as legislative and policy gaps that must be addressed in order to ensure a coherent and comprehensive gender-sensitive approach to migration. It is hoped that by increasing the visibility of gender and migration issues in both origin and destination countries, this report can be used by all stakeholders to advocate for better protection of women migrant workers' human rights.





Photo credit: United Nations/Avila, Maria Francesca

## CHAPTER 1

# CONCEPTS AND INTERNATIONAL FRAMEWORKS

---

## A. GENDER-RESPONSIVE AND RIGHTS-BASED APPROACH TO LABOUR MIGRATION

In order to ensure human development, well-being, and empowerment throughout the migration process, every migrant worker must be guaranteed his or her civil, cultural, economic, political, and social rights. To that end, states and non-state actors are obligated to ensure humane and lawful working and living conditions for all migrant workers, men and women. However, because gender is one of the most important factors shaping migrant workers' experience (even more important than country of origin or destination, age, class, race or culture),<sup>1</sup> laws, policies and programmes designed to promote and protect human rights of migrant workers must be responsive to gender differences and disparities.

### A GENDER-RESPONSIVE RIGHTS-BASED APPROACH TO MIGRATION<sup>2</sup>

A *rights-based* approach to migration uses human rights standards as a road map to identify the political, economic, social, and cultural causes of the marginalization, discrimination and abuse that workers face throughout the migration cycle. A rights-based approach enables migrant workers to claim their rights, gain more influence in unequal power relationships, and work towards positive change. A *gender-responsive approach* to migration is rights-based because it acknowledges that discrimination against women and girls is a fundamental denial of human rights. It recognizes that discrimination is often what drives poor women to migrate to meet their survival needs, and is also what contributes to abuse and exploitation of women migrants during transit and upon arrival in receiving countries. Gender responsiveness requires action to correct societal biases, and ensure that women are able to: participate in all spheres of life; exercise meaningful influence on policy decisions; benefit from the policy actions; and access mechanisms to redress injustices. A gender-responsive rights-based approach that ensures women can claim their rights during all stages of migration should be at the core of any credible migration and development strategy.

## B. GLOBAL CONTEXT OF MIGRATION

According to the International Organization for Migration (IOM), today there are approximately 214 million international migrant workers, almost half of whom are women. Labour-receiving countries with a high percentage of migrant workers include Qatar, United Arab Emirates,

---

1 International Organization for Migration, *Gender and Migration* (webpage, n.d.). Available from: [www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/brochures\\_and\\_info\\_sheets/gender\\_factsheet\\_en.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/brochures_and_info_sheets/gender_factsheet_en.pdf)

2 UNIFEM, *Empowering Women Migrant Workers in Asia, A Briefing Kit – Migration as a Human Rights Issue* (webpage, n.d.). Available from: <http://www.unwomeneseasia.org/projects/migrant/Briefing%20kit%20files.htm>

Jordan, Singapore, and Saudi Arabia.<sup>3</sup> Major sending countries include the Philippines, Indonesia, Sri Lanka, Nepal and Bangladesh.<sup>4</sup>

Demand for migrant labour is largely determined by the extent to which a domestic workforce is unable or unwilling to meet the needs of its national economy. Most women who migrate for work are motivated by a lack of opportunities at home and the belief that they can achieve a better life in a foreign country.<sup>5</sup> By migrating for work, many women are able to significantly improve their quality of life, and, through remittances, improve the quality of life for their families. However, many others experience violations of their human rights during one or more stages of the migration process, including: being forced to pay exorbitant recruitment fees and sign fraudulent contracts; having wages withheld and documents confiscated; being forced to work in unsafe conditions; and being subjected to physical and sexual violence. These abuses occur because sending, transit and receiving countries often ensure only minimal protection of migrant workers. In fact many countries do not consider domestic work as “work” at all, and thus deny domestic workers any protection under labour laws.

Consequently, many sending countries are now taking a more proactive approach to protect their citizens who choose to migrate for work. For example, a group of Asian sending countries meets regularly as part of the Colombo Process, to strategize about ways to improve conditions for their migrant workers. Also, several labour-sending countries have entered into bilateral agreements with receiving countries to protect the rights of all interested parties involved in the migration process, including governments, recruitment agents, employers and employees.<sup>6</sup>

## C. HUMAN RIGHTS TREATIES AND TREATY BODIES

International human rights and labour law conventions promote and protect the rights of women migrant workers by providing legal frameworks for States to enforce the prohibition of discrimination, guarantee substantive equality, and ensure minimum standards for living and working conditions. States parties to these Conventions are obligated to implement legislation, policies and programmes that promote and protect the rights of women migrant workers, in line with these international human rights standards.<sup>7</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the most important legal frameworks for ensuring fundamental freedoms and rights of women, including women migrant workers. Other important treaties in this respect are: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC); the International Convention on the Elimination on

3 International Organization for Migration, *Webpage: Migration Facts and Figures*, (Geneva, n.d.). Available from: [www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/enn](http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/enn)

4 One World Global Justice On-line, *International Migration Guide*. Available from: <http://uk.oneworld.net/guides/migrati on?gclid=CM30wuGjo6wCFaWL4godS3OK2g>

5 Ibid.

6 Ibid.

7 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: [http://www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

---

All Forms of Racial Discrimination (CERD); the International Covenant on Economic Social and Cultural Rights (ICESCR); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2003 and the Protocol against the Smuggling of Migrants by Land, Sea and Air 2004, both of which supplement the United Nations Convention against Transnational Organized Crime; and the International Covenant on Civil and Political Rights (ICCPR). Additionally, a host of ILO conventions and declarations address issues relevant to women migrant workers. Some of these include conventions on: forced labour; freedom of association; migration for employment; right to organize and collective bargaining; equal remuneration; abolition of forced labour; discrimination in employment; minimum age for employment; migration in abusive conditions and promotion of equality of opportunity and treatment of migrant workers; regulation of private employment agencies; prohibitions on child labour; and decent work for domestic workers.

## **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

The Convention on the Elimination of Racial Discrimination (CERD) entered into force on 4 January 1969 and was adopted “for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices.” Racial discrimination was defined as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Of the 13 countries covered in this study only Singapore has not yet ratified CERD.

Under CERD, States parties have the obligation to guarantee the right of everyone to equality before the law for all, notably in the enjoyment of rights, without distinction as to race, colour, or national or ethnic origin. The obligation includes guaranteeing the right to “just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration,” and “[t]he right to public health, medical care, social security and social services.” States parties have the obligation to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the effect of creating or perpetuating racial discrimination wherever it exists.

Non-recognition of domestic work or its exclusion from labour laws in countries of employment wherein migrants perform an overwhelming majority of domestic work may be deemed as a failure to fulfill the above-mentioned obligation as it effectively excludes migrant domestic workers from the protection of the law. Migrant workers’ organizations may use this provision to lobby for the recognition of domestic work. Abuse of women migrant domestic workers by their employers or recruiters may sometimes constitute examples of racial discrimination by private actors. According to baseline research carried out by the Asian Migrant Centre in Hong Kong, China (2001), there is a significant link between the race and gender of migrant domestic workers and the violations of employment contracts and the abuse experienced by domestic workers in Hong Kong, China.

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The Committee on the Elimination of Racial Discrimination is the body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties. All States parties are obligated to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the ICERD and then every two years. In addition, the ICERD establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure (preventing existing situations escalating into conflicts), the examination of inter-state complaints and the examination of individual complaints.

## GENDER-RELATED DIMENSIONS OF RACIAL DISCRIMINATION

In its General Recommendation No. 25 (2000), the Committee focused on the gender-related dimensions of racial discrimination, noting that there are situations that only or primarily affect women, or affect women in a different way or to a different degree than men. The Committee stated that abuse of women workers in the informal sector or domestic workers abroad by their employers are examples of certain forms of racial discrimination which may be directed specifically towards women. Therefore, the Committee has expressed its intention to “integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its session working methods, including its review of reports submitted by States parties, concluding observations, early warning mechanisms and urgent action procedures, and general recommendations.”<sup>8</sup>

States parties were also requested by the Committee to “describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention” in their reports. In their “shadow”, or alternative, reports to the Committee, migrant workers’ organizations may submit information on the employment conditions of women migrant workers guaranteed under CERD.<sup>9</sup>

## COMMUNICATIONS

The Committee is authorized to receive communications from States parties regarding the failure of another State party to give effect to the provisions of the Convention. However, the Committee can only receive and consider communications from individuals or groups if the State party within whose jurisdiction said persons or groups belong have made a declaration recognizing the competence of the Committee. This mechanism may be utilized by a State party, individual or group to bring to the Committee’s attention the situation of migrant

<sup>8</sup> UNIFEM, ‘Legal Protection for Migrant Domestic Workers in Asia and the Arab States’ (2008).

<sup>9</sup> Ibid.

---

domestic workers; any violation of their rights; or the failure of another State party to protect, promote and fulfill the provisions of CERD.<sup>10</sup>

## NON-CITIZENS

Article 1, paragraph 2, of CERD provides a qualification to the definition of racial discrimination, stating that it shall not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens or migrants. The Committee clarified the responsibilities of States parties regarding non-citizens, noting “the Durban Declaration in which the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, recognized that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism.” In its General Recommendation No. 30 (2005), the Committee emphasized that Article 1, paragraph 2, must not be used to detract in any way from the rights and freedoms recognized and enunciated in the international bill of rights. As such, even though they are non-citizens, the rights of women migrant domestic workers to just and favorable conditions of work and remuneration are still protected.<sup>11</sup>

The recommendations of the Committee to States parties to CERD relevant to women migrant workers are as follows:

33. Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects;
34. Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault.<sup>12</sup> The measures should also ensure the guarantee of rest, leisure and reasonable limitation of working hours, as well as periodic holidays with pay, as well as remuneration for public holidays. As the International Covenant on Economic, Social and Cultural Rights (ICESCR) also embodies the principle of non-discrimination, its provisions are especially relevant to women migrant domestic workers.<sup>13</sup>

### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Article 7 guarantees the rights most often ignored by governments, by their exclusion of domestic workers from the coverage of labour laws, including: the provisions on minimum wage; rest days; holiday pay; and working hours, among others. Legislations also frequently lack provisions for the effective prosecution of private actors, such as employers and recruitment agencies, who abuse domestic workers. Article 2, paragraph 2, prohibits discrimination, including on grounds of gender. Article 3 mandates that states undertake to ensure the equal rights of men

---

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

and women to protection under the ICESCR. However, women migrant domestic workers experience non-payment or under-payment of wages; long working hours; heavy workload; lack of rest days or rest periods; and non-payment during holidays, among other abuses.<sup>14</sup>

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights is the body of independent experts that monitors implementation of the ICESCR by its States parties. States must report initially within two years of accepting the ICESCR and thereafter every five years.

## INTERSECTION OF MIGRATION WITH OTHER SOCIAL FACTORS

In its General Comment No. 16 (2005), the Committee notes that “[m]any women experience distinct forms of discrimination due to the intersection of sex with such factors as race, color, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.”<sup>15</sup>

## STATE OBLIGATIONS

According to the Committee, one of the core obligations of States parties is the obligation to ensure non-discrimination and equal protection of employment. States parties are obligated “[t]o avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups.” Hence, any law or policy that discriminates against migrant workers or provides for their unequal treatment, such as the exclusion of domestic work from protection under labour laws, may be regarded as a violation of the core obligations of States parties under ICESCR.<sup>16</sup>

The Committee also declared that States parties must undertake measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy and emphasized that there is a need to properly regulate domestic and agricultural work through national legislation so that domestic and agricultural workers can enjoy the same level of protection as other workers.<sup>17</sup>

## PREGNANCY IN THE CONTEXT OF EMPLOYMENT

With respect to women and the right to work, the Committee notes that pregnancy must not constitute an obstacle to employment, nor justification for loss of employment.

---

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

---

The standard employment contract for non-Jordanian domestic workers, for example, requires the recruitment agencies to shoulder the cost for the return of worker to country of origin if she becomes pregnant. In Hong Kong, China, the Employment Ordinance prohibits the dismissal of a worker, including domestic workers, from the date of confirmation of pregnancy until the expiry of her maternity leave. In Singapore, the Work Permit for Foreign Workers in General prohibits women migrant workers from falling pregnant or delivering a child in Singapore. However, Singapore is not party to the ICESCR.<sup>18</sup>

### **International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976, also embodies the principle of non-discrimination, requiring States parties to “respect and to ensure ... the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Of the 13 countries covered in this study, only Singapore and the United Arab Emirates have not yet ratified ICCPR.<sup>19</sup>

The principle of non-discrimination, including equality before the law, are also integrated in specific categories of civil and political rights. For example, Article 14, paragraph 1, states that all persons shall be equal before the courts and tribunals. This right applies to aliens, including migrant workers, who must not be treated differently on the basis of their status as non-citizens. It also guarantees the equal treatment of women migrant workers who resort to the justice system for violation of rights or abuses committed against them.<sup>20</sup>

In practice, however, there are conditions that restrict the woman migrant worker’s access to the judicial system. In some countries of employment, the legal residency of women migrant workers is dependent on their continuous employment with a given employer. As such, disputes with those employers usually result in the cancellation of the residency permit of domestic workers and their subsequent deportation. Women migrant workers are generally not allowed to work while a case they brought is pending, resulting in loss of income for months or years. Given these conditions, some women migrant workers prefer not to report abuses or file complaints.<sup>21</sup>

ICCPR also prohibits slavery and slave trade, servitude, and forced or compulsory labour. This is especially relevant to migrant domestic workers as their working conditions and meager salary sometimes amount to slavery. According to the ILO, although domestic work is not per se forced labour or slavery, it can become so when debt bondage or trafficking is involved. There are reports of trafficked women domestic workers who are effectively treated as slaves by their employers and recruitment agencies.<sup>22</sup>

---

18 Ibid.

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid.

## HUMAN RIGHTS COMMITTEE

The Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its State parties. States must report initially one year after acceding to the ICCPR and then whenever requested by the Committee (usually every four years).

## DEFINITION OF DISCRIMINATION

According to the Human Rights Committee, discrimination should be defined as: any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (emphasis added).

## MIGRANTS AND FREEDOM OF MOVEMENT UNDER THE ICCPR

In General Comment No. 15 (1986), the Committee emphasizes the non-discrimination policy embodied in Article 2, paragraph 1, of the Covenant, stating that, “[a]liens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant.” Although a State party may impose conditions relating to movement, residence and employment, migrants’ rights are protected by ICCPR once they receive permission to enter the territory of the State.

Freedom of movement and to choose where to live are often restricted in the countries of employment. In the case of domestic workers, government regulations often require the worker to reside in the house of the employer. Employers and recruitment agencies also often confiscate the passports and identity documents of domestic workers, thereby effectively limiting their movement and increasing their vulnerability. There are also reports of employers locking domestic workers in the house during their absence to prevent them from leaving.<sup>23</sup>

## COMPLAINTS

A State party may choose to recognize the competence of the Committee to receive and consider inter-state complaints. The first Optional Protocol to the Covenant, which entered into force on 23 March 1976, gives the Committee the competence to examine individual complaints regarding alleged violations of the Covenant by a State party to the Protocol. Women migrant workers, once in the territory of a State party, may use this mechanism to file a complaint against alleged discriminatory policies or regulations before the Committee.

---

<sup>23</sup> Ibid.

## International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families (MWC)

The MWC, which entered into force on 1 July 2003, is the most comprehensive international instrument that focuses on the treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of countries of origin and employment of the migrants. It is also one of the least ratified human rights treaties, especially among migrant workers' destination countries, or countries of employment.<sup>24</sup> Among the 13 countries covered in this study, only the Philippines has ratified the MWC. Bangladesh ratified the MWC in 2011, Cambodia and Indonesia signed in 2004. All four are predominantly countries of origin for migrant workers.

### DEFINITION OF MIGRANT WORKER AND NON-DISCRIMINATION

A migrant worker is defined under the MWC as “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.” Article 7 of the MWC also embodies the principle of non-discrimination, with States parties committing “to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”

### EQUALITY OF TREATMENT

The MWC states that migrant workers, whether documented or not, shall enjoy treatment not less favorable than that which applies to nationals of the country of employment in respect of remuneration and:

- (a) Other aspect of working conditions, such as overtime, hours of work, weekly rest, paid leave, safety, health, termination of employment and any other conditions which, according to national law and practice, are covered by these terms;
- (b) Other terms of employment, such as minimum age, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

The MWC also provides that it shall be unlawful to derogate from this principle of equality of treatment in private contracts of employment. Even if the employer and the domestic worker sign the contract providing for conditions of work less favorable than that accorded to nationals of the countries of employment, the MWC considers such an agreement unlawful.

---

<sup>24</sup> Ibid.

States parties are required to ensure that migrant workers are not deprived of any rights derived from the principle of equality of treatment by reason of any irregularity in their stay or employment. Employers of migrant workers are not relieved of any legal or contractual obligations, nor are their obligations limited, by reason of such irregularity. These provisions under MWC are especially relevant to migrant domestic workers who are undocumented. Even if they are undocumented, the rights of migrant domestic workers are guaranteed under the MWC. It is to be noted, however, that none of the countries of employment covered in this study have ratified the MWC.<sup>25</sup>

## PRESERVATION OF IDENTITY DOCUMENTS

The MWC declares it unlawful for anyone other than an authorized public official to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permits. Any authorized confiscation requires the delivery of a detailed receipt and there is an absolute prohibition against the destruction of a passport or equivalent document of a migrant worker and his or her family. It is a common practice for employers and recruitment agencies across the regions to confiscate the passport and identity documents of the workers, even if it is prohibited under the laws of the countries of employment. The 2006 Memorandum of Understanding between Indonesia and Malaysia expressly allows employers to keep the domestic worker's passport.<sup>26</sup>

## SOCIAL SECURITY AND EMERGENCY MEDICAL CARE

MWC also provides that migrant workers and members of their families shall enjoy, in the countries of employment, the same treatment granted to nationals with respect to social security and medical care, even if there is irregularity with their stay or employment. As previously stated, only a few countries of employment cover migrant domestic workers in their social security system.<sup>27</sup>

## COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It held its first session in March 2004. States parties may choose to recognize the competence of the Committee to receive and consider communications from one State party alleging that another party is not fulfilling its obligations under the MWC. States parties may also recognize the competence of the Committee to receive and consider

---

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

---

communications from or on behalf of individuals within that State's jurisdiction who claim that their rights under MWC have been violated.

The communications mechanism of the Committee is an essential tool for migrant workers' organizations and advocates, which may be used in reporting not only individual cases but also systematic abuses committed against migrant domestic workers.<sup>28</sup>

## CMW COMMITTEE GENERAL COMMENT NO. 1 ON MIGRANT DOMESTIC WORKERS 2010

The Committee's General Comment No. 1 on Migrant Domestic Workers, which was adopted in November 2010, invited States to be guided by it in the implementation of the rights of migrant domestic workers and encouraged States that have not yet done so to ratify the International Convention on the Rights of Migrant Workers and Members of Their Families.

## C. THE INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS

The International Labour Organization (ILO) has been the lead United Nations agency in setting standards for protecting the rights of workers including migrants. International labour standards in the form of conventions and recommendations are developed and adopted by member States during the yearly meeting of the International Labour Conference where each country is represented by four delegates: two from the government, and one each from its employers' and workers' organizations. Conventions are binding on states that ratify them. Recommendations serve as a guide to national action and are not open for ratification.<sup>29</sup>

The ILO's activities to protect women migrant workers from discrimination, violence and abuse are concentrated on assisting countries in policy formulation, and in establishing or strengthening legislation, administrative measures, structures and practices for the effective management of labour migration. A principal focus of the ILO's work is to improve the knowledge base concerning working conditions, recruitment and employment practices affecting migrant workers.<sup>30</sup>

The two systems – the protection of workers' rights under ILO labour standards, and the protection of human rights under United Nations and regional treaties – are complementary and mutually reinforcing. Labour standards developed within the ILO have had a profound influence on the content of international human rights treaties, including the ICCPR, the ICESCR and the CMW. Rights in employment, such as fair wages, safe and healthy working

---

28 Ibid.

29 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008).

30 Report of the Secretary-General (A/58/161) (2003).

conditions, reasonable working hours and trade union rights, are protected by international human rights law as well as by international labour standards.<sup>31</sup>

## THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP IN 1998

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up 1998 specifically refers to the protection of migrant workers in its Preamble. It states that even those Members who have not ratified the Conventions in question are obligated merely by virtue of membership of the ILO to respect, promote and realize principles concerning the fundamental rights in the core ILO Conventions. In other words, the 1998 Declaration binds all ILO members, and protects all migrant workers regardless of status. The core labour standards covered in the Declaration on Fundamental Principles and Rights at Work and its 1998 Follow up are espoused in the following ILO Conventions<sup>32</sup>:

Forced Labour Convention 1930	(ILO C29)
Abolition of Forced Labour Convention 1957	(ILO C105)
Minimum Age Convention 1973	(ILO C138)
Worst Forms of Child Labour Convention 1999	(ILO C182)
Equal Remuneration Convention 1951	(ILO C100)
Discrimination (Employment and Occupation) Convention 1958	(ILO C111)
Freedom of Association Convention 1948	(ILO C87)
Right to Organize and Collective Bargaining Convention 1949	(ILO C98)

The ILO Declaration is especially relevant in the context of domestic work as many domestic workers experience inhumane and degrading conditions in the workplace, which sometimes amount to force or compulsory labour. Even if States have not yet ratified the convention concerning forced or compulsory labour, they have the obligation to eliminate laws, regulations, practices or conditions which effectively transform domestic work into forced or compulsory labour. The withholding or nonpayment of salaries for payment of excessive fees by recruitment agencies are examples of such practices which all States need to eliminate.<sup>33</sup> The ILO Declaration is also relevant in the context of women migrant workers who find themselves subject to trafficking for the purposes of sexual exploitation, and are thereby subjected to conditions of forced or compulsory labour.

## ILO CONVENTIONS SPECIFIC TO MIGRANT WORKERS

The main ILO Conventions on migrant workers are the Migration for Employment No. 97, (1949) and the Migrant Workers (Supplementary Provisions) Convention No. 143, (1975). These comprehensively define the rights of migrant workers, and advocate the principles of equal treatment, equality of opportunity and non-discrimination. The 1990 International Convention

31 Global Commission on International Migration, 'International Migration and Human Rights' (2005).

32 UNIFEM, "Empowering women migrant workers in Asia, A Briefing Kit - Migration as a human rights Issue" (2004)

33 Arab States' (2008).

---

on the Protection of the Rights of All Migrant Workers and Members of their Families elaborate and expand on these rights. These three conventions together define a comprehensive charter of migrant rights and provide a legal basis for national policy and practice on migrant workers.

## ILO CONVENTIONS AND RECOMMENDATIONS SPECIFIC TO MIGRANT WORKERS INCLUDE:

C97	Migration for Employment Convention (Revised)	1949
R86	Migration for Employment Recommendation (Revised)	1949
C143	Migrant Workers (Supplementary Provisions) Convention	1975
R151	Migrant Workers Recommendation	1975

The two conventions are based upon the underlying principle of equality of treatment between nationals and regular migrant workers.<sup>34</sup> States party to ILO C97 undertake to apply the principle of non-discrimination to documented migrants, including women migrant workers, with respect to remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, paid leave, and social security. States party to ILO C143 recognize the need to respect the basic human rights of all migrant workers. It guarantees that a migrant worker shall not be regarded as illegal or irregular by the mere fact of loss of her employment. The worker shall also enjoy the guarantee of secure employment, the provision of alternative employment, relief work and retraining.<sup>35</sup> ILO C143 also addresses irregular migration and calls for sanctions against traffickers.<sup>36</sup>

## OTHER SELECTED ILO CONVENTIONS RELEVANT FOR WOMEN MIGRANT WORKERS:

### **ILO Convention No. 181 Concerning Private Employment Agencies, 1997**

ILO Convention No. 181, which came into force on 10 May 2000, regulates private employment agencies operating within the jurisdiction of States parties. Of the 13 countries covered in this study, none have ratified ILO Convention No. 181.<sup>37</sup> This convention is particularly relevant to migrant workers, especially since private agencies are now heavily involved in the transfer of workers between countries. The convention provides that States parties implement a system of licensing or certification of agencies. It prohibits: the denial of workers' rights to free association and collective bargaining; discrimination against workers; and the charging of fees to workers, directly or indirectly.

With regard to migrant workers, States are required to ensure adequate protection for, and prevent abuses against, those recruited or placed in their territory by private recruitment agencies. States are encouraged to enter into bilateral agreements to prevent abuse of and

---

34 UN Department of Economic and Social Affairs, "2004 World Survey on the role of Women in Development: Women & International Migration" (E/CN.4/2004/76) (2004)

35 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008).

36 UN Department of Economic and Social Affairs, "2004 World Survey on the role of Women in Development: Women & International Migration"

37 Domestic Workers in Asia and the Arab States' (2008).

fraudulent practices against migrant workers who use private recruitment agencies. They must also have procedures to investigate complaints by workers. In addition, there must be adequate protection of, among other things, minimum wages, working time and other working conditions, social security benefits, and occupational safety and health.

This Convention is also important as overcharging by private placement agencies is among the most serious and prevalent problems experienced by domestic workers across the region.<sup>38</sup>

### **ILO Convention on Domestic Workers 2011**

In 2011 the ILO adopted the International Convention on Domestic Workers, a landmark legal instrument aimed at protecting the rights and improving the conditions of life of domestic workers, millions of whom are migrants. The new ILO standards set out that domestic workers around the world who care for families and households must have the same basic labour rights as those recognized for other workers: reasonable hours of work, weekly rest for at least 24 consecutive hours, a limit on payment in kind, clear information on the terms and conditions of employment, and respect for the fundamental principles and rights at work, including freedom of association and the right to collective bargaining.

According to Human Rights Watch<sup>39</sup>, this landmark treaty gives these workers the dignity they are due and the same rights other workers have under the law. This includes earning a minimum wage, a weekly day off, and limits to their working hours. It also obligates governments to protect them from violence and to monitor and enforce these provisions. About 30 percent of domestic workers are female, some of whom start working between the ages of 6 and 8, leaving them especially susceptible to abuse. Workers who have migrated from other countries also run a high risk of experiencing violence. The treaty addresses the vulnerabilities of both groups.<sup>40</sup>

## **D. SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL**

### **UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS**

The mandate of the Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights, pursuant to resolution 1999/44. The mandate was extended for a further three years by the Commission on Human Rights in 2005, at its

---

38 Ibid.

39 <http://www.hrw.org/news/2011/06/23/victory-domestic-workers>

40 Landmark ILO Treaty Sets Standards for Basic Rights' (2011), available at <http://www.hrw.org/news/2011/06/23/victory-domestic-workers>

---

62nd session (Res. 2005/47). With the reform to the United Nations human rights machinery in 2006, the newly established Human Rights Council was called upon to assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights. As a result, the Human Rights Council, through resolution 8/10 of 18 June 2008, strengthened the mandate of the Special Rapporteur and further extended it for three years.

The mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 18 December 1990. 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.

The main functions of the Special Rapporteur on the Human Rights of Migrants include:

- (a) To examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation;
- (b) To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;
- (c) To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur;
- (d) To promote the effective application of relevant international norms and standards on the issue;
- (e) To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants;
- (f) To take into account a gender perspective when requesting and analyzing information, and to give special attention to the occurrence of multiple discrimination and violence against migrant women.
- (g) To give particular emphasis to recommendations on practical solutions with regard to the implementation of the rights relevant to the mandate, including by identifying best practices and concrete areas and means for international cooperation;
- (h) To report regularly to the Council, according to its annual programme of work, and to the General Assembly, at the request of the Council or the Assembly.

## REPORT TO THE GENERAL ASSEMBLY

In his communications to Governments sent from April 2010 to May 2011, the Special Rapporteur on Human rights of migrants, expressed concern at a number of situations of alleged violations of the human rights of migrant workers, including (a) arbitrary arrest, sexual violence, torture and other forms of cruel, degrading and inhuman treatment or punishment; excessive use of force; and forced labour; (b) mass expulsions and forcible return; (c) inadequate standard of living, including lack of access to adequate food and housing; (d) sale of children, including for purposes of economic exploitation; (e) killings by border authorities; (f) trafficking

for sexual and economic exploitation; (g) verbal and physical abuse by immigration authorities; (h) abuse and exploitation of domestic migrant workers, including denial of basic labour rights, such as non-payment of wages; (i) restrictions on freedom of movement of nationals; and (j) racist and xenophobic propaganda against migrants.<sup>41</sup>

The Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodríguez Pizarro (from 1999-2005), in her report to the General Assembly in 2002, considered the particular situation of women migrant workers.<sup>42</sup> Similarly in the report to the Sixtieth session of the Economic and Social Council, in the Commission On Human Rights, the Special Rapporteur focused particularly on Human rights of Migrant Domestic Workers. In this report, she observed that in developed countries migrant domestic workers are becoming indispensable to enable women to advance in employment and in society. The work of migrant domestic workers in caring for the elderly has taken on particular importance as a result of the ageing of the population in many developed countries. In these reports, the Special Rapporteur considered it very important to tackle the issue of violence against women migrant workers as a vulnerable group and recalled that during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance it was specifically recognized that discrimination takes many forms. Due to their double marginalization as women and as migrants, women migrant workers may easily find themselves vulnerable to violence and abuse, both at home and at work. Women migrant workers dominate the informal labour market; they work as domestic, industrial or agricultural workers or in the service sector. The fact that gender roles are traditionally established and that men often do not share the domestic chores, particularly looking after children on a daily basis, makes it even more difficult for women to develop personally and professionally.

The Special Rapporteur noted with deep concern the situation of great vulnerability experienced by women and girls left behind in the country of origin. Where the father has migrated for work, remaining female family members may be ill-treated, harassed and abused by relatives to whose care they are entrusted, and who also may hope to gain access to the father's remittances. Where the mother migrates, this can lead to vulnerability to sexual abuse, incest by the father and economic exploitation.

The Special Rapporteur also noted that "Both women who have been the victims of trafficking and those who migrate voluntarily may end up in situations of exploitation, violence and abuse. ... The exchange of sexual favours for permission to transit, which is common practice on some frontiers, is also a form of gender-based harassment to which migrant women are often subjected."

## GLOBAL CONTEXT OF MIGRATION

Accurate data on migration is difficult to obtain because many migrant workers lack official status. According to the UN Department of Economic and Social Affairs, in 2010 there were

41 UN General Assembly, "Human Rights of Migrants" Special Rapporteur Report A/66/264(2011)

42 Rapporteur report A/57/292 (2002).

---

200 million international migrant workers and their families. This figure excludes 15 million refugees, whose movement across a border has been forced by fear of persecution or violence. Migrant workers choose voluntarily to reside outside their country of birth.

The OECD group of richer countries reports that inward migration fell in 2008 and 2009, largely due to the recession. By contrast, the previous five years saw an average annual increase of 11 percent, as the thriving global economy boosted demand for labour. The majority of migrants live in the richer countries of Europe and North America, including about 40 million in the US and 10 million in Germany. In Europe, one in eight people of working age is a migrant; in North America this ratio is one in four.

Contrary to popular belief, the majority of migrants have moved from one rich country to another; only 37 percent of global migration involves movement from poor to rich countries. In most Arab Gulf countries up to 80 percent of the labour force is comprised of migrant workers. The major sending countries are the Philippines, Indonesia, Sri Lanka, Nepal and Bangladesh. These countries also supply labour for China's Hong Kong, Malaysia and Singapore. About 10 percent of the population of Philippines, 8 million people, are engaged in work away from their home country.

Since the early 1980s, demand for female migrant workers has grown, mostly for domestic services. Almost half of all international migrants are women, often leaving their children and families behind.

## MIGRANT WORKERS: SUPPLY AND DEMAND<sup>43</sup>

Migrant workers are motivated by a lack of opportunities at home and the belief that they can achieve a better life in a foreign country. They join the supply of migrant labour when the combination of these "push" and "pull" forces overwhelms the wrench of leaving familiar surroundings and the risks of the unknown. The choice of destination is greatly constrained by the expense and debt incurred for travel costs, official permit fees and, all too often, the unofficial levies of intermediary fixers. In light of these obstacles, which affect the poorest the most, about 40 percent of all economic migrants head for the nearest country.

Demand for migrant labour is determined by the extent to which a domestic workforce is unable or unwilling to meet the needs of its national economy. There may be shortages of skills or, more typically, vacancies arise in jobs rejected by the local population, often described as 3D - dirty, dangerous and difficult. Many migrant workers are professionals who take on jobs that do not utilize their full skills and potential.

Foreign labour has such a dominant role in many Middle Eastern economies that it has become a packaged commodity. Airline schedules are synchronized with the timing of temporary contracts whilst living conditions are customized to fulfill cultural needs.

---

43 Information from <http://uk.oneworld.net/guides/migration?gclid=CM30wuGjo6wCFaWL4godS3OK2g>

However, these established channels of migration are insufficient to absorb the supply of labour. Many aspiring workers choose to take their chance as undocumented migrants, entering a country by overstaying a visa or by crossing an unprotected border.

Work is often to be found; thanks to opportunist employers who ask no questions in return for a pliant labour force, unable to demand the protection of minimum standards of pay and conditions. The United Nations estimates that there are 20-30 million undocumented migrants worldwide, including 11 million in the US.

## MIGRANT EXPERIENCE

Many migrant families have greatly improved their fortunes, especially in accessing higher standards of health and education for their children. However, too many experience unacceptable violations of their human rights.<sup>44</sup>

Anxious to create a flexible labour supply and to avoid social costs, the receiving country often extends only minimum protection to migrant workers. Weak labour laws encourage unscrupulous recruitment agencies and employers to withhold wages, confiscate identity documents and deny reasonable time off work.

Conditions for domestic workers in the Middle East in particular have attracted the attention of human rights organizations. Often concealed within private households, workers are vulnerable to sexual abuse and slave-like labour conditions.

In many countries undocumented migrants live in daily fear of round-ups, abusive treatment in detention centres and mass deportation. In some cases, having the required documents is no protection against local discrimination. Whether documented or not, about two million Burmese can expect no favours from the authorities in Thailand. And Indonesian workers in Malaysia face periodic clamp-downs by the state, enforced by unsympathetic local vigilante groups.

Integration with host communities is a critical to the well-being of international migrants. However, resentment and discrimination can fester especially where there is competition for jobs and housing. Xenophobia has been a blot on post-apartheid South Africa, exploding into violence during 2008 when 60 people were killed and homes of thousands of Zimbabweans and other immigrant groups were destroyed.

## MIGRANT RIGHTS<sup>45</sup>

Human rights campaigners acknowledge that the right to work in a foreign country does not equate with immediate access to the full benefits of citizenship. Their efforts focus on establishing minimum standards of working and living conditions consistent with the principles of international human rights law.

44 Information available from <http://uk.oneworld.net/guides/migration?gclid=CM30wuGjo6wCFaWL4godS3OK2g>

45 Information from <http://uk.oneworld.net/guides/migration?gclid=CM30wuGjo6wCFaWL4godS3OK2g>

---

The initial step towards this goal was achieved in 1990 with the adoption by the United Nations of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, also known as the Migrant Workers' Convention. It tackles every stage of the migration process and enjoys the status of one of only nine core global human rights treaties.

Although the Convention entered into force with 20 country ratifications in 2003, not one of the major destination states has ratified it. As a consequence, migrant workers remain at the mercy of national immigration laws which often provide little or no recourse against discrimination and exploitation.

Since it became apparent that national economic interests would prevail over the principles of the Convention, many of the principal sending countries now take more proactive measures to protect their citizens. For example, following reports of deaths and abuse of female domestic workers in Lebanon, the governments of Ethiopia and Philippines have become more cautious about permitting travel to that destination.

In a forum known as the Colombo Process, a group of Asian sending countries has met regularly since 2003 to share ideas for protection of their migrant workers. A number of bilateral agreements also exist to reconcile the interests of parties involved in migration channels. On the global scale, the International Labour Organization is the United Nations agency responsible for promoting the cause of migrant rights.

## UNITED NATIONS CONVENTION AGAINST TORTURE

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights instrument, under the review of the United Nations, that aims to prevent torture around the world. The convention requires states to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured.

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. 26 June is now recognized as the International Day in Support of Torture Victims, in honour of the Convention. As of September 2010, the Convention had 147 parties.

**THE COVENANT FOLLOWS THE STRUCTURE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR).**

### ***Definition of Torture***

Article 1 of the Convention defines torture as: "(A)ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining

from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

— Convention Against Torture, Article 1.1

Actions which fall short of torture may still constitute cruel, inhuman or degrading treatment under Article 16.

### ***Ban on Torture and Cruel and Degrading Treatment***

Article 2 of the convention prohibits torture, and requires parties to take effective measures to prevent it in any territory under its jurisdiction. This prohibition is absolute and non-derogable. “No exceptional circumstances whatsoever” may be invoked to justify torture, including war, threat of war, internal political instability, public emergency, terrorist acts, violent crime, or any form of armed conflict. Torture cannot be justified as a means to protect public safety or prevent emergencies. Neither can it be justified by orders from superior officers or public officials. The prohibition on torture applies to all territories under a party’s effective jurisdiction, and protects all people under its effective control, regardless of citizenship or how that control is exercised. Since the Convention’s entry into force, this absolute prohibition has become accepted as a principle of customary international law.

Because it is often difficult to distinguish between cruel, inhuman or degrading treatment and torture, the Committee regards Article 16’s prohibition of such treatment as similarly absolute and non-derogable.

The other articles of part I lay out specific obligations intended to implement this absolute prohibition by preventing, investigating and punishing acts of torture.

### ***Ban on Refoulement***

Refouling is the forced returning of an apparent refugee to his or her country of provenance. Article 3 prohibits parties from returning, extraditing or refouling any person to a state “where there are substantial grounds for believing that he would be in danger of being subjected to torture”. The Committee against Torture has held that this danger must be assessed not just for the initial receiving state, but also to states to which the person may be subsequently expelled, returned or extradited.

## **OPTIONAL PROTOCOL**

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the General Assembly on 18 December 2002 and in force since 22 June 2006, provides for the establishment of “a system

---

of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment,”[10] to be overseen by a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As of April 2012 the Protocol has 71 signatories and 63 parties.

## COMMITTEE AGAINST TORTURE

The Committee against Torture (CAT) is a body of human rights experts that monitors implementation of the Convention by State parties. The Committee is one of eight United Nations-linked human rights treaty bodies. All state parties are obliged under the Convention to submit regular reports to the CAT on how rights are being implemented. Upon ratifying the Convention, states must submit a report within one year, after which they are obliged to report every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations.” Under certain circumstances, the CAT may consider complaints or communications from individuals claiming that their rights under the Convention have been violated. The CAT usually meets in April/May and November each year in Geneva.

All of these articulate important principles for promoting and protecting women migrant workers rights. However, this report will mainly focus on the extent to which governments are meeting their obligations under the CEDAW, as it has been ratified by every country included in this study, and thus all are obliged to uphold and enforce its provisions.

### **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The CEDAW came into force on 3 September 1981, and as of September 2012 there were 187 States parties, making it the second most widely ratified of all the international human rights treaties. The CEDAW is the only international legal instrument specifically designed to promote and protect women’s rights in both the public and private spheres. It ensures both de jure and de facto equality between men and women through legal guarantees, a transformation of institutional and social environments, and temporary special measures to compensate for disadvantages faced by women. It functions as both a bill of rights and a platform for action for States parties to protect and promote women’s human rights, and makes them accountable for rights violations by non-state actors, including the family.<sup>46</sup>

The CEDAW’s principles of substantive equality, non-discrimination and state obligation are applicable to all forms of discrimination against women, including during migration. While the CEDAW does not specifically address migration, many of its articles are directly relevant to issues faced by women migrant workers.

---

<sup>46</sup> Ibid.

## ARTICLE 1: DISCRIMINATION AGAINST WOMEN

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>47</sup> CEDAW requires States parties to ensure that private organizations, enterprises and individuals safeguard women’s rights. CEDAW also recognizes and addresses violations of women’s human rights in the private sphere of the home.<sup>48</sup> These provisions are especially relevant for women migrant workers because their work in destination countries is often for private organizations, enterprises and individuals, and in the case of women migrant domestic workers, is performed in the private sphere of the home. In the CEDAW Committee’s General Recommendation No. 19, it emphasized that Governments may be held responsible for “private acts” if they “fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and to provide for compensation.”

CEDAW also says officials and others responsible for preventing rights abuses, or for punishing violations, should be held to account. This approach is a “crucial deterrent to rights violations during the migration process as it addresses the nexus of collusion between law enforcers, exploitative recruiting agencies and employers, state officials and others who act with impunity.”<sup>49</sup>

## ARTICLE 2: POLICY MEASURES

States parties are obliged to take concrete steps to eliminate discrimination against women in laws, policies and programmes, backed by institutional mechanisms. This includes policies related to migrant workers such as training programmes, information campaigns, workplace safety programmes, health schemes, and access to justice.

## ARTICLE 5: SEX ROLE STEREOTYPING AND PREJUDICE

States parties must “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>50</sup> This article requires governments to initiate programmes and policies that challenge cultural and traditional assumptions about women’s roles in public and private life. These assumptions often limit women’s choices of employment in countries of origin, resulting in poverty and the need to migrate for work. Stereotypical assumptions and prejudices also result in women being segregated into certain employment sectors in destination countries, such as domestic help, where their work is undervalued and they are not afforded equal protection under the law.

47 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Art. 1.

48 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*, p. 5.

49 *Ibid.*, p. 44.

50 CEDAW, Art. 5.

---

## ARTICLE 6: TRAFFICKING AND PROSTITUTION

States parties must take all appropriate measures, including legislation, to stop all forms of trafficking and exploitation of prostitution of women. A lack of information and rights awareness makes women migrant workers particularly vulnerable to acts of deception, coercion and exploitation by recruitment agents, that lead to conditions of forced labour and trafficking. This article requires that governments provide legal guarantees protecting migrant women from trafficking and penalize those found in violation of anti-trafficking laws.

## ARTICLE 11: EMPLOYMENT RIGHTS

The CEDAW Convention recognizes women's rights to work based on equality between men and women. Women must enjoy the same opportunities as men in employment, remuneration, promotion, training, social security, and healthy and safe working conditions. To this end, Article 11 obligates governments to recognize domestic work as "work," and ensure that all women migrant workers are covered by labour laws, workplace safety regulations, and social security laws on an equal basis with men.

## ARTICLE 15: EQUALITY BEFORE THE LAW

Women are to be treated as equal before the law and have a legal capacity identical to that of men. This means that States parties are obligated to establish tribunals and other justice mechanisms that enforce the prohibition of discrimination against women by individuals, organizations or enterprises. Additionally, Article 15 requires that women, including women migrant workers, have equal access to justice to redress any discrimination faced during the migration cycle, including before their departure, during employment and upon returning home.

## COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN AND THE OPTIONAL PROTOCOL TO THE CEDAW

The Committee on the Elimination of Discrimination against Women regularly reviews States parties' progress in implementing the CEDAW. Reviews are done every four years through submission of country reports by the States parties as well as non-governmental organizations (NGOs). NGOs regularly submit shadow reports to the Committee that highlight the condition of women migrant domestic workers using the CEDAW as the framework.

The Committee also considers communications submitted by individuals or groups of individuals under its jurisdiction, claiming to be victims of a violation by a State party of any of the rights set forth in CEDAW. The communications mechanism provides a venue for the interpretation and practical application of CEDAW in concrete individual cases, and motivates States parties to respond more effectively to claims and ensure effective remedies at national level.

The Committee may also initiate an inquiry of its own initiative in the case of reliable information of serious or systematic violations of CEDAW within a State party. Submitting information

directly to the Committee is another avenue by which migrant workers organizations and advocates can report on the condition of domestic workers, especially any systematic abuses committed against them within the territory of States parties to CEDAW. Through communications submitted by individuals and groups, and through inquiries initiated by the Committee itself, jurisprudence on CEDAW is being developed, which strengthens women migrant workers' understanding of their rights.

## THE CEDAW COMMITTEE'S GENERAL RECOMMENDATION NO. 26 ON WOMEN MIGRANT WORKERS

In the absence of a specific article on migration in the CEDAW Convention, General Recommendation 26 (GR 26) provides guidance on how to address migration concerns. GR 26 "aims to elaborate upon the circumstances that contribute to the specific vulnerability of many women migrant workers and their experience of sex- and gender-based discrimination as a cause and manifestation of the violation of their human rights."<sup>51</sup>

The CEDAW Committee acknowledges States' rights to control their borders and regulate migration, but emphasizes in GR 26 that they must do so "in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes the promotion of safe migration procedures and the obligation to respect, protect and fulfill the human rights of women throughout the migration cycle."<sup>52</sup>

GR 26 also highlights the fact that migration is not a gender-neutral phenomenon, and that women migrants may use different migration channels, often migrate into different sectors of employment, and are exposed to different forms of exploitation and abuse. Consequently, GR 26 requires States parties to study migration "from the perspective of gender inequality; traditional female roles; a gendered labour market; the universal prevalence of gender-based violence; and the worldwide feminization of poverty and labour migration."<sup>53</sup>

GR 26 provides a detailed framework for integrating a gender perspective into migration policies designed to counter discrimination, exploitation and abuse. It details factors influencing women's migration as well as sex and gender-based concerns related to migrant women. It also gives specific recommendations to countries of origin, transit and destination for effective ways to promote and protect the rights of women migrant workers.

Drawing on GR 26, this document aims to use the CEDAW as a methodological framework for evaluating the progress selected countries have made within their jurisdiction in improving conditions for migrant women; and to highlight legislative and policy gaps that must be addressed to better ensure that women migrant workers are able to claim their human rights.

51 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15 2008) (Forty-second session, 2008), para. 2. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

52 *Ibid.*, para. 3.

53 *Ibid.*, paras. 2 and 5.



Photo credit: UN Women

## CHAPTER 2.

# COUNTRY REPORTS

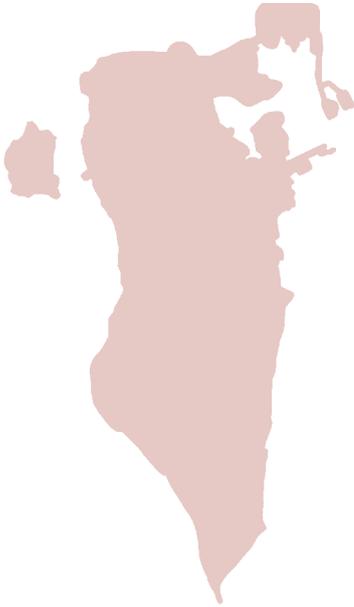


Photo credit: UN Photo/Martine Perret



RECEIVING COUNTRIES

# Kingdom of Bahrain



## A. COUNTRY CONTEXT

The Kingdom of Bahrain is an archipelago of 33 islands located in the Persian Gulf. Bahrain is a high income country<sup>1</sup> and ranks “very high” on the UNDP’s latest Human Development Index.<sup>2</sup> However, beginning in February 2011, the country experienced a sustained period of unrest, resulting from mass protests calling for political reform. Troops were subsequently stationed around the country and extensive security operations, including attacks on peaceful protesters, led to the deaths of 52 people.<sup>3</sup>

Like many Gulf states, Bahrain has historically relied heavily on oil as a primary source of income, however, with reserves forecast to run dry in the next 10 to 15 years, Bahrain has diversified its economy and now the financial sector, tourism, construction and the service industry are also major contributors to the country’s gross domestic product.<sup>4</sup>

According to the 2010 census, Bahrain has a resident population of 1,234,571. It is predominantly a receiving country for migrant labour, and recently the number of foreigners overtook the number of nationals. As of 2010, 666,172 residents (54 per cent of the population) were foreigners. Nationals of Asian countries numbered 562,040, or 84.3 per cent of the foreign residents and 45.5 percent of the total population of the country.<sup>5</sup>

1 Available from: <http://data.worldbank.org/country/bahrain>

2 <http://hdrstats.undp.org/en/countries/profiles/BHR.html>

3 <http://www.state.gov/documents/organization/186633.pdf>

4 *Kingdom of Bahrain Decent Work Country programme 2010-2013*, p.3, ILO. Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf>

5 Bahrain Census Department located at: [www.census2010.gov.bh/results\\_en.php](http://www.census2010.gov.bh/results_en.php)

Human Development Index	Rank 42, Very High <sup>6</sup>
Stock of Immigrants (2010)	666,172
Annual growth rate of immigrant population	5.2% (1960-2005)
Immigrants' share of population (2010)	54%
Proportion of female immigrants (2009)	15.05% <sup>7</sup>

According to the International Labour Organization (ILO), domestic work is the “single most important category of employment among women migrants to the Gulf. Foreign embassies and non-governmental organizations (NGOs) estimate that there are 70,000 foreign domestic workers in Bahrain of predominantly Sri Lankan, Indonesian, Indian, and Filipino origin.”<sup>8</sup> However, to address high unemployment among locals, the government has recently begun reducing sponsorship opportunities for foreign workers and placed more emphasis on hiring Bahrainis.<sup>9</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Bahrain’s labour legislation is relatively advanced compared to other countries in the region, making it one of the more “progressive” of the Gulf Cooperation Council (GCC) countries. For example Bahrain is one of the few countries in the GCC that allows trade unions. Additionally, in 2009 Bahrain partially repealed the Kafala system – the first country in the GCC to do so. Previously under the Kafala system, all unskilled labourers were required to have an in-country sponsor who was responsible for their visa and legal status.

Under the 2009 changes, the Bahrain Labour Market Regulatory Authority (BLMRA) became the direct sponsor of most expatriate contractual workers in the country. This move allowed workers to change from one employer to another without their employer’s agreement. It was hoped that this new law would decrease migrant workers’ vulnerability to abuse by their employer.<sup>10</sup> However, in 2011 King Hamad Al Kalifa rolled back progress by amending the regulation so that now migrant workers are prevented from leaving their employer within the first year of employment.<sup>11</sup> Additionally, reforms to the Kafala system do not cover domestic workers, who continue to be trapped by the sponsorship system.<sup>12</sup>

6 <http://hdrstats.undp.org/en/countries/profiles/BHR.html>

7 IOM citing Bahrain labour Market Regulatory Authority, 2009 available at: [http://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf)

8 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42<sup>nd</sup> Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIBahrain42.pdf>

9 *Kingdom of Bahrain Decent Work Country programme 2010-2013*, pp.3-4, ILO. Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf>

10 *Bahrain’s Decision to Repeal the “Kafala” System*, Georgetown University School of Foreign Service in Qatar, centre for International and Regional Studies, available at: <http://cirs.georgetown.edu/events/conferences/104124.html>

11 *HM King Hamad Issues Law 15/2011*, Bahrain News Agency available at: <http://bna.bh/portal/en/news/461096>

12 *Trafficking in Person’s Report – Bahrain*, U.S. State Department, 2012.

Because domestic workers are employed in people's homes, they are not legally classified as "workers" and are not covered by many of Bahrain's laws governing employee rights.<sup>13</sup> Consequently, domestic workers are vulnerable to abuse at each stage of migration, including:

- i) **During Recruitment** – Many women are exploited or trafficked by recruiting agents, either in the country of origin or the country of destination, and become heavily indebted to recruiters even before they start working. Additionally, employers are required to pay for employees' transportation costs, but in many cases do not comply with this rule.<sup>14</sup>
- ii) **Employment Contracts** – Conditions are generally set according to the employer's discretion and often there is no contract at all.<sup>15</sup> The Bahrain Ministry of Labour has drawn up a model contract but its use is very limited. The BLMRA has studied the issue and found that 65 per cent of migrant workers had never seen an employment contract and 89 per cent were unaware of their terms of employment upon arrival in Bahrain.<sup>16</sup>
- iii) **At work** – Domestic workers regularly find themselves assigned unspecified and multiple forms of work. For example, they may be required to be babysitters, kitchen helpers, and cleaners, within the employers' home as well as in the employers' relatives' homes. They often work for undefined hours, have no days off, and in some cases salaries go unpaid. A 2005 ILO study reported that on average, domestic workers in Bahrain were required to work 108 hours per week.<sup>17</sup> Employers often withhold domestic workers' passports and restrict their movements so that they are not free to move outside the sponsor's home, receive visitors or have partners. Many find it difficult to practice their own religion freely, and have problems with living conditions, inadequate food and medical provisions. In addition, there are cases of psychological, verbal, physical and sexual abuse.<sup>18</sup> Consequently, an increasing number of women try to escape these exhausting conditions and seek shelter with NGOs or embassies.<sup>19</sup>
- iv) **Access to services** – Compounding these problems, female migrant domestic workers have extremely tenuous or no access at all to care and support services and legal redress. The fear of reprisal, arrest or deportation inhibits many from reporting abuse, and, although the government and local NGOs have carried out information campaigns, many migrant domestic workers are unaware of their rights.<sup>20</sup>

13 *Trafficking in Person's Report – Bahrain*, U.S. State Department, 2012.

14 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

15 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

16 *Trafficking in Persons Report, Bahrain*, U.S. State Department 2012. Available at: [http://bahrain.usembassy.gov/news\\_from\\_washington/bahrain-trafficking-in-persons-report.html](http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html)

17 <http://www.caramasia.org/reports/FDWlegislationAsia.pdf>

18 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

19 *Trafficking in Persons Report, Bahrain*, U.S. State Department 2012. Available at: [http://bahrain.usembassy.gov/news\\_from\\_washington/bahrain-trafficking-in-persons-report.html](http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html)

20 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

## C. KEY STAKEHOLDERS

The Ministry of Labour and Social Affairs enforces and implements the Government's policy of enhancing the living standards of the Bahraini people through measures that contribute to sustaining workforce stability, higher worker productivity, and fair working conditions.

The Labour Market Regulation Authority (LMRA) was created to reform Bahrain's labour market and is responsible for prescribing the conditions for work permits and issuing them for foreign workers. This includes renewal procedures, prescribed fees, procedures and cases for suspending the renewal of such a permit or withdrawing it before expiry, and procedures for making exceptions to the normal conditions for issuing permits. The body also carries out workplace inspections to ensure that workers are doing the job specified in their work permit.

The Bahrain centre for Human Rights (BCHR) is a non profit NGO, dedicated to promoting democracy and human rights, including the rights of migrant workers. BCHR has repeatedly called attention to the plight of female migrant domestic workers in Bahrain, noting that "To a great extent, this sector of Bahraini society has been ignored and excluded from the discourse on women's and migrants' rights in Bahrain."<sup>21</sup>

The Migrant Workers' Protection Society also works to promote and protect the rights of migrant workers. However, in August 2010, the Government ordered it to close down its shelter, alleging that it was not registered, despite the fact that the organization had provided the ministry with a copy of the registration certificate.<sup>22</sup>

## D. RATIFICATION RECORD

The following table illustrates Bahrain's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	18 June 2002(a)
ICCPR	20 September 2006(a)
ICESCR	27 September 2007(a)
ICERD	27 March 1990(a)

21 <http://www.bahrainrights.org/en/node/3692>

22 See Human Rights Watch 2011 UPR Submission on Bahrain <http://www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain>

ILO 29 Forced or Compulsory Labour	11 June 1981
ILO 87 Freedom of Association	-
ILO 97 Migration for Employment	-
ILO 98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	-
ILO 105 Abolition of Forced Labour	14 July 1998
ILO 111 Discrimination in Employment	26 September 2000
ILO 138 Minimum Age for Admission to Employment	2012
ILO 143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO 181 Private employment agencies	-
ILO 182 Prohibition worst forms of child labour	23 March 2001

## E. COMPLIANCE WITH CEDAW

The Kingdom of Bahrain acceded to the CEDAW in 2002 but made reservations to: Article 2; Article 9, paragraph 2; article 15, paragraph 4; Article 16; and Article 29, paragraph 1, stating they are incompatible with the provisions of the Islamic Shariah law. The CEDAW Committee has urged Bahrain to withdraw these reservations “as they are contrary to the object and purpose of the Convention.”<sup>23</sup>

## DISCRIMINATION

Bahrain’s Constitution enshrines the principle of equality between men and women and the CEDAW is directly applicable in national law. However, the CEDAW Committee has raised concerns about the lack of a specific definition of discrimination against women in domestic legislation, noting that the absence of such a provision, encompassing both direct and indirect discrimination in both the public and private spheres, constitutes an impediment to the full application of the Convention.<sup>24</sup>

<sup>23</sup> *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 17, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

<sup>24</sup> *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 17, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

The CEDAW Committee also expressed its concern about entrenched stereotypes regarding the roles of Bahraini women and men in the family, and noted the detrimental effect these have had on women's participation in education, the labour market and in political and public life. The Committee urged the Government to invest more in public awareness campaigns that promote the equal status of men and women in private and public life.<sup>25</sup>

Bahrain has undertaken some positive measures to eliminate discrimination against women, including: adoption of the National Strategy for the Advancement of Bahraini Women to promote women's enjoyment of their rights in all areas; establishment of the Supreme Council for Women in 2001 as the national mechanism for the advancement of women, and the establishment within the Supreme Council of a committee on women's complaints; a new "Citizenship" curriculum with the aim of empowering women in society; and the cooperation protocol of 2006 to eliminate stereotypical portrayals of women in educational material.<sup>26</sup>

## POLICY MEASURES

Bahrain's Policy on Labour Migration requires migrant workers to have a contract of employment and to undertake health assessments as prescribed by the Ministry of Health, in order to ascertain their physical fitness and determine that they do not carry any infectious diseases.<sup>27</sup> The pre-employment medical tests include a general medical examination and chest X-ray, as well as testing for HIV, hepatitis B and syphilis for certain occupation groups, including domestic workers. Workers who fail these tests are considered unfit for work and are not issued a work permit.<sup>28</sup>

Studies have shown that conducting such assessments without access to proper counselling and referrals makes migrants more vulnerable to abuse and exploitation.<sup>29</sup> Additionally, in General Recommendation 26, the CEDAW Committee states that subjecting migrant women to compulsory testing for contagious diseases, including for HIV/AIDS, and handing test results over to agents and employers is a violation of women's right to privacy.<sup>30</sup> Bahrain should therefore ensure that tests are not conducted without women's consent; that follow-up services are adequately provided; and that results are not shared with anyone without the woman's consent.

25 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 22-23, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

26 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 5, 6, 8 & 32, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

27 *Labour Migration from Indonesia, An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, p. 74, IOM, 2010.

28 *Bahrain Medical Bulletin*, Vol. 33, No. 1, March 2011. Available at: [http://www.bahrainmedicalbulletin.com/march\\_2011/Medical\\_News.pdf](http://www.bahrainmedicalbulletin.com/march_2011/Medical_News.pdf)

29 *Asian Labour Migrants and Health: Exploring Policy Routes*, p.3 IOM and the Migration Policy Institute, June 2011. Available at: <http://www.migrationpolicy.org/pubs/MigrationandHealth.pdf>

30 General Recommendation 26, Art. 17, CEDAW Committee.

Employment contracts must specify that employers of foreign workers are obliged to meet the costs of repatriating the foreign worker to their country of origin at the completion, expiry or cessation of the work contract. Should a foreign worker change employers, the new employer is liable to pay the repatriation costs at the end of the work contract.<sup>31</sup> This is a good-rights based practice as it decreases the likelihood of migrant workers falling into extreme debt or being stranded in Bahrain with no means of paying for a ticket home.

Regarding immigration policy, all foreigners staying in Bahrain for more than three months are required to acquire a resident permit. The Directorate of Immigration and Passports issues a residence permit, which is generally valid for two years. Work permits for all migrant workers are also valid for two years and are renewable, subject to medical clearance.<sup>32</sup>

## TRAFFICKING AND FORCED LABOUR

### **Forced Labour**

Forced labour is punishable by imprisonment and/or a fine pursuant to section 302 of the Penal Code of 1976 and 1993 amendments made by Legislative Decree No. 6. The legislation notwithstanding, many foreign workers are vulnerable to forced labour as a result of high recruitment fees charged by employment agencies in Bahrain and source countries. One study found that 70 per cent of foreign workers borrowed money or sold property in their home countries in order to secure a job in Bahrain.<sup>33</sup> Additionally, some Bahraini employers illegally charge workers exorbitant fees to remain in Bahrain and work for third-party employers (under the free visa arrangement). Bahrain's LMRA estimates that approximately 10 per cent of migrant workers are in Bahrain under illegal free-visa arrangements – a practice that can contribute to debt bondage – while the Bahrain Chamber of Commerce and Industry puts the figure at 25 per cent.<sup>34</sup>

### **Trafficking**

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Bahrain is a destination country for women subjected to human trafficking. Women from India, Pakistan, Nepal, Sri Lanka, Bangladesh, Indonesia, Thailand, the Philippines, Ethiopia, and Eritrea migrate voluntarily to Bahrain to work as domestic workers or as unskilled labourers in the construction and service industries. Upon arrival however, many are subjected to forced labour and sex work through the use of such practices as unlawful withholding of passports, restrictions on movement, contract substitution, non-payment of wages, threats, and physical or sexual abuse.<sup>35</sup>

31 *Labour Migration from Indonesia, An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, p. 74, IOM, 2010.

32 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008)

33 [http://bahrain.usembassy.gov/news\\_from\\_washington/bahrain-trafficking-in-persons-report.html](http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html)

34 US Department of State, Trafficking in Persons Report 2012.

35 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

The 2012 TIP report found that women from Thailand, the Philippines, Morocco, Jordan, Syria, Lebanon, Russia, China, Viet Nam and eastern European states are the majority of those forced to work as sex workers in Bahrain. The Report also concluded that, although the Government made some reforms to its migrant worker sponsorship system, the reforms are not sufficient and continue to give employers inordinate power over foreign workers, particularly domestic workers. NGOs and labourers have also claimed that officials allow Bahrainis to sponsor more expatriate workers than they could reasonably employ, and illegally engage in the free-visa arrangements, employing workers without going through the required procedures, and withholding their passports and salaries by way of coercion.<sup>36</sup> The TIP report noted that this illegal behaviour contributes to forced labour and debt bondage, however few victims are able to be assisted by the Government, due to the lack of a formal victim identification procedure.<sup>37</sup>

## PROSECUTION

In 2008, Bahrain enacted Law No. 1 on Human Trafficking, which prohibits all forms of trafficking in persons and prescribes penalties ranging from three to 15 years' imprisonment, which is commensurate with penalties prescribed for other serious crimes. The Government also established the National Committee to Combat Human Trafficking to improve collection of data, and devise programmes for combating trafficking and protecting victims. This law is a good, gender-sensitive, rights-based practice in compliance with Article 6 of the CEDAW, which requires states to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women." In its most recent Concluding Observations for Bahrain the Committee commended Bahrain for its efforts and urged the Government to monitor the impact of these measures so that it can provide information on the results achieved.<sup>38</sup>

With respect to prosecution, in 2011, the Government investigated 18 trafficking cases, five of which resulted in convictions. The 2012 TIP report notes, however, that because the government does not separate people-smuggling from human-trafficking offences, it is unclear how many of the convictions were actually for human trafficking.<sup>39</sup>

## PROTECTION

Women arrested for prostitution or fleeing their employer are often charged and detained with no regard for their personal circumstances. These women are generally sentenced to

36 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

37 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

38 *Concluding Observations – Bahrain*, Forty Second Session CEDAW Committee, 2008

39 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

two weeks' detention and then deported. Bahrain does not have adequate procedures for identifying potential victims of abuse among these vulnerable groups, and does not ensure that victims receive access to essential protective services, except for the very small number referred to the Government's primary shelter.<sup>40</sup> This failure to adequately identify and provide protection for women victims of trafficking violates Article 2 of CEDAW, which requires states to "take all appropriate measures to abolish regulations and practices which constitute discrimination against women." The CEDAW Committee's General Recommendation 19 on Violence against Women implores governments to provide protection and support services for victims of violence (including trafficking victims) as well as gender-sensitive training of judicial and law enforcement officers and other public officials.<sup>41</sup>

## PREVENTION

Some notable efforts made by the Government to prevent human trafficking include an interagency committee to better monitor and identify trafficking issues, and a "know your rights" media campaign using television, radio and other media to educate vulnerable populations about the risks of trafficking. Despite these efforts, ten of thousands of women migrant workers remain at risk of forced labour and debt bondage as a result of the Kafala system which, although repealed for other categories of labourers, still applies to domestic workers. The problem is compounded by the fact that Bahrain's 2010 labour law does not cover domestic workers, thus increasing the chances of exploitation and abuse of this vulnerable population.<sup>42</sup> The Special Rapporteur on Trafficking in Persons, Especially Women and Children, after a fact-finding mission in Bahrain, noted the link between these exemptions in the law and the increased likelihood of trafficking.<sup>43</sup> Thus, exempting domestic workers from labour laws and from legislative reforms to abolish the Kafala system is discriminatory and violates Articles 11 and 15 of the CEDAW, which require governments to protect women's health and safety in working conditions, and to ensure men and women are accorded equal protection under the law.

## EMPLOYMENT

The Ministry of Labour enforces the labour law and mandates acceptable conditions of work for all adult workers, except domestic workers (who are outside the purview of labour laws), including a maximum working week of 48 hours, with special permission required by the ministry for work in excess of 60 hours per week. Because the Labour Law does not cover domestic workers many are required to work 15 to 17 hours a day, seven days a week. Since domestic workers' legal status in Bahrain depends on the continued visa sponsorship of their

40 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

41 General Recommendation 19, Art. 24 The CEDAW Committee

42 *Trafficking in Persons Report – Bahrain*, US Department of State, 2012.

43 Statement of Sigma Huda, *Special Rapporteur of the United Nations Commission on Human Rights on trafficking in persons, especially women and children*, UN Press Release, November 2006. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument>

employers, those who attempt to escape from exploitative situations risk arrest, prolonged administrative detention and deportation. Reports have also indicated that public authorities often privilege employers in disputes involving migrant workers.<sup>44</sup>

Consequently, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has strongly urged Bahrain to take steps to ensure that new Labour Code includes provisions that explicitly define and prohibit direct and indirect discrimination, on all the grounds enumerated in Article 1(1)(a) of the Convention Concerning Discrimination in Employment, with respect to all aspects of employment and occupation, and covering all workers, including domestic workers, casual workers and agricultural workers.<sup>45</sup> The CEDAW Committee also remarked on the fact that female migrant domestic workers are not covered under the labour code, are unaware of their rights, and cannot easily file complaints or seek redress in cases of abuses. The Committee called upon Bahrain to take all appropriate measures to ensure that the labour code covers all migrant domestic workers.<sup>46</sup>

In response to the various criticisms, the Government of Bahrain adopted Order No. 79 of 16 April 2009, which relates to the procedures governing the transfer of a foreign worker from one employer to another. Section 2 of the Order states that the foreign worker shall have the right to transfer to work with another employer without violating the rights of an employer by virtue of the provisions of the law or the text of the labour contract concluded between the parties. While such reform is encouraging it does not go far enough. The US Department of State reported that, while the new rules went into effect in August 2009, there are still restrictions on how migrant workers can change jobs without employers' permission. The report also indicates that most of the new rules do not apply to domestic workers. Migrant domestic workers need to be included in the protection provided by Order No. 79, and reform of the Labour Code still needs to be implemented in order for it to comply with Article 11 of CEDAW on equality in employment.<sup>47</sup>

Bahraini law prohibits sexual harassment, and stipulates penalties of imprisonment of "up to one year or a fine of 100 dinars (265 dollars) if the victim is 14-21 years old, and up to three months in prison and a fine of 20 dinars (53 dollars) if the suspect is convicted of insulting or committing an indecent act towards a female in public."<sup>48</sup> Despite this, the US Department of State report continues, "sexual harassment remains a widespread problem for women, especially foreigners employed as domestic workers and in other low-level service jobs."<sup>49</sup> As noted in General Recommendation No. 26, women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers

44 OHCHR Compilation Report for the Universal Periodic Review of Bahrain (A/HRC/WG.6/1/BHR/2) (2008)

45 CEACR, 'Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958' (No. 111) Bahrain (ratification: 2000) (2010)

46 *Concluding Observations – Bahrain*, Forty Second Session CEDAW Committee, 2008

47 US Department of State, Human Rights Report 2010, Bahrain

48 *Human Rights Report 2011 – Bahrain*, p.27, U.S. State Department, available at: <http://www.state.gov/documents/organization/186633.pdf>

49 *Human Rights Report 2011 – Bahrain*, p.27, U.S. State Department, available at: <http://www.state.gov/documents/organization/186633.pdf>

are particularly vulnerable to physical and sexual assault, food and sleep deprivation and other abuses by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is also a problem worldwide.

With respect to maternity protection, Article 61 of Bahrain's Labour Law provides for 45 days of maternity leave with full pay, and a further 15 days without pay. In addition, Article 62 provides for daily breast-feeding breaks.<sup>50</sup> This is a gender-sensitive, rights-based practice in line with Articles 11(2)(b) and (c) of CEDAW, which require the introduction of maternity leave with pay and the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities. However, since the Labour Law excludes domestic workers, and since the majority of these workers are women, the exclusion of domestic workers is discriminatory and contrary to the aims and purpose of CEDAW.

## EMPLOYMENT CONTRACT

Bahrain's Policy on Labour Migration requires labour migrants to have a contract of employment. The contract must contain: the employer's name and address; the worker's name, qualifications, nationality, occupation, address, and identification; date of appointment; nature, type and place of employment; duration of contract; wage, method and date of payment; and any special conditions. Also, employers of foreign workers are required to pay the costs of repatriating the foreign worker to their country of origin at the completion, expiry or cessation of the work contract. If a foreign worker changes employers, the new employer is liable for paying the repatriation costs at the end of the work contract. Employers must also provide foreign workers with a receipt for all documents which may have been deposited with them for safekeeping.<sup>51</sup>

Contracts for migrant workers that stipulate working hours and minimum wages are regarded as good rights-based practices.<sup>52</sup> However, a 2009 study by the LMRA found that 65 per cent of foreign workers had not seen their employment contract and that 89 per cent were unaware of their terms of employment.<sup>53</sup> When migrant workers are unaware of their contractual rights, they are less likely to challenge illegal behaviour by their employer. Additionally, when migrant workers' legal presence in a country is linked to an ongoing contractual relationship, the fear of deportation makes them less likely to report illegal conduct, and thus more vulnerable to abuse.<sup>54</sup>

50 UPR National Report, Bahrain.

51 IOM, *Labour Migration from Indonesia* (2010)

52 Report of the Special Rapporteur on Migration to the UN Economic and Social Council of January 12, 2004. (E/CN.4/2004/76)

53 Human Rights Report – Bahrain 2012, U.S. State Department.

54 ILO, 'The Special Working Contract for Non Jordanian Domestic Workers' (2003)

## MINIMUM WAGE

<sup>55</sup>Several foreign governments have tried to introduce minimum wages for their nationals working in Bahrain, however, the Labour Minister has stated the government will not accept any minimum wage for foreign workers.<sup>56</sup> The lack of a minimum wage often results in very low pay for migrant workers. Many have found it increasingly difficult to cope with financial difficulties, and there has been an increase in the number of migrants taking their own lives.<sup>57</sup> Estimates show that foreign domestic workers in Bahrain earn approximately 20 per cent of average wages.<sup>58</sup> Because the vast majority of domestic workers are women, this constitutes de facto discrimination based on gender and is a violation of Article 11 (d) of the CEDAW, which guarantees women the right to equal remuneration.

## MINIMUM AGE

The minimum age for employment is 16, however younger people aged between 14 and 16 may be allowed to work in special circumstances. They may not work more than six hours per day and are prohibited from working in industries that are hazardous or unhealthy, including construction, mining, and oil refining.<sup>59</sup> Some sending countries have established minimum ages for their citizens working in Bahrain. For example, Bangladesh does not allow women under 25 to work as domestic helpers,<sup>60</sup> Indonesia requires that its workers migrating to Bahrain must be 18 or older, but domestic workers must be at least 21,<sup>61</sup> and an agreement with the Philippines states that domestic workers from that country must be at least 30 years old.<sup>62</sup>

## BENEFITS AND HEALTH CARE

The Government does not charge taxes from any workers, including female migrant workers. Medical care is also free for all people living in Bahrain, including female migrant workers.<sup>63</sup> These are good examples of gender-sensitive rights-based practices in that they do not discriminate between benefits available to men and women, or between Bahrainis and foreigners.

55 US Department of State, Human Rights Report 2010, Bahrain.

56 Wage Woes for Maids, Bahrain Centre for Human Rights, 2006

57 *Poverty drives migrant Indian workers in Bahrain to suicide*, Bahrain Centre for Human Rights, June 2012. Available at: <http://www.bahrainrights.org/en/node/1288>

58 *Domestic Work Policy Brief: Remuneration in Domestic Work*, ILO 2011 available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_155654.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155654.pdf)

59 *Human Rights Report 2011 – Bahrain*, Section 7c, U.S. State Department. 50 UPR National Report, Bahrain.

60 ILO (2011), Report on the review of The Decent Work Country programme: Bangladesh 2006-2009. 52 Report of the Special Rapporteur on Migration to the UN Economic and Social Council of January 12, 2004. (E/CN.4/2004/76)

61 *Labour Migration from Indonesia*, p. 74, IOM, 2010

62 *International Migration Papers, No. 1, Women Migrant Domestic Workers in Bahrain*, p. 22, ILO, 2002 available at: <http://www.ilo.org/public/english/protection/migrant/download/imp/imp47e.pdf>

63 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008)

## REGULATION OF EMPLOYMENT AGENCIES

All recruitment agents must be licensed by the Ministry of Labour and Social Affairs, and employers are cautioned not to enter into a contract with a recruitment agent unless it holds a valid licence. According to regulations, the employee should not be charged with any costs related to obtaining or retaining employment.<sup>64</sup> However, in practice many labour recruitment agencies in Bahrain and source countries require workers to pay high recruitment fees, a practice that makes them highly vulnerable to forced labour once in Bahrain.<sup>65</sup> According to one trade union officer, female labour migrants who migrate to Bahrain to work in the domestic sector are particularly vulnerable to exploitation by recruitment agencies, which have reportedly demanded up to three months' salary in exchange for a visa, far in excess of the regular recruitment fees.<sup>66</sup>

The Ministry of Labour and Social Affairs supervises and conducts regular inspection of employment agencies. Between 2002 and 2010, authorities closed 105 agencies that were accused of confiscating labour migrants' passports, switching contracts or withholding salaries.<sup>67</sup> Economic exploitation by recruitment agents and other service providers violates migrant women's equal right to employment. It is therefore critical that Bahrain continue to monitor recruitment agents closely, particularly those focused on hiring domestic workers, as they are particularly vulnerable to exploitation given that they are not covered under labour laws.

## WORK SAFETY

The Ministry of Labour enforces the labour law and determines acceptable conditions of work for all employees, except domestic workers. During 2011, the Ministry of Labour employed 43 inspectors to check for compliance with workplace safety standards. Inspectors are authorized to issue fines and close worksites if employers are in violation of regulations. Penalties include fines from 50 dinars (133 dollars) to 300 dinars (798 dollars).<sup>68</sup> During the year inspectors visited 354 migrant labour camps to verify that workers' accommodation met required safety and hygiene standards. According to a report by the US State Department: "Violations were found in 348 camps; 230 were issued orders to rectify the violations, nine cases were transferred to the public prosecution for legal action, and the other cases remained under investigation as of year's end."<sup>69</sup>

Unfortunately, however, inspectors are only authorized to inspect commercially registered workplaces, but not private homes where most domestic workers live, or unregistered "private" camps where many unskilled labourers work.<sup>70</sup> This lack of oversight leaves tens of

64 *Labour Migration from Indonesia*, p. 74, IOM, 2010

65 *Trafficking in Persons Report 2012 – Bahrain*, US Department of State.

66 *Labour Migration from Indonesia*, p. 76, IOM, 2010

67 *Labour Migration from Indonesia*, p. 77, IOM, 2010

68 *Human Rights Report 2011 – Bahrain*, U.S. State Department

69 *Human Rights Report 2011 – Bahrain*, U.S. State Department

70 *Human Rights Report 2011 – Bahrain*, U.S. State Department

thousands of women vulnerable to unsafe working conditions. There are credible reports of domestic workers being forced to work up to 16 hours per day with little time off, becoming malnourished, and being subjected to verbal and physical abuse, including sexual molestation and rape.<sup>71</sup> Human rights advocates have reported that as a result, between 30 and 40 per cent of the recent attempted suicide cases handled by the government's psychiatric hospitals have been foreign domestic workers.<sup>72</sup>

Excluding private homes from workplace inspections is discriminatory because the vast majority of migrant women in Bahrain work in domestic settings.<sup>73</sup> The lack of oversight has led to abuse and exploitation of domestic workers in violation of Article 11(f) of the CEDAW, which guarantees women the right to protection of health and safety in working conditions. Domestic workers are also excluded from the Law on Social Insurance (Decree Law No. 24/1976), which provides for insurance against: old-age pension payments; disability and death; employment injuries; and temporary disability by reason of sickness or maternity, among other benefits. However, it has been reported that the government is in the process of including domestic workers in the coverage of the law and there is a plan to establish an agency to deal with this matter.<sup>74</sup> Bahrain should move quickly to ensure coverage of domestic workers under the social insurance law in order to comply with Article 11 (e) of the CEDAW guaranteeing women the right to social security in cases of retirement, unemployment, sickness, invalidity and old age.

## EQUALITY BEFORE THE LAW

Article 15 of the CEDAW requires States parties to accord to women equality with men before the law, including laws related to freedom of association and freedom of movement.

## FREEDOM OF ASSOCIATION

The US State Department has reported that, “[w]ith the exception of domestic servants, foreign workers, who made up approximately 60 per cent of the workforce, are allowed to join unions. The law prohibits unions from engaging in political activities and states that all trade unions are required to join the General Federation of Bahrain Trade Unions (GFBTU).”<sup>75</sup> This law is discriminatory in that it only allows migrant workers who are not engaged in domestic work to exercise their freedom of association, thereby violating Article 15 of CEDAW, which guarantees women equality before the law.

71 *Human Rights Report 2011 – Bahrain*, U.S. State Department

72 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

73 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

74 UNIFEM, ‘Legal Protection for Migrant Domestic Workers in Asia and the Arab States’ (2008)

75 *Human Rights Report 2011 – Bahrain*, U.S. State Department

## Bilateral Trade Union Agreements on Migrant Workers

In 2009, Bahrain entered into a bilateral trade union agreement about migrant workers with leaders of three national trade union centres in Sri Lanka. The aim of the agreement is to promote migrant workers' rights by: improving trade union protection; coordinating activities between trade unions in Sri Lanka and Bahrain; campaigning for ratification of relevant conventions; raising awareness of the benefits of labour migration; and addressing migrants' occupational health and safety and housing concerns. Importantly, the agreements call for gender equality, including equality of treatment and non-discrimination, and state the need for special protection for vulnerable categories of workers, such as agricultural and domestic workers.<sup>76</sup>

These agreements are good gender-sensitive rights-based practices in line with the CEDAW, as they support equality between men and women, recognize domestic workers' contributions, and promote measures to ensure women's rights are protected in the workplace.

### Freedom of Movement

Article 15(4) of CEDAW requires States parties to accord to women equality with men before the law, including laws related to freedom of movement. In Bahrain, in contrast to many other Gulf nations, labour migrants have the right to keep their own passports. According to Bahraini law, no person is allowed to keep another person's passport. This makes it easier for labour migrants to move freely, leave their employers, contact their consulate or seek refuge at a shelter if they encounter problems at the workplace.

Despite this, the law prohibiting the withholding of employees' passports has not been effectively enforced, thus employers still routinely retain the passports of domestic workers.<sup>77</sup> Confiscation of travel documents and belongings by employers restricts freedom of movement and makes it difficult for women migrant workers to leave the country or return home if required. This practice is a violation of CEDAW Article 15(4), which accords men and women the same rights with regard to movement.

## WOMEN'S ACCESS TO JUSTICE

### Redress For Workers' Rights

A number of avenues exist for female migrant workers to seek redress for workplace violations. When a worker lodges a complaint, the Ministry of Labour is charged with opening an investigation and, when appropriate, taking remedial action. The ministry reportedly received 5,132 complaints during 2009, including an average of 11 from domestic workers per month. Ministry officials stated that they were able to resolve most cases through mediation, and

<sup>76</sup> *Bilateral trade union agreements on migrant workers rights between Sri Lanka and Bahrain, Kuwait and Jordan*, ILO 2009, available at: [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=32](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32)

<sup>77</sup> *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012.

public prosecutors took the remaining for investigation. Complaints that cannot be settled through arbitration must be referred to the court within 15 days. Resolutions of disputes are exempt from fees at all stages of the proceedings.<sup>78</sup> Additionally, if a contract dispute involving a domestic worker cannot be resolved and goes to court, the court will appoint a lawyer for the migrant worker.<sup>79</sup> Employers of citizens and migrant workers who fail to pay wages as required by law are liable to face fines and imprisonment.<sup>80</sup>

In theory, these are good protections, however, many migrant women, particularly domestic workers who still work under the Kafala system, refrain from making complaints to authorities out of fear of deportation or employer retaliation.<sup>81</sup> If a victim brings a suit against her employer, she cannot leave the country for the duration of the case, which is difficult without financial support. The Migrant Workers Protection Society (MWPS) provides some compensation to victims but the amount is reportedly low. Also, most victims of rape by their employers do not seek legal redress since local courts require witnesses to prove guilt for such assaults.<sup>82</sup> As a result, the CEDAW Committee has urged Bahrain to strengthen its efforts to ensure that migrant domestic workers have adequate legal protection, are aware of their rights and have access to legal aid.<sup>83</sup>

### **Redress For Violence Against Women**

Bahrain has no laws or government policies that specifically address gender-based violence, and there is a lack of enforcement for the existing legal provisions that may apply. For example, the think tank Freedom House has noted that “the penal code generally addresses violence against citizens, but this is not adequate to protect against sexual harassment and domestic abuse. Wives, daughters, and female foreign workers rarely seek legal redress for violence committed against them, and when they do, the perpetrators often avoid punishment, thereby exposing victims to additional maltreatment ... Additionally, under Article 353 of the penal code, a rapist may avoid punishment if he agrees to marry his victim.”<sup>84</sup> This lack of legal protection for women who are victims of violence violates Article 2 of the CEDAW, which obligates States parties to “take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.” As the CEDAW Committee noted in its General Recommendation 19, gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

The Government does run a hotline for victims of violence, and there is one government-run shelter in Bahrain, which is funded by the Ministry of Social Affairs. The shelter can accommodate up to 20 people and is offered to women and children who have been

78 Labour Law for the Private Sector, Article 155.

79 ECOSOC, ‘Report of the Special Rapporteur on Migrant Workers, (E/CN.4/2004/76) (2004) .

80 UNIFEM, ‘Legal Protection for Migrant Domestic Workers in Asia and the Arab States’ (2008).

81 US Department of State, Human Rights Report 2010, Bahrain.

82 US Department of State, Human Rights Report 2010, Bahrain.

83 Concluding Observations of the CEDAW Committee – Bahrain 2008.

84 *Women’s Rights in the Middle East and North Africa – Progress amidst resistance*. Bahrain Chapter p.6, Freedom House, 2010.

victims of violence, irrespective of their nationality. The shelter provides protection to victims, including legal assistance, accommodation, meals and recovery assistance. Prior to accommodating victims, police reports are filed to ensure that the claims of violence against the victims are processed, as well as confirming the identity of victims and ensuring that their status is not irregular.

The MWPS, with financial assistance from the government, also manages a shelter for both victims of trafficking and abused labour migrants, including female domestic workers.

Additionally, a number of embassies such as that of the Philippines offer shelter and other direct assistance to their nationals. The Indonesian Government shelter also has the capacity to accommodate 20 domestic workers fleeing abuse.<sup>85</sup>

The Government also continues to conduct awareness campaigns and publishes pamphlets on foreign resident workers' rights in several languages, which are provided to local diplomatic missions. Yet despite these efforts, many foreign workers remain unaware of their rights under the law.<sup>86</sup> In its General Recommendation 26 the CEDAW Committee commented on the practical barriers that may prevent women from accessing justice. It noted that women migrant workers often lack knowledge of their embassies or of services available, due to their dependence on employers. General Recommendation 26 recognizes that it is very difficult for women migrant domestic workers who rarely leave the house to even register with embassies, let alone file complaints. Thus, the Government must take all steps necessary to ensure women migrant workers, particularly those working in private homes, have access to information about their rights and are able to access justice mechanisms when needed.

## F. ANALYSIS AND CONCLUSIONS

In recent years the Government of Bahrain has taken steps towards improving the standing of women in Bahrain. The quasi-governmental Supreme Council for Women (SCW) has played an important role in this process, by: helping the government formulate policies on women's issues; promoting political participation of women; organizing workshops and publishing studies on gender issues; and generally advocating for gender equality. Additionally, the adoption of a national strategy for the advancement of women, and the new law to combat trafficking are welcome initiatives to further promote and protect the rights of women. A number of other concrete measures taken by Bahrain are also gender-sensitive and rights-based good practices, including:

85 IOM, *Labour Migration from Indonesia (2010)*

86 US Department of State, *Human Rights Report 2010, Bahrain*.

- Establishment of the National Committee to Combat Human Trafficking with the responsibility to devise programmes to prevent and combat human trafficking and protect victims from further harm, and to coordinate with national machinery with regard to human trafficking data.
- Gender-sensitive bilateral trade union agreements on migrant workers with Sri Lanka.
- A policy requiring all labour migrants, regardless of occupation, to have a contract of employment.
- A policy to not charge taxes from any workers, including female migrant workers.
- Provision of free medical care to all migrant workers, including domestic workers.
- A Ministry of Labour policy to review the records of complaints or disputes filed against employers before approving their applications for employment of migrant domestic workers.
- Distribution of brochures on workers' rights at airports, health centres, and foreign embassies.
- Establishment of centres within the Supreme Council for Women, with offices in all governorates, to receive and act on women's complaints.
- Establishment of complaint hotlines for migrant workers.
- Establishment of a shelter for women victims of violence, including migrant workers.
- The Constitution which enshrines the principle of equality between men and women and further provides that the CEDAW has the status of law in Bahrain and can thus be directly applied.
- Introduction of a new curriculum entitled "Citizenship," which addresses human rights issues, and aims to empower women in society.
- Partial repeal of the Kafala system.
- Requirements that employers meet the costs of repatriating foreign workers to their country of origin at the completion of the work contract.
- A media campaign to educate vulnerable populations about the risks of trafficking.
- Labour laws mandating a maximum of 48 hours of work per week, and 45 days of maternity leave with pay, plus 15 days without pay (although these exclude domestic workers).
- Provisions for daily breastfeeding breaks at work.
- Order 79 of 16 April 2009, which gives foreign workers (except domestic workers) the right to transfer from one employer to another.
- Laws prohibiting sexual harassment.
- Government licensing and inspections of recruitment agencies, and fines and closures for those that do not abide by regulations.
- Inspections for workplace safety (excluding private homes).
- Giving migrant workers the right to join trade unions (except domestic workers).
- Regulations providing that foreign workers have the right to keep their own passports.
- Legal mechanisms for resolving complaints by migrant workers include: investigations, mediation, appointments of lawyers that proceed to court.

Despite these positive developments, women migrant workers in Bahrain, particularly domestic workers, are particularly vulnerable to abuse and exploitation. They are not protected by labour laws and are often subjected to conditions of involuntary servitude, with long working hours, minimal wages, limitations on their movement, and exposure to threats and violence. Additionally, because domestic workers are isolated and fear deportation if they complain, it is very difficult for them to seek legal redress. To address these problems, and better protect

the rights of women migrant workers in Bahrain, it is recommended that the Government consider the following recommendations.

## G. RECOMMENDATIONS

- Incorporate the definition of discrimination against women, as contained in Article 1 of the Convention, into domestic legislation.
- Revise the Labour Code again to ensure that it provides to women migrant workers, including domestic workers, the same rights and protection that are extended to all other workers in the country, including the right to organize and freely associate.
- Ensure that contracts for women migrant workers are legally valid and enforce wage and hour regulations, health and safety codes and holiday and vacation leave regulations. Ensure workers are shown their contracts and have it explained to them in their own language.
- Put in place mechanisms for monitoring working conditions of migrant women, especially in the kinds of workplaces where vulnerable women dominate, such as private homes.
- Enact regulations relating to independent residency status to allow for the legal stay of a woman who flees her abusive employer or spouse, or is fired for complaining about abuse.
- Dismantle the Kafala system and end domestic workers' forced seclusion.
- Train police officers to protect the rights of women migrant workers.
- Increase information exchange and bilateral cooperation agreements with countries of origin, to prevent trafficking.
- Provide mandatory awareness-raising programmes concerning the rights of migrant women workers, and gender-sensitivity training for: recruitment agencies; employers; and relevant State employees, such as criminal justice officers, border police, immigration authorities, border police and social service and healthcare providers.
- Improve procedures for examination of families who are allowed to employ domestic workers to ensure that they are financially capable and will respect the human rights of their employees.
- Enforce laws requiring employers to pay all transportation costs of migrant workers.
- Ratify the convention on migrant workers as well as other ILO conventions related to migrant work.
- Withdraw all reservations to CEDAW.
- Enhance efforts to eliminate stereotypes regarding the roles of women and men in the family and society.
- Ensure migrant women are not subjected to medical tests without their consent; ensure adequate counselling and services are provided to women when test results are provided; and ensure test results are not provided to anyone without workers' consent.
- Punish recruitment agencies found to be charging migrant workers exorbitant fees.
- Punish employers found to be withholding workers' passports and restricting their movements.
- Ensure mechanisms are in place to identify victims of trafficking and ensure victims are not punished for offences related to their having been trafficked.

- Include domestic workers under Order No. 79 of 16 April 2009 to allow them to transfer from one employer to another.
- Enhance enforcement of laws related to sexual harassment.
- Enact a minimum wage that allows all workers to make a decent living.
- Monitor recruitment agencies more closely, particularly those recruiting migrant women for domestic work.
- Include migrant women domestic workers in the Law on Social Insurance.
- Allow domestic workers to join unions.
- Increase access to justice mechanisms for migrant workers by providing legal assistance in contract negotiations and in seeking redress for violations. Provide adequate financial assistance to migrant workers participating in investigations.
- Enact a law to specifically address gender-based violence, and repeal the law allowing rapists to go unpunished if they marry their victim.
- Increase the number of services/shelters available to victims of violence.

## REFERENCES

- Bahrain Centre for Human Rights, Bahrain Youth Society for Human Rights & Caram Asia (2008), The Situation of Women Migrant Domestic Workers in Bahrain, Report submitted to the 42nd Session of the CEDAW Committee
- Bahrain Labour Code 1976
- CEACR: Individual Observation concerning Convention No. 29, Forced Labour, 1930 Bahrain (ratification: 1981) Published: 1994
- CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Bahrain (ratification: 2000) Published: 2010
- CEDAW (2008), *Concluding Observations: Bahrain*, CEDAW/C/BHR/CO/2
- CEDAW Committee, General Recommendation No. 26 on women migrant workers
- ECOSOC (2004), Report of the Special Rapporteur on Migrant Workers, E/CN.4/2004/76. World Survey (2004), Women and Migration
- Committee on the Elimination of Discrimination Against Women (2008), Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain, CEDAW/C/BHR/CO/2
- Gulf Daily News, 2007
- IOM (2010), Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East
- ILO (2003), The Special Working Contract for Non Jordanian Domestic Workers
- OHCHR (2008), Compilation Report for the Universal Periodic Review of Bahrain, A/HRC/WG.6/1/BHR/2
- Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2006/73/Add. 1), para. 3
- Report of the Special Rapporteur on Migration to the UN Economic and Social Council of January 12, 2004
- UNIFEM (2008), Legal Protection for Migrant Domestic Workers in Asia and the Arab States
- US Department of State, Human Rights Report 2010, Bahrain

## INTERNET

- <http://www.constructionweekonline.com/article-7467-new-bahrain-labour-law-to-give-workers-more-rights/>
- [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=32](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32)
- [http://en.wikipedia.org/wiki/Kafala\\_System](http://en.wikipedia.org/wiki/Kafala_System)
- <http://en.worldstat.info/Asia/Bahrain>
- [http://en.news.maktoob.com/20090000569060/Foreigners\\_now\\_majority\\_of\\_Bahrain's\\_population/Article.htm](http://en.news.maktoob.com/20090000569060/Foreigners_now_majority_of_Bahrain's_population/Article.htm)
- <http://data.worldbank.org/country/bahrain>

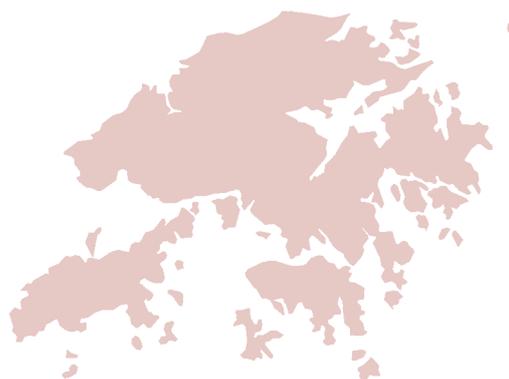


Photo credit: United Nations/Lin Joe Yin



RECEIVING COUNTRIES

# Hong Kong SAR (China)



## A. TERRITORY CONTEXT

Hong Kong, although a part of China, is a special administrative region (SAR) created in 1997 after the expiration of the United Kingdom's 99-year lease on the territory. Under the principle of "one country, two systems", Hong operates under a different political system from mainland China and maintains a relatively high degree of autonomy, enjoying executive, legislative and independent judicial power. Hong Kong SAR's independent judiciary functions under the common law framework, and The Basic Law, Hong Kong SAR's constitutional document, ensures equality before the law, and respect for the rights and freedoms of its residents, including freedom of assembly and movement, freedom of religious belief, and freedom to join trade unions.<sup>1</sup>

Hong Kong SAR is one of the most densely populated places in the world. It has a population of 7.1 million<sup>2</sup>, enjoys a very high human development index. Hong Kong SAR is primarily a receiving territory of labour migrants. Foreign workers include professionals as well as domestic workers, with the latter making up approximately 4 percent of the population and are overwhelmingly women. As of April 2013 Hong Kong employs more than 300,000 foreign domestic workers.<sup>3</sup> The overwhelming majority of these domestic workers are women, most of whom originate from the Philippines (152,807) and Indonesia (151,382).<sup>4</sup>

1 Available from: <http://www.gov.hk/en/residents/government/political/#/en/residents/government/law/>

2 Available from: <http://www.gov.hk/en/about/abouthk/factsheets/docs/population.pdf> |

3 Available from: [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_201584/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_201584/lang--en/index.htm)

4 *Global Migration 2012, Trends, Patterns and Conditions of Migration, Asia Pacific Mission for Migrants*. Available at: [www.apmigrants.org/downloads?dir...Researches...file...2012...](http://www.apmigrants.org/downloads?dir...Researches...file...2012...)

Human Development Index	Rank 21 (Very high)
Stock of immigrants 2010	2,741,800
Annual growth rate of immigrant population	0.9%
Immigrants' share of the population	39.5%
Proportion of female immigrants	56.5%

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

In general, Hong Kong SAR is perceived to enjoy a high level of civil liberties. Human rights protection is enshrined in the Basic Law and its Bill of Rights Ordinance (Chapter 383). The Bill of Rights Ordinance puts the International Covenant on Civil and Political Rights (ICCPR) into effect in Hong Kong SAR. Any legislation that is inconsistent with the Basic Law can be set aside by the courts.

Although the territory's administration generally respects the human rights of the citizens, there are concerns that the right to freedom of assembly has been unduly restricted by the Public Order Ordinance and that police have abused their powers when using heavy-handed tactics towards protesters. Other core areas of concern include covert surveillance tactics that violate the right to privacy, a lack of legal protection for homosexuals, and a lack of respect for labour rights.

Additionally, in 2011, the right to abode and the debate on whether to grant permanent residency to migrant workers who have been working and living in Hong Kong SAR for at least seven years sparked a public controversy, and highlighted how domestic workers are often perceived and treated differently from others who migrate for work. Hong Kong SAR's Basic Law allows that persons not of Chinese nationality can apply for permanent residency if they entered on valid travel document, ordinarily resided in Hong Kong SAR for a continuous period of seven years, and have taken the territory as their place of permanent residence.

However, domestic workers are excluded from this provision of the law. In 2011, the High Court held that the Basic Law applies equally to all people, including domestic workers. This decision was heralded by human-rights advocates as an important step forward in eliminating discrimination against migrant domestic workers. However, in March 2012, the High Court's decision was overturned by the Appeals Court which held that sovereign authority has the power to admit, exclude and expel certain categories of aliens.<sup>5</sup> Critics argue that gender, race and nationality are what lie at the heart of such unfair treatment towards domestic workers.

## C. KEY STAKEHOLDERS

Labour laws in Hong Kong SAR are administered by the Labour Department, which is charged with improving the utilization of human resources by providing a range of employment services to meet changes and needs in the labour market to: ensure that risks to people's safety and health at work are properly managed by legislation, education and promotion; foster harmonious labour relations through promotion of good employment practices and resolution of labour disputes; and improve and safeguard employees' rights and benefits in an equitable manner.

Migrant Forum Asia (MFA) is a regional network of non-governmental organizations (NGOs), associations and trade unions of migrant workers, and individual advocates in Asia who are committed to protecting and promoting the rights and welfare of migrant workers. MFA acts as a facilitator and a regional communication and coordination point between member organizations and advocates, forging concerted action to address discriminatory laws and policies, violence against women migrants, unjust living conditions, unemployment in the homeland and other issues affecting migrant workers.<sup>6</sup>

The Hong Kong Federation of Asian Domestic Workers (FADWU), founded in 2010, seeks to unite the unions representing domestic workers of different origins into one federation in order to struggle for common rights and conditions in Hong Kong SAR. It used the campaign for adoption of the International Labour Organization's (ILO) Convention on Domestic Workers as a unifying tool, and with technical and financial inputs from the ILO, affiliated six domestic worker unions in Hong Kong SAR, the Philippines, Nepal, and Thailand. The founding unions are: the Indonesian Migrant Workers Union; the Hong Kong Domestic Workers General Union; the Filipino Domestic Helpers General Union, Hong Kong; the Union of Nepalese Domestic Workers in Hong Kong; the Overseas Domestic Workers' Union – HK; and the Thai Migrant Workers' Union Hong Kong.<sup>7</sup>

## D. RATIFICATION RECORD

The following table illustrates Hong Kong SAR's ratification status of international treaties related to women migrant workers.<sup>8</sup>

5 Ivan Broadhead, "Hong Kong Court Overturns Case Granting Foreign Maids Residency", *Voice of America*, 27 March 2012. Available from: [www.voanews.com/content/hong-kong-court-overturns-case-granting-foreign-maids-residency-144645995/180641.html](http://www.voanews.com/content/hong-kong-court-overturns-case-granting-foreign-maids-residency-144645995/180641.html)

6 Available from: [www.mfasia.org/about-mfa](http://www.mfasia.org/about-mfa)

7 Available from: [www.fadwu.org](http://www.fadwu.org)

8 Data from International Labour Organization. Available from: [www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200\\_COUNTRY\\_ID:103578](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:103578)

TREATIES	RATIFICATIONS
MCW	-
CEDAW	14 October 1996 (through a communication of the UK to the UN SG) <sup>9</sup>
ICCPR	20 May 1976 (ratification of UK)
ICESCR	20 May 1976 (ratification of UK)
ICERD	29 December 1981 (accession of China)
ILO C29 Forced or Compulsory Labour	1 July 1997
ILO C87 Freedom of Association	1 July 1997
ILO C97 Migration for Employment	1 July 1997
ILO 98 Right to Organize and Collective Bargaining	1 July 1997
ILO C100 Equal Remuneration	-
ILO C105 Abolition of Forced Labour	1 July 1997
ILO C111 Discrimination in Employment	12 January 2006
ILO C138 Minimum Age for Employment	28 April 1999 (communication of China to ILO)
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition on the Worst Forms of Child Labour	8 August 2002 (communication of China to ILO)

## E. COMPLIANCE WITH CEDAW

### DISCRIMINATION

Hong Kong SAR passed the Race Discrimination Ordinance<sup>10</sup> into law in July 2008. However, the law has a weak definition of indirect discrimination and does not cover discrimination on the basis of nationality, citizenship and residence, effectively excluding migrant workers. NGOs have criticized this law as not providing full compliance with international human

<sup>9</sup> Available at: [http://www.bayefsky.com/html/uk\\_t2\\_cedaw.php](http://www.bayefsky.com/html/uk_t2_cedaw.php)

<sup>10</sup> Available from: [www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A?OpenDocument&bt=0](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A?OpenDocument&bt=0)

rights standards<sup>11</sup>, and human rights treaty bodies have raised concerns about the lack of protection against discrimination and abuse of foreign domestic helpers.<sup>12</sup>

## POLICY MEASURES

Hong Kong SAR's labour policy provides that local workers shall enjoy priority in employment over foreign workers. Despite this, the administration introduced the Quality Migrant Admission Scheme in June 2006, aiming to attract highly skilled or talented people from the mainland and overseas to settle in Hong Kong SAR. The scheme is quota-based and operates on a points-based system. People admitted under this scheme are allowed an initial stay of one year in Hong Kong SAR, even without an offer of local employment. The Supplementary Labour Scheme, first introduced in February 1996, also allows employers to apply for admission of foreign workers at technician level or below from outside Hong Kong SAR. There are no industry-specific quotas under the Supplementary Labour Scheme, and applications are considered on a case-by-case basis. However, to ensure that priority is extended to local workers in hiring, vacancies must first be advertised in newspapers.

## DOMESTIC WORKERS

The Immigration Ordinance regulates the entry, hiring and employment of migrant workers.<sup>13</sup> Employers are required to submit to the Immigration Department, by post or in person, an application for employment of domestic worker from abroad.<sup>14</sup> It stipulates that the employer will strictly observe the worker's conditions of stay as well as the wage level, live-in and accommodation requirements.<sup>15</sup> The employer must also submit evidence that he or she is financially capable of hiring a domestic worker. In general, the employer must have at least 15,000 Hong Kong dollars (1,919 US dollars) household income per month for each domestic worker to be employed. The Immigration Department may also require the employer to attend an interview regarding his or her application.<sup>16</sup>

The Immigration Ordinance prohibits domestic workers from engaging in unauthorized work, or work outside the lists of tasks considered domestic duties under the Schedule of Accommodation and Domestic Duties. As such, domestic workers cannot work for a person other than the employer, clean another residence, or perform non-domestic duties. There are employers who contravene these rules by, for example, ordering domestic workers to work in shops or business establishments, in order to save money. In practice it is difficult for domestic workers to refuse as they fear termination of their employment.<sup>17</sup>

11 *China, UPR Stakeholder Report 2009, People's Republic of China (including Hong Kong and Macao Special Administrative Regions)*, (A/HRC/WG.6/4/CHN/3) (2009).

12 *Ibid.*

13 Available from: <http://www.hkii.org/hk/legis/en/ord/115/>

14 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007).

15 Hong Kong SAR, Immigration Department, *Frequently asked questions: Foreign domestic helpers* (webpage, n.d.). Available from: [www.immd.gov.hk/ehhtml/faq\\_fdh.htm](http://www.immd.gov.hk/ehhtml/faq_fdh.htm)

16 *Ibid.*

17 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

## TRAFFICKING

According to the US Department of State's 2012 Trafficking in Persons (TIP) Report, Hong Kong SAR is a destination and transit territory for men and women from mainland China, the Philippines, Indonesia, Thailand, and elsewhere in South-East Asia, some of whom are victims of human trafficking for the purposes of domestic servitude or forced prostitution. Victims, attracted by the promise of financial rewards, are usually deceived by criminal syndicates or acquaintances about the nature of their future jobs, and upon arrival are forced into prostitution to repay money owed for their passage. According to the 2012 TIP report, "foreign domestic workers from the Philippines and Indonesia are generally charged the equivalent of [US]\$1,950 and \$2,725 respectively, by recruiters in their home countries. These debts may comprise more than 80 percent of workers' salaries for the first seven to eight months of employment."<sup>18</sup>

Hong Kong SAR does not have specific anti-trafficking laws, but the Immigration Ordinance, Crimes Ordinance, and other relevant laws prohibit some trafficking-related offences. In 2011, the administration convicted six sex traffickers but there were no convictions for forced labour.<sup>19</sup> Other efforts to prevent trafficking have included the distribution of guide books, in several languages, to foreign domestic workers that explain their rights and the services available to them. Additionally, law enforcement has been trained on investigative techniques to identify trafficking and, 12 trafficking victims were identified in 2011. Generally, victims who are recognized by Hong Kong SAR authorities are not penalized for unlawful acts committed as a direct result of their being trafficked. However, the Government's limited definition of sex trafficking and uneven implementation of victim identification procedures may lead to some victims being deported for immigration violations. The lack of a comprehensive law to prohibit and prosecute all forms of trafficking and protect victims violates article 6 of CEDAW on trafficking and is contrary to General Recommendation No. 19 on gender-based violence.

## FORCED LABOUR

Despite the fact that Hong Kong SAR legislation prohibits forced or compulsory labour, migrant workers continue to be lured to Hong Kong SAR with false promises of employment and then forced into prostitution and other forms of compulsory labour. Some employment agencies registered in Hong Kong SAR have been accused of colluding with agencies in countries of origin to profit from schemes that lead to extreme indebtedness and ultimately forced labour for migrant workers. Agencies in Hong Kong have reportedly illegally confiscated domestic workers' passports, employment contracts and ATM cards and withheld them until their debts have been repaid.<sup>20</sup> This violates article 15 of CEDAW on equality before the law, including laws related to freedom of movement.<sup>21</sup>

18 US State Department, *Trafficking in Persons Report 2012 – Cambodia*, (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/192367.htm](http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm)

19 Ibid.

20 US State Department, *Human Rights Report 2010 - Hong Kong SAR*, (2010). Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)

21 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: [http://www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

## EMPLOYMENT

Due to the shortage of local full-time live-in domestic helpers, migrant domestic workers, who are almost exclusively female, have been allowed to work in Hong Kong since the 1970s to free housewives from household chores and allow them to take up employment in the growing Hong Kong economy. The demand for migrant domestic workers has increased continuously over the past three decades.

Hong Kong SAR is one of the few territories analyzed in this study which covers migrant domestic workers under the national labour laws and regulations.<sup>22</sup> Hong Kong SAR's Employment Ordinance (Chapter 57) regulates conditions of employment and applies to all workers, including migrant domestic workers.<sup>23</sup> Many aspects of the labour law provide best-practice examples of a gender-sensitive legal framework for the onsite stage of migration. For example, the ordinance provides important benefits including: one day of rest in seven; time off during public holidays; annual leave; one month notice for termination, or one month's pay in lieu of notice; payment of wages and a definition of allowable deductions by employers.<sup>24</sup> Since the employment of migrant domestic workers is clearly covered by the law, disputes between employer and worker can be taken to the Hong Kong Labour Department, and if the dispute cannot be conciliated, the Department will recommend resolving the matter in the Labour Court.

Providing coverage under the labour law is a first step towards meaningful protection for migrant domestic workers. However, there are provisions in the regulations that provide migrant domestic workers with fewer rights than other workers. For example, Hong Kong SAR's live-in requirement for domestic workers has been criticized by the Committee on Elimination of Racial Discrimination (CERD) as it tends to result in longer working hours, and shorter rest and holiday periods. Additionally, the Two-Week Rule requires foreign domestic workers to leave Hong Kong SAR within two weeks of their contract expiring or being terminated. NGOs, as well as the committees for CEDAW, CDESCR, and CERD, have criticized this regulation as discriminatory and have called upon the Hong Kong SAR administration to abolish it.<sup>25</sup> The CEDAW Committee in its General Recommendation 26 on Women Migrant Workers noted that when a migrant worker's right to stay in the territory depends on her employment, her employer may be able to abuse that opportunity for coercion. If she is detained for violating those restrictions, she also is at risk of violence from officials while in detention.<sup>26</sup>

22 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment* (2005). Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

23 Available from: <http://www.labour.gov.hk/eng/legislat/content2.htm>

24 Hong Kong SAR, Department of Labour, *Guidebook for the Employment of Domestic Helpers from Abroad* (webpage, n.d.). Available from: [www.immd.gov.hk/en/forms/forms/id-e-969.html](http://www.immd.gov.hk/en/forms/forms/id-e-969.html)

25 China, *UPR Stakeholder Report 2009*.

26 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

## EMPLOYMENT CONTRACT

Labour and employment issues are governed by Hong Kong's Employment Ordinance which outlines the rights, duties and responsibilities of the employer and employee. Under the Supplementary Labour Scheme (SLS), employers who are unable to secure suitable local staff are allowed to hire foreign workers at technician level or below.<sup>27</sup> Under the SLS foreign workers are only allowed to work for the employers, in the positions, and for the duration of employment as stipulated under their employment contract, and they must return to their place of origin on expiry of their contracts.

The Immigration Department requires an employment contract to be signed before the issuance of a working visa to domestic workers. The standard Employment Contract (ID407) for all foreign domestic workers is the only contract acceptable to the Immigration Department, and is the only contract between employers and domestic help that is legally enforceable in the Hong Kong Labour Courts.<sup>28</sup> The standard Employment Contract provides for: suitable and furnished accommodation; free food or an allowance; rest days; statutory holidays; paid annual leave; maternity protection; free medical treatment; and payment of compensation in case of injury by accident or occupational disease in the course of employment.<sup>29</sup> Such standard contracts constitute a good practice as they clearly detail the rights and responsibilities of both the employer and employee, and protect workers by providing a clear standard for regulation, inspection and enforcement by government authorities. One shortcoming of these contracts however, is the rule linking migrant domestic workers' legal presence in Hong Kong SAR with the maintenance of an ongoing contractual relationship with the employer. This system puts in the hand of employers a powerful weapon to intimidate and abuse their workers, as it significantly reduces the chance of employees reporting mistreatment out of fear of termination and subsequent deportation.<sup>30</sup>

## MINIMUM WAGE

Under the Supplementary labour Scheme, employers must pay foreign workers at least the median monthly wages of local workers in comparable positions and they shall "be accorded no less favourable treatment as that enjoyed by local workers under the labour laws."<sup>31</sup> On 1 May 2011 the statutory minimum wage was raised from 3,580 to 3,740 Hong Kong dollars per month and applies to all foreign workers.

The Director of Immigration only approves those Standard Employment Contracts for foreign domestic helpers wherein the employer agrees to pay not less than the minimum allowable wage. It is illegal for an employer to make an agreement with their domestic helper to pay them

27 Available from: [www.labour.gov.hk/eng/plan/iwFDH.htm](http://www.labour.gov.hk/eng/plan/iwFDH.htm)

28 Hong Kong SAR, Department of Labour, *Practical Guide for Employment of foreign domestic helpers – What foreign domestic helpers and their employers should know*, (n.d.). Available from: [www.labour.gov.hk/eng/public/wcp/FDHguide.pdf](http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf)

29 Available from: <http://www.immd.gov.hk/ehhtml/id407form.htm>

30 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

31 Available from: [www.labour.gov.hk/eng/plan/iwSLS.htm](http://www.labour.gov.hk/eng/plan/iwSLS.htm)

less than minimum wage. An employer who underpays wages as stated in the contract is liable to a maximum fine of 350,000 Hong Kong dollars and three years' imprisonment.<sup>32</sup>

The latest minimum-wage ordinance specifically excludes domestic workers who receive free board.<sup>33</sup> The Statutory Minimum Wage came into force on 1 May 2011 and the initial Statutory Minimum Wage rate is 28 Hong Kong dollars (3.60 US dollars) per hour.<sup>34</sup> The exclusion of domestic workers who receive free board from the minimum wage protections amounts to indirect discrimination against women since domestic workers are almost exclusively female, making this ordinance contrary to article 11 of CEDAW.

## MINIMUM AGE

In general, Employment Ordinance Chapter 57 regulates the employment of children under the age of 18 as follows: Children younger than 15 are prohibited from working in any industrial setting; children 13-14 who are attending school may take up work in non-industrial settings; young persons aged 15-17 may work in industrial undertakings but are prohibited from working more than 8 hours per day and 48 hours per week. Overtime work, working on statutory holidays and working on rest days for anyone under 18 is also prohibited.<sup>35</sup> However, for migrant workers, the minimum age may vary depending on the laws of the country from where the foreign worker originated. According to the Hong Kong Immigration Department, foreign workers under 18 are not barred from entering into an employment contract, subject to confirmation that the immigrants' home country has no relevant age restriction on their nationals working in Hong Kong SAR.<sup>36</sup>

## BENEFITS

Migrant workers recruited to work under Hong Kong SAR's Supplementary Labour Scheme are entitled to the following benefits: overtime pay if required to work more than the hours stipulated in the contract; expenses for passage to and from Hong Kong SAR, as well as fees for medical examinations, and for visas or visa extensions; a rest day once a week; 12 statutory public holidays; one week of paid annual leave for every period of 12 months following the completion of the first year of service; free medical care including hospital stays and urgent dental care; work-related injury compensation; food provided free of charge or a food allowance not less than 775 Hong Kong dollars per month; and adequate furnished accommodation (the employer may deduct up to 10 percent of wages or the actual cost of accommodation, whichever is the less, for accommodation costs).<sup>37</sup> These benefits constitute good practices in compliance with the CEDAW Committee's General Recommendation 26 which calls upon

32 Hong Kong SAR, *Practical Guide for Employment of foreign domestic helpers*.

33 Hong Kong SAR, Section 7(3) *Minimum Wage Ordinance 15 of 2010*.

34 Available from: <http://www.labour.gov.hk/eng/news/mwo.htm>.

35 Available from: [www.labour.gov.hk/eng/legislat/content2.htm](http://www.labour.gov.hk/eng/legislat/content2.htm)

36 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p. 67.

37 Available from: [www.labour.gov.hk/eng/public/sld/WhatIWknow.pdf](http://www.labour.gov.hk/eng/public/sld/WhatIWknow.pdf)

countries to ensure an adequate standard of living for migrant workers, including overtime pay, weekly days of rest and access to medical care.

## REGULATION OF EMPLOYMENT AGENCIES

The legislation that monitors recruitment agencies in Hong Kong SAR includes (1) the Employment Ordinance (Chapter 57), which establishes procedures for issuance of licences to employment agencies, grounds for their revocation, prohibited acts for employment agencies, and provides for the inspection of the business premises<sup>38</sup> and (2) the Employment Agency Regulations, which provides that no more than 10 percent of the worker's monthly salary shall go towards paying a recruitment fee.<sup>39</sup>

Women tend to possess fewer assets than men, or have no assets at all to pay exploitative recruitment and job placement fees typically charged by recruiting agents. Therefore, in the worst cases, women are more likely to avail themselves of "fly now, pay later" schemes where costs and profits are recovered by agents by appropriating the worker's wages over several months, thereby trapping women in debt bondage. Hong Kong SAR's regulation of employment agencies, and capping the recruitment fee at 10 percent of the monthly salary, represent good practices for gender-sensitive legal frameworks for migration, and are good examples of the authorities taking appropriate measures to comply with CEDAW and eliminate discrimination against women in the field of employment.<sup>40</sup>

## MATERNITY PROTECTION

Female migrant workers are entitled to 10 weeks' paid maternity leave subject to the following requirements: (i) she has been employed for not less than 40 weeks immediately before the commencement of scheduled maternity leave; (ii) she has given notice of pregnancy confirmed by a medical certificate to her employer; and (iii) she has produced a medical certificate specifying the expected date of confinement, if so required by the employer. The maternity leave pay is equal to 80 percent of the normal wages, payable on the normal pay day. This represents good gender-sensitive practice in line with article 11(2)(b) of CEDAW, which requires the introduction of maternity leave with pay.

Except in cases of summary dismissal for serious misconduct, the Employment Ordinance prohibits an employer from dismissing a pregnant worker from the date on which she is confirmed pregnant by a medical certificate, up to the date on which she is due to return to work upon the expiry of her maternity leave.<sup>41</sup> This constitutes gender-sensitive practice in

38 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

39 Kay Lam Chi Yan, *The Second Periodic Report on the Hong Kong Special Administrative Region of the People's Republic of China in light of the Convention on the Elimination of All Forms of Discrimination against Women*, Hong Kong Human Rights Monitor (Hong Kong, 2006), paragraph 25, Part II. Available from: <http://www.hkhrm.org.hk/CEDAW%20News/CEDAW9.pdf>

40 CEDAW, Art. 11.

41 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

line with article 11(2)(a) of CEDAW, which prohibits dismissal on the grounds of pregnancy or maternity leave.

## REMITTANCES

The CEDAW Committee in its General Recommendation No. 26 on women migrant workers noted that women migrant workers may be unable to save or transmit savings safely through regular channels due to isolation, cumbersome procedures, language barriers, or high transaction costs.<sup>42</sup> In an example of gender-sensitive practice, The Asian Migration Centre in Hong Kong SAR has been working with migrant workers on the issues of reintegration and savings since 1993. The programme organizes and trains migrant workers, including foreign domestic workers in Hong Kong SAR, to participate in group savings and collective decision-making, and to create sustainable alternative investments back in their home countries. This illustrates the potential for maximizing the development impact of migration through savings mobilization and productive investment as a reintegration measure.<sup>43</sup>

## ACCESS TO HEALTH SERVICES, WORK SAFETY

The Occupational Safety and Health Ordinance<sup>44</sup> provides for the safety and health protection of employees in both industrial and non-industrial workplaces. The Ordinance imposes a general duty of care on employers and employees. However, it does not apply to domestic premises where only domestic servants are employed.<sup>45</sup> Hong Kong SAR's Schedule of Accommodation and Domestic Duties, which is annexed to all contracts for foreign domestic workers, describes the minimum for suitable accommodation that must be provided by the employer. It states that no helper should have to "sleep on made to do beds in the corridor with little privacy or share a room with an adult/teenager of the opposite sex."<sup>46</sup> Despite this there are many reports of women domestic workers sleeping in spaces with inadequate privacy and locking arrangements, such as in kitchens, corridors, or children's bedrooms, thus heightening their vulnerability to sexual abuse by male employers.<sup>47</sup> The CEDAW Committee in its General Recommendation No. 26 on women migrant workers noted that lack of privacy and hygiene, or poor living conditions without running water or adequate sanitary facilities violates basic human rights, including rights to protection of health and safety in working conditions as described in article 11 of the Convention.

Hong Kong SAR's Employment Ordinance obligates employers to provide free medical treatment to domestic workers who fall sick or are injured, whether or not it is attributable to their employment. This includes medical consultation, maintenance in hospital and emergency

42 CEDAW Committee, *General recommendation No. 26*.

43 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*.

44 Available from: <http://www.hkii.org/hk/legis/en/ord/509/>

45 Available from: <http://www.labour.gov.hk/eng/legislat/content4.htm>

46 Available from: [www.immd.gov.hk/ehtml/id407g\\_form.htm](http://www.immd.gov.hk/ehtml/id407g_form.htm)

47 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*.

dental treatment. Employers must also provide paid sick leave to domestic helpers, equivalent to 80 percent of the average daily wage, as long as they have accumulated enough sick days, the leave taken is not less than four consecutive days, and it is supported by a medical certificate. Domestic workers accumulate two paid sick days for each completed month of service during the first year of work, and four days per month thereafter, up to a maximum of 120 days. Employers who dismiss employees that are on sick leave and have not committed serious misconduct, are liable to prosecution and a fine of up to 100,000 Hong Kong dollars.<sup>48</sup>

The Employees' Compensation Ordinance applies to all full-time and part-time employees who are employed under a contract, including migrant workers and domestic helpers. It establishes a no-fault, non-contributory employee compensation system for work injuries.<sup>49</sup> In case the worker suffers injury by accident or occupational disease arising out of and in the course of employment, it is the obligation of the employer to make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282. Subject to certain conditions, a migrant domestic worker is also entitled to either severance payment or long-service payment in case of dismissal.<sup>50</sup>

## RIGHT TO TAKE PART IN CULTURAL LIFE

Article 13 of CEDAW obligates States parties to "take all appropriate measures to eliminate discrimination against women in economic and social life in order to ensure, on a basis of equality of men and women, the same rights." Good practice CEDAW-informed legal rights and obligations include an equal right to participate in recreational activities, sports and all aspects of cultural life.<sup>51</sup> Hong Kong SAR provides a good example of gender-sensitive measures to eliminate discrimination against women in social life, by ensuring that migrant domestic workers get one rest day in seven and by providing for freedom of movement for these workers, which enables social and cultural bonds to be built that can develop into a supportive community. Such bonds are critical to diminish feelings of isolation and alienation, which have deleterious effects on the psychology of the migrant domestic workers. Moreover, such support networks can contribute to a positive migration experience for the migrant domestic workers, and a willingness to renew contracts after they have completed their first term. The territory of employment will also benefit from better-trained migrant domestic workers who are more conversant in the local language, culture and society. Providing areas for migrant domestic workers to gather in safety and security during their rest days is important. In Hong Kong SAR, certain public areas are known to be gathering spots for different nationalities of migrant domestic workers, Filipinos, Indonesians, Thais, Nepalis, and others, and many of the migration associations conduct all their activities on that one rest day, often in these public areas where migrant domestic workers gather.<sup>52</sup>

48 Hong Kong SAR, *Practical Guide for Employment of foreign domestic helpers*.

49 Available from: <http://www.labour.gov.hk/eng/legislat/content1.htm>

50 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

51 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries* (March 2010). Available from: [http://cedaw-seasia.org/docs/Aw\\_GEL\\_incover050609Feb10.pdf](http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf)

52 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

## EQUALITY BEFORE THE LAW

### ***Freedom of Association***

Migrant workers in Hong Kong SAR do not have the right to bargain collectively.<sup>53</sup> This restriction violates article 15 of CEDAW on equality before the law, which includes laws related to freedom of association and protection of the right to organize. Although migrant workers may not be able to bargain collectively, they do have the right to organize, and employers may be fined up to 200,000 Hong Kong dollars for terminating an employee because of their involvement in union activity. Hong Kong SAR recognizes migrants' unions under the Registry of Trade Unions Ordinance.<sup>54</sup> In Hong Kong SAR, a vibrant and varied group of migrant associations exists, which includes the Thai Regional Alliance, United Filipinos–Hong Kong SAR, Far East Overseas Nepalese Association, Asia-Pacific Mission for Migrants, Association of Sri Lankans, Friends of Thailand–Hong Kong SAR, The Asian Women's Union, the Filipino Migrant Workers Union, and the Association of Indonesian Migrant Workers. Unions of migrant domestic workers and other migrant unions have collaborated with general trade unions like the Hong Kong Confederation of Trade Unions on issues confronting both local and migrant workers, including wage cuts and maternity protection. The Hong Kong Confederation of Trade Unions has supported several initiatives of the Indonesian Migrant Domestic Workers Union by providing space, technical facilities, holding joint press conferences and presence at migrant workers' events.<sup>55</sup>

Several migrant worker unions have come together and formed a coalition body named the Asian Migrant Coordinating Body, which is regularly invited by the Government of Hong Kong SAR to provide input and feedback on policies and regulations affecting migrant domestic workers. The fact that these associations are recognized as legitimate partners and representatives of the migrant domestic workers, and accorded a place in the policy dialogue, is a positive example of empowering migrants, especially women, to exercise choices, access resources, and claim rights.<sup>56</sup>

### ***Women's Access to Justice***

Hong Kong SAR has some excellent mechanisms affording access for women migrant workers to officials in order to bring complaints. For instance, the Department of Labour has set up a 24-hour hotline to receive complaints by domestic workers about unlawful treatment. Complaints received are immediately and thoroughly investigated. This is particularly important for workers who are employed in private homes and often cannot make such phone calls except at odd hours when others in the household are away or asleep. The hotline is a good example of efforts to effectively enforce the labour law and ensure that it applies to women migrant workers.

The Legal Aid Department also assists migrant workers in accessing their rights by, for example, helping them to file criminal cases against violent employers or applications to the

53 US State Department, *Human Rights Report 2010*.

54 Available from: <http://www.hkliv.org/hk/legis/en/ord/332/>

55 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*.

56 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

Wage Security Division for payment in cases where employers have claimed bankruptcy.<sup>57</sup> The Labour Department also assists injured migrant workers or families of deceased workers in claims of outstanding payments of employees' compensation.<sup>58</sup>

For conflicts or claims arising out of the employment contract or provisions under the Employment Ordinance, both the employer and migrant domestic worker may approach the Labour Relations Division of the Labour Department for assistance. The Division resolves labour disputes through the provision of free conciliation service. If no settlement is reached, the claim is referred to either the Minor Employment Claims Adjudication Board or the Labour Tribunal for adjudication, depending on the amount of the claim. The Labour Tribunal can award a range of Remedies for Employment Protection, including an order of reinstatement or re-engagement, an award of terminal payments or an award of compensation. Awards may be appealed to the appropriate courts. Although the Labour Department receives an estimated 2,000 complaints per year against employers, it has been able to secure convictions in only a few cases (33 in 2004 and 29 in 2003).<sup>59</sup>

However, even if a migrant worker makes the difficult decision to file a complaint she will generally have to negotiate with her former employer for any remedy. The Labour Relations Division gives considerable bargaining power to employers, and this is exacerbated by the Two-Week Rule in cases involving migrant domestic workers. The Immigration Department will extend a migrant domestic worker's visa if she has an active claim with the Labour Department, but normally grants only short extensions (necessitating frequent visa fees) and does not permit the migrant domestic worker to work while she pursues her claim. This provides a strong incentive for the migrant domestic worker to accept any offer from the employer, even if it is less than her legal entitlement.<sup>60</sup> This raises concerns about Hong Kong SAR's application of the principle of substantive equality under CEDAW. The goal of a substantive approach to equality is to ensure that the outcomes of laws, policies and programmes are gender-responsive. In the case of Hong Kong SAR, the Two-Week Rule in practice makes it difficult for women migrant domestic workers to claim their rights. Therefore, although it appears that there is effective access to justice for women on paper, in practice this is not the case, violating the principle of substantive equality, which requires equality of opportunity, access as well as results and benefits.

Similar problems arise if a migrant domestic worker files a complaint with the Hong Kong Equal Opportunities Commission for employment discrimination or sexual harassment. In theory, migrant domestic workers have the same rights as local workers under the Disability Discrimination Ordinance and the Sex Discrimination Ordinance. Indeed, a special provision in the Sex Discrimination Ordinance prohibits anyone who lives in the household from sexually harassing the migrant domestic worker who works there. This was included because the legislature recognized that a live-in migrant domestic worker might be harassed by people other than the employer (for example, the husband or son of the employer). However, if a

57 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

58 *Ibid.*

59 Peggy Lee and Carole Petersen, "Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers", 29, Centre for Comparative and Public Law Occasional Paper No. 16, (Hong Kong, July 2006). Available from: [www.law.hku.hk/ccpl/pub/Documents/16-LeePetersen.pdf](http://www.law.hku.hk/ccpl/pub/Documents/16-LeePetersen.pdf)

60 *Ibid.*

migrant domestic worker files a complaint against the employer or a member of the employer's family this results in termination of the contract, leaving the migrant domestic worker without a work visa, and thus unable to support herself while the claim is being investigated. Like the Labour Department, the Hong Kong Equal Opportunities Commission depends primarily upon voluntary conciliation to resolve complaints.<sup>61</sup>

In trafficking cases, the situation is slightly better. Victims are legally required to assist in the investigation and prosecution of their traffickers and are provided with government-sponsored assistance including shelter, financial and legal assistance, counselling, and psychological support during the investigation. However, they are not allowed to work during what are often lengthy legal proceedings. The fear of having to assist in long trials may make victims reluctant to be identified by authorities. Victims also have the ability to file civil charges for compensation from their traffickers, and can apply for legal alternatives to their removal to countries where they may face hardship or retribution, but victims are often unaware of these options and thus do not often exercise their rights.<sup>62</sup>

Thus, although migrant domestic workers theoretically enjoy many of the same legal protections as local workers, in practice they find it far more difficult to enforce their rights. Policies of the Immigration Department discourage or prevent domestic workers from coming forth as complainants or as prosecution witnesses.<sup>63</sup> For instance, domestic workers found engaged in unauthorized work are themselves liable to prosecution. This policy has the effect of discouraging domestic workers from reporting unauthorized work to the authorities even when they are forced to perform such work by their employers.<sup>64</sup> Therefore, the reality is that, while there are some avenues through which women may seek justice in Hong Kong SAR, equal access to justice for women migrant workers is still not fully realized.

## F. ANALYSIS AND CONCLUSIONS

Because both spouses in Hong Kong families are often working, there is a great need for help in taking care of their children, elderly relatives and the house. As a result, domestic helpers, mostly women from the Philippines and Indonesia, form an important part of the economy of Hong Kong SAR. Despite this, social acceptance of migrant domestic workers remains limited. The controversy surrounding the Evangeline Vallejos right-to-abode case indicates an active policy to prevent integration, and suggests that attitudinal changes relative to gender, migration and human rights in Hong Kong society remains a significant area of development work.<sup>65</sup>

Notwithstanding, Hong Kong SAR must be recognized for some gender-sensitive and rights-based practices, including:

61 Ibid.

62 US State Department, *Trafficking in Persons Report 2010 – Hong Kong SAR (2010)*. Available from: [www.state.gov/j/tip/rls/tiprpt/index.htm](http://www.state.gov/j/tip/rls/tiprpt/index.htm)

63 Ibid.

64 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

65 Ibid.

- Hong Kong SAR ratified the ILO Migration For Employment Convention (C 97).
- Hong Kong's labour law, the Employment Ordinance (Chapter 57), applies to all workers including informal sector migrant workers and domestic workers. Hong Kong SAR is one of the few countries analyzed in this study whose labour laws cover migrant domestic workers and domestic work under the national labour laws, and include regulations and effective enforcement to ensure that migrant domestic workers receive protection as provided under law.
- The Employment Ordinance provides important benefits such as one day of rest in seven; public holidays; annual leave; one month notice for termination, or one month's pay in lieu of notice; payment of wages; and definition of allowable deductions by employers.
- Since the employment of all women migrant workers is clearly covered by the law, disputes between employer and worker can be taken to the Hong Kong Labour Department, and if the dispute cannot be conciliated, the Department will recommend resolving the matter in the Labour Court.
- The Immigration Department requires a standard employment contract to be signed with the employer before the issuance of a working visa to domestic workers.
- The Employment Agency Regulations provide that no more than 10 percent of any migrant worker's monthly salary shall go towards paying a recruitment fee.
- Female migrant workers are entitled to 10 weeks paid maternity leave subject to certain conditions.
- The Asian Migration Centre in Hong Kong SAR has been working with migrant workers on the issues of reintegration and savings since 1993.
- Hong Kong SAR recognizes migrants' unions under the Registry of Trade Unions Ordinance, and any union member whose contract is terminated by her employer due to her involvement in union activities is protected under the labour law. The union can also bring cases to international attention by lodging complaints with the ILO.
- The Department of Labour has set up a Labour Law Enquiry Hotline that receives complaints from migrant workers about unlawful treatment. Complaints received are immediately and thoroughly investigated.
- The administration of Hong Kong SAR allowed the establishment of FADWU in 2010 which advocated for the ILO convention on domestic workers. This organization of domestic workers has helped create a voice and a mechanism for highlighting the violation of human rights and the gender-based violence suffered by migrant domestic workers.

## G. RECOMMENDATIONS

The CEDAW Committee has recommended the following reforms be taken in Hong Kong SAR to ensure substantive equality for women migrants:

## POLICY REFORM

- Amend the definition of discrimination in the Race Discrimination Ordinance 2008 to include all migrant workers, including all women migrant workers, informal sector workers, and foreign domestic workers.
- Enact a comprehensive anti-trafficking law in line with the Palermo Protocol, including punishments stringent enough to carry a deterrent value.
- Repeal the Two-Week Rule. Since residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, Hong Kong SAR should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or the employer's spouse, or is fired for complaining about abuse.
- Amend regulations to allow for independent residency status for domestic workers, breaking the link between residency permits and sponsorship by an employer. Also repeal the Two-Week Rule and allow for the legal stay of a woman who flees her abusive employer or the employer's spouse, or is fired for complaining about abuse.
- Amend the Occupational Safety and Health Ordinance to include domestic premises at which only domestic workers are employed.
- Amend the law to provide all migrant workers with the right to bargain collectively.
- Amend the law which prohibits migrant workers from working once they have filed a labour complaint.

## ENFORCEMENT

- Make greater efforts to identify and criminally prosecute cases of both sex and labour trafficking.
- Ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to women migrants. Also, take steps to end the forced seclusion or locking in the homes of women migrant workers, especially those working in domestic service.
- Train police officers to protect the rights of women migrant workers from abuse of the right to freedom of movement.
- Ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available, including health-care services, language and other skills training programmes, emergency shelters, police services, recreational programmes and programmes designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence. Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status.

## REFERENCES

- CERD 2009 CERD/C/CHN/CO/10-13.
- Chapter 1 Application, Employment Ordinance (Chapter 57), 1968.
- China: Hong Kong Special Administrative Region, paragraph 29, CERD/C/357/Add.4 (Part II) (2001).
- Committee on the Elimination of Discrimination Against Women (2008), *General recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R.
- China, State Party report to the Committee on the Elimination of Discrimination against Women, paragraph 191, CEDAW/C/37 CHN/5-6/Add.1 (2004).
- Lee, Peggy and Petersen, Carole. *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, at 29, Centre for Comparative and Public Law Occasional Paper No. 16 (2006).
- Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers.
- Immigration Department, *supra* note 17.
- Hong Kong SAR Department of Labour. *Guidebook for the Employment of Domestic Helpers from Abroad*. Hong Kong: Dept. of Labour.
- ILO (2009), Review of Labour Migration Management, policies, and legal framework in Cambodia.
- Immigration Department HKSAR, Frequently asked questions: Foreign domestic helpers <[http://www.immd.gov.hk/ehtml/faq\\_fdh.htm](http://www.immd.gov.hk/ehtml/faq_fdh.htm)>
- Kay Lam Chi Yan, The Second Periodic Report on the Hong Kong Special Administrative Region of the People's Republic of China in light of the Convention on the Elimination of All Forms of Discrimination against Women, Hong Kong Human Rights Monitor (2006), paragraph 25, Part II.
- Section 7(3) Minimum Wage Ordinance 15 of 2010, Hong Kong Special Administrative Region.
- Smales, P. (2010), *The Right to Unite: A Handbook on Domestic Worker Rights Across Asia*, Asia Pacific Forum on Women, Law and Development (APWLD, Thailand).
- UNDP Human Development Reports, 2009 & 2010.
- UNIFEM (2008), Legal Protection for Migrant Domestic Workers in Asia and the Arab States.
- UNIFEM (2010), *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries*.
- UNIFEM (2005), Good Practices to Protect Women Migrant Workers.
- UPR Stakeholder Report 2009, People's Republic of China (including Hong Kong and Macao Special Administrative Regions), A/HRC/WG.6/4/CHN/3.
- UPR Compilation Report 2009, People's Republic of China (including Hong Kong and Macao Special Administrative Regions), A/HRC/WG.6/4/CHN/2.
- US Department of State Human Rights Report 2010, Hong Kong SAR.

## INTERNET

<http://domesticworkerrights.org/?q=node/149>  
<http://www.december18.net/article/joint-declaration-celebrating-may-day-2010-asian-domestic-workers-day>  
<http://www.hklii.org/hk/legis/en/ord/115/>  
<http://www.hklii.org/hk/legis/en/ord/509/>  
<http://www.labour.gov.hk/eng/legislat/content2.htm>  
<http://www.labour.gov.hk/eng/public/ConciseGuide.html>  
<http://www.labour.gov.hk/eng/plan/iwFDH.htm>  
<http://www.immd.gov.hk/ehhtml/id407form.htm>  
[http://en.wikipedia.org/wiki/Foreign\\_domestic\\_helpers\\_in\\_Hong\\_Kong](http://en.wikipedia.org/wiki/Foreign_domestic_helpers_in_Hong_Kong)  
[www.radiolabour.net/.../Solidarity-News-2510](http://www.radiolabour.net/.../Solidarity-News-2510)  
[http://www.wiegodatabase.org/index.php?option=com\\_sobi2&sobi2Task=sobi2Details&catid=12&sobi2Id=541&Itemid=88&lang=fr](http://www.wiegodatabase.org/index.php?option=com_sobi2&sobi2Task=sobi2Details&catid=12&sobi2Id=541&Itemid=88&lang=fr)  
[http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A?OpenDocument&bt=0](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A?OpenDocument&bt=0)

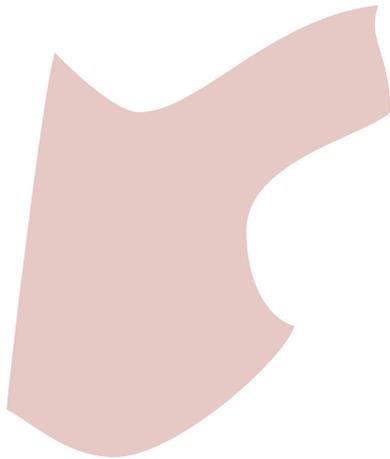


Photo credit: UN Women



RECEIVING COUNTRIES

# Kingdom of Jordan



## A. COUNTRY CONTEXT

Jordan is a middle-income country located in Western Asia with a population of 6.3 million, 80 per cent of whom live in urban centres. Recent political upheaval in the Arab region has impacted Jordan economically. Since February 2011, the country has also experienced demonstrations calling for political reforms and improved living conditions, including more than 550 labour-related protests and strikes. The Government has responded by enacting Constitutional changes that strengthened the judiciary.<sup>1</sup>

Jordan is located at the crossroads of two major areas of instability and has therefore been heavily impacted by protracted conflicts in the Middle East. Civil war in Lebanon, and the first and second Gulf wars, caused massive influxes of refugees and migrant workers into Jordan, putting pressure on government authorities, economic and social infrastructures and local communities. In the UNDP's latest Human Development Index, Jordan received a "medium" rank.<sup>2</sup>

In the past, Jordan has been both a country of origin and destination for migrant workers. From the mid-1970s to the mid-1980s, hundreds of thousands of well-educated and highly skilled Jordanians migrated for employment mainly to oil-producing countries. Currently however, Jordan is predominantly a labour-receiving country with a stock of almost 3 million immigrants in 2010.<sup>3</sup>

1 International Labour Organization, *Decent Work Country programme (2012-2015) – Jordan* (Geneva, 9 March 2012). Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf)

2 Available from: <http://hdrstats.undp.org/en/countries/profiles/JOR.html>

3 International Organization for Migration, *Migration Facts and Figures* (webpage, n.d.). Available from: [www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en](http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en)

Human development index	Rank 95, medium human development <sup>4</sup>
Stock of Immigrants 2010	2,973,000 <sup>5</sup>
Annual growth rate of immigrants (2010-2015)	-5.2 migrants/1,000 population <sup>6</sup>
Immigrants' share of national population	46% (2010) <sup>7</sup>
Proportion of females among immigrants	49% (2010) <sup>8</sup>

Many migrant workers in Jordan are women working as domestic workers, who mainly come from Indonesia, the Philippines and Sri Lanka. Additionally, there are many men and women migrants working in large factory complexes referred to as Qualified Industrial Zones (QIZ), where goods are manufactured for export.<sup>9</sup> Recent statistics show that between 2004 and 2009 work permits issued to Filipinos more than doubled, reaching nearly 15,000, and work permits issued to Sri Lankans increased by 40 per cent, reaching 20,000.<sup>10</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Although Jordan has taken some steps to improve the working and living conditions of its migrant workers, many are excluded from labour laws that protect employees from abuse. Migrant domestic workers in particular are subject to an immigration sponsorship system (the Kafala system<sup>11</sup>) that contributes to isolation and leaves them at risk of exploitation by employers.

Although migrant domestic workers provide valuable services that are in high demand in Jordan, many report being slapped, kicked, beaten, spat at and threatened with violence in the homes in which they work. Several have fallen to their deaths in recent years in circumstances recorded as accidents, but which remain inadequately investigated and explained. In 2009, the Labour Ministry linked the attempted suicides of 14 Sri Lankan domestic workers to abusive conditions at work.<sup>12</sup>

4 UNDP, *Human Development Report 2011 – Sustainability and Equity: A Better Future for All* (New York, 2011). Available from: [http://www.undp.org/content/dam/undp/library/corporate/HDR/2011%20Global%20HDR/English/HDR\\_2011\\_EN\\_Contents.pdf](http://www.undp.org/content/dam/undp/library/corporate/HDR/2011%20Global%20HDR/English/HDR_2011_EN_Contents.pdf)

5 Ibid.

6 Available from: [www.iom.int/jahia/jahia/Jordan](http://www.iom.int/jahia/jahia/Jordan)

7 Ibid.

8 Ibid.

9 Solidarity centre, *A Voice for Migrant Workers in Jordan's Export Factories*, (Manama, u.d.). Available from: [www.solidaritycenter.org/content.asp?contentid=627](http://www.solidaritycenter.org/content.asp?contentid=627)

10 Dovelyn Rannveig Agunias, *Running in Circles: Progress and Challenges in Regulating Recruitment of Filipino and Sri Lankan labour Migrants to Jordan*, Migration Policy Institute (Washington DC, US, Singapore, July 2011). Available from: [www.migrationpolicy.org/pubs/JordanCorridor-Labor-2011.pdf](http://www.migrationpolicy.org/pubs/JordanCorridor-Labor-2011.pdf)

11 Also known as the Kafala system (see detailed description in Bahrain country report)

12 Amnesty International, *Amnesty International Report 2010 - Jordan* (London, 28 May 2010). Available from: [www.unhcr.org/refworld/country,,AMNESTY,,JOR,,4c03a81fc,0.html](http://www.unhcr.org/refworld/country,,AMNESTY,,JOR,,4c03a81fc,0.html)

Additionally, there are reports of women migrant domestic workers being beaten by representatives of recruitment agencies shortly after their arrival in Jordan, in an attempt to frighten and discourage them from running away or from making complaints about their employers. Although new safeguards were introduced in 2003 in the form of a special contract for migrant domestic workers, they appear to have had little impact in practice.

In August 2009, the Labour Law was also amended to better regulate the working conditions of all domestic workers, including migrants. New regulations prescribe maximum working hours, rights to holiday and sick leave, and domestic workers' entitlement to regular contact with their own families. While these changes were welcome as important steps in providing better protection for domestic helpers, there are still insufficient safeguards to protect domestic workers from violence and sexual abuse.<sup>13</sup>

Although there have been significant improvement in recent years with respect to women's rights, discrimination and harassment of women remains a concern. According to the International Labour Organization (ILO), only 14 per cent of Jordanian women participate in the labour force compared to 65 per cent of men. Jordanian women who do work earn an average monthly wage of 314 Jordanian dinar (443 US dollars) compared to 364 dinar (514 dollars) for men, which after adjusting the average number of hours, amounts to a gender pay gap of 7 per cent.<sup>14</sup> On a positive note, the Government recently withdrew its reservation to article 15(4) of the CEDAW, guaranteeing women freedom of mobility and to choose their place of residence without requesting permission from male family members. However, the Government has indicated that it will maintain its reservation to other elements of article 15, including those guaranteeing women equality under the law with men.<sup>15</sup>

## C. KEY STAKEHOLDERS

The Ministry of Labour (MoL) works to provide protection and services for migrant workers by creating rules and regulations that govern the recruitment process, setting minimum employment standards, improving labour inspectorate capacity and maintaining a system adjudication to resolve disputes. The MoL has also developed a draft Action Plan for the effective management of labour migration and protection of migrant workers based on the ILO guidelines.<sup>16</sup> Recently, however, as part of its 2011 national employment strategy, the Government imposed quotas on migrant workers being employed in certain professions – and entirely closed others – in order to give priority to employing Jordanian nationals.<sup>17</sup>

<sup>13</sup> Ibid.

<sup>14</sup> International Labour Organization, *Decent Work Country programme (2012-2015) – Jordan* (Geneva, 9 March 2012). Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf)

<sup>15</sup> UNIFEM, *CEDAW Success Stories – Egypt and Jordan* (webpage, u.d.). Available from: [www.unifem.org/cedaw30/success\\_stories/index.html#egypt](http://www.unifem.org/cedaw30/success_stories/index.html#egypt)

<sup>16</sup> Jordan, Ministry of Labour, *Report on the status of migrant workers in the qualified industrial zones*, (Manama, May 2006). Available from: [www.carim.org/public/polsoc texts/PS2JOR005\\_EN.pdf](http://www.carim.org/public/polsoc texts/PS2JOR005_EN.pdf)

<sup>17</sup> International Labour Organization, *Decent Work Country programme*

The Tamkeen centre for Legal Aid and Human Rights is an NGO that works to ensure human rights and fundamental freedoms for marginalized groups. Its Migrant Workers programme raises awareness about the working conditions for migrant workers and provides legal advice and representation to victims of abuse.

The Adaleh centre for Human Rights Studies is another NGO actively working to promote the implementation of CEDAW principles and enhance protections for migrant workers in Jordan through awareness campaigns, capacity-building initiatives and legal assistance.

## D. RATIFICATION RECORD

The following table illustrates Jordan's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	1 July 1992
ICCPR	28 May 1975
ICESCR	28 May 1975
ICERD	30 May 1974 a
ILO C29 Forced or Compulsory Labour	6 June 1966
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	12 December 1968
ILO C100 Equal Remuneration	22 September 1966
ILO C105 Abolition of Forced Labour	31 March 1958
ILO C111 Discrimination in Employment	4 July 1963
ILO C138 Minimum Age for Admission to Employment	23 March 1998
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibitions on the Worst Forms of Child Labour	20 April 2000

## E. COMPLIANCE WITH CEDAW

Jordan does not consider itself bound by the following provisions of CEDAW: article 9, paragraph 2 and article 16, paragraph (1) (c) relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation; article 16, paragraph (1) (d) and (g).

## DISCRIMINATION

In its 2012 Concluding Observations the CEDAW Committee noted that, while the CEDAW has the force of law in Jordan it has not been given sufficient visibility as a legal basis for eliminating discrimination against women. The Committee also noted “a continuing lack of awareness among women and among the judiciary and legal professions about the rights of women under the Convention.” In particular, the Committee called on Jordan to insert the word “gender” or “sex” into the newly amended Constitution’s article 6 prohibiting discrimination.<sup>18</sup>

## POLICY MEASURES

Jordan’s immigration policy requires prospective migrant workers to go through employment agencies for work in Jordan. All migrant workers are required to possess a work permit, which is renewed annually, as well as a residence permit.<sup>19</sup> Pursuant to the Special Working Contract for Non-Jordanian Domestic Workers adopted on 21 January 2003, employers are responsible for obtaining work and residence permits for migrant domestic workers. However, some employers fail to secure or renew the necessary permits, thereby incurring fines imposed by the Ministry of the Interior. Domestic workers are required to remain in the country until the fines are paid, either by the worker or the employer. Human Rights Watch has reported on migrant workers languishing for over a year in shelters because their former employers would not pay outstanding fines. Because many of the workers had not been given their salaries, they were also unable to pay the fines themselves.<sup>20</sup>

On occasion, however, the Government has reached settlements with domestic workers, or their embassies, and exempted them from the payment of fines – for example when the whereabouts of the employer were not known.

In an attempt to better protect the rights of labourers in Jordan, and better ensure that Jordanian Law complies with international labour standards, the Council of Ministers approved a number of amendments to the Labour Law No. 8 of 1996. The amendments, which came

18 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Jordan* (CEDAW/C/JOR/CO/5) (Fifty-first session, 2012). Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

19 Jordan, Ministry of Labour and UNIFEM, *Domestic Workers Project Booklet*, (Manama, n.d.)

20 Human Rights Watch, “Jordan: Abused Domestic Workers Stranded - Authorities Prevent Sri Lankans From Returning Home”, Munich, 8 April 2011. Available from: [www.hrw.org/news/2011/04/08/jordan-abused-domestic-workers-stranded](http://www.hrw.org/news/2011/04/08/jordan-abused-domestic-workers-stranded)

into force on 15 August 2010, have led to greater protections for foreign workers in Jordan, as well as increased entitlements. Some of the most important changes are:

- Migrant workers are allowed to join a trade union.
- Employment contracts must be drafted in a foreign workers own language.
- Employers must pay migrant domestic workers the same minimum wage offered to Jordanians and compensate employees in cases of unfair dismissal or dismissal without notice.
- Recruitment agencies are subject to increased regulations that emphasize their obligations to the government, employers and workers, and increased fines for those agencies that do not abide by the law.<sup>21,22,23</sup>

Not all of the changes, however, apply to migrant domestic workers.<sup>24</sup> The MoL's Labour Regulation No. 90 of 1 October 2009 more explicitly describes the rights and benefits to be afforded migrant domestic workers. Domestic workers are covered under the Draft Social Security Law of 2010.<sup>25</sup>

## TRAFFICKING AND PROSTITUTION

According to the US State Department's 2012 Trafficking in Persons Report (TIP Report), Jordan is a destination and transit country for individuals subjected to forced labour. Many women from countries in South-East Asia voluntarily travel to Jordan in search of employment as domestic workers. Upon arrival however, some have their passports withheld and their movements restricted, while being forced to work without pay and threatened with physical or sexual abuse. Jordan's sponsorship system, which requires that foreign workers rely on their employer to renew work and residency permits, places significant power in the hands of employers and recruitment agencies and increases the foreign domestic workers' vulnerability to trafficking.<sup>26</sup>

Human trafficking and forced labour in Jordan is not limited to domestic workers. The country's garment industry, as well as agriculture, construction and building maintenance sectors also attract workers from other parts of Asia as well as North Africa. Some of these workers have also encountered forced labour conditions

21 Dana Adbuljaleel, "Amendments to the Jordanian Labour Law", *Newsletter of Al Tamimi & Company Advocates and Legal Consultants*, issue 236, December 2010 / January 2011. Available from: <http://altamimi.newsweaver.ie/Newsletter/1q5wiprfuvvm90wdis92cbz>;

22 UN Women, *UN Women in Action – Jordan* (webpage, u.d.). Available from: [www.migration-unifem-apas.org/jordan/Unifem\\_in\\_Action.html](http://www.migration-unifem-apas.org/jordan/Unifem_in_Action.html)

23 International Trade Union Confederation, *Annual Survey of violations of Trade Union Rights – Jordan – 2012* (webpage, u.d.). Available at: <http://survey.ituc-csi.org/Jordan.html?lang=en#tabs-3>

24 See 3(c) of the Labour Code No. 26 of 2010, amending Labour Code No. 8 of 1996.

25 Simel Esim (ILO) and Carole Kerbage (ESCWA), *The Situation of Migrant Domestic Workers in Arab States – a Legislative Overview*, (Bangkok, u.d.). Available from: [www.unescap.org/sdd/meetings/beirut-June2011/Esim-ESCWA-situation-female-workers-vulnerable-sectors.pdf](http://www.unescap.org/sdd/meetings/beirut-June2011/Esim-ESCWA-situation-female-workers-vulnerable-sectors.pdf)

26 US State Department, *Trafficking in Persons Report 2012 – Jordan* (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/192367.htm](http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm)

including withholding of passports, delayed payment of wages, forced overtime and verbal and physical abuse.

Jordan has made efforts to tackle human trafficking, most notably by passing an Anti-Human Trafficking Law in 2009 and creating a committee to promote public awareness on the issue. The law prohibits all forms of trafficking and prescribes penalties of up to 10 years' imprisonment for forced prostitution and trafficking involving aggravating circumstances, such as trafficking of women or children, or with the involvement of a public official. Penalties for trafficking men without aggravating circumstances are a minimum of six months' imprisonment and a maximum fine of 7,000 dollars. These penalties, however, are not considered to be sufficiently stringent to seriously deter trafficking.

The 2012 TIP report also noted deficiencies in identifying and referring victims of trafficking for assistance. Specifically it found that the Government's efforts were limited in the areas of raising public awareness, cooperating with source country embassies, and ensuring that identified victims were not penalized.

Recently however, the Cabinet did approve bylaws under which the government could establish a shelter for women victims of trafficking. Additionally, in January 2012, a multi-sectoral National Screening Team was formed, comprised of National Committee members and representatives of the Ministries of Interior, Justice, Labour, and the police, which has begun interviewing vulnerable individuals identified by embassies, to determine if they are trafficking victims.

The CEDAW Committee in its 2012 Concluding Observations welcomed the adoption of the 2009 Human Trafficking Act and the national strategy to combat human trafficking. It expressed concern however, that the act does not provide an adequate definition of human trafficking. It also noted that the law does not sufficiently provide for investigation, prosecution and punishment of trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Committee called on the government to do more to collect data on incidents of trafficking, and ensure that victims have access to quality medical care, counselling and shelter.<sup>27</sup>

## EMPLOYMENT

Jordan suffers from a high unemployment rate of Jordanian women (22 per cent in 2010) and persistent gender wage gaps (30 per cent in the private sector). Equality in employment is a critical area for gender equality since access to resources and other benefits are closely tied to employment. Accordingly, article 11 of CEDAW requires States parties to take all appropriate

---

27 CEDAW Committee, *Concluding Observations*, paras. 29-30.

measures to eliminate discrimination against women in employment in order to ensure they enjoy the same rights on a basis of equality with men.<sup>28</sup>

In its 2012 Concluding Observations, the CEDAW Committee commended Jordan for adopting several legislative measures aimed at eliminating discrimination against women. The Committee made particular note of the 2008 and 2010 amendments to the Labour Code, which widened its scope of application to migrant workers, including domestic workers – referred to as “domestic helpers”. However, the Committee criticized the law for not explicitly requiring equal pay for men and women for work of equal value. Additionally, the Committee noted that, although the amended law prohibits sexual harassment in the workplace, sanctions only apply in cases where the perpetrator is the actual employer.

In 2011, the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) also noted that the 2008 Amendments to the Labour Code did not provide for equal remuneration for men and women for work of equal value, which constitutes discrimination against women in the labour market and is contrary to CEDAW article 11.<sup>29</sup>

In response, Jordan launched the tripartite plus National Steering Committee for Pay Equity to take the lead in coordinating and implementing an action plan and activities aimed at achieving pay equity for equal value of work. The Committee will be co-chaired by the Ministry of Labour (MoL) and the Jordanian National Commission for Women (JNCW). UN Women is also working with the Government in order to revise the Labour Law again and ensure that the new version fully complies with CEDAW, is rights-based, and ensures substantive equality to women domestic and migrant workers.

Additionally, Jordan has enacted several other regulations to better promote and protect the rights of women migrant workers. For example, the law previously required a domestic worker to obtain her employer’s permission before leaving the house. Failure to do so would void the employer’s financial obligations to her, including for repatriation at the end of the contract. Recent changes, however, require only that domestic workers inform their employer when they intend to leave home.<sup>30</sup>

Also, since July 2011, employers of domestic workers have been required to deposit their employees’ salaries into bank accounts. The labour inspectorate has enforced this directive by requiring all employers to provide proof of the bank account and payment of wages when they complete the annual renewal process for their employees’ work permits.<sup>31</sup> This helps to protect domestic workers against non-payment of wages.

28 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries*, (March 2010). Available from: [http://cedaw-seasia.org/docs/Aw\\_GEL\\_incover050609Feb10.pdf](http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf)

29 International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100) Jordan (ratification: 1966)*, (2010).

30 US State Department, *Trafficking in Persons Report 2012*

31 Ibid.

New regulations for domestic workers also prescribe a maximum of 10 working hours per day, one day off per week, 14 days of paid annual leave, sick leave, and entitlement to regular contact with their families.<sup>32</sup> Despite addressing important issues, however, many of the new regulations are loosely worded and open to interpretation, increasing the chances for abuse. For instance, employers are obliged to provide “suitable” living conditions for domestic worker. However, they do not specify the exact meanings of “safe and healthy working conditions” and how to ensure “privacy” for workers who live in their employers’ homes.<sup>33</sup>

Because Jordan has not always been able to ensure adequate protection for migrant workers’ rights, some countries have imposed bans on employment of their nationals. In January 2012, the Ministry of Labour agreed to a request by Indonesia’s Ambassador to halt the issuance of work permits to Indonesian domestic workers, and a similar request was made by the Philippine Government. However, representatives from both labour-sending countries have recently negotiated new Memorandums of Understanding (MoUs) on domestic workers’ rights with the Government of Jordan as a first step toward lifting the bans.<sup>34</sup>

## EMPLOYMENT CONTRACT

In an example of a robust, gender-sensitive and rights-based good practice, the Ministry of Labour promulgated a Special Working Contract for Non-Jordanian Domestic Workers on 21 January 2003. The first of its kind in the Middle East, the precedent-setting contract was developed through the joint work of UN Women and the MoL and was supported by a multi-sector, multi-stakeholder group that included other relevant ministries, the National Commission for Women, the Jordanian Women’s Union, and embassy representatives from Indonesia, the Philippines, and Sri Lanka, the three major countries of origin of Jordan’s migrant domestic workers.

The Special Working Contract is the only binding document that is acceptable for the purposes of securing a visa, as well as resident and work permits for migrant domestic workers in Jordan.<sup>35</sup>

Every employer, agent, and domestic worker must sign the Special Working Contract, which lasts for two years but can be extended by signing the annexed contract upon completion. The Special Working Contract contains a number of important provisions relating to the responsibilities of employers and recruitment agents and the rights of migrant workers, including that: the employer and agency pay for a workers’ round-trip airfare, work and residency permits, and an agreed salary; the employer provides the worker with meals, clothing, accommodation, and medical care; the employer is not allowed to take the worker’s passport; the employer cannot employ the worker anywhere except the employer’s home;

32 Simel Esim and Carole Kerbage, *The Situation of Migrant Domestic Workers in Arab States*.

33 Ibid.

34 US State Department, *Trafficking in Persons Report 2012*

35 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment* (2005). Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

the employer must not place any restrictions on the worker's correspondences; and the worker is allowed one weekly rest day.

The Special Working Contract increases the protection and rights of women migrant domestic workers by making employers and recruitment agents liable for contract violations. The MoL, in coordination with other relevant government agencies, is charged with following up on reports of violations made by individual workers and embassies on behalf of their nationals and with assisting in mediating disputes. It has also set up a hotline and email address for reporting violations, with translation services available in several languages in addition to Arabic, including Indonesian, Sinhalese, Tagalog, Chinese, and Hindi.

## MINIMUM WAGE

In February 2012, the minimum wage rate was increased to 190 Jordanian dinars (268 dollars) per month. However, this does not apply to most migrant workers working in the Qualified Industrial Zones – nor does it apply to domestic workers.<sup>36</sup> Domestic workers usually receive a monthly salary between 150 and 250 dollars per month, but in some instances wages are as low as 80 dollars per month. Wages should be paid within seven days of the due date and receipts are required to be signed by both parties. However, some migrant domestic workers have reported working for up to five months without payment as the employer withheld the salary to pay for the agent's commission, which is prohibited in Jordan. Others have reported being paid only at the end of their two-year contract.<sup>37</sup> This is *prima facie* discriminatory in that it treats domestic workers, who are predominantly female, differently from all other workers in Jordan.

## MINIMUM AGE

Jordan ratified the ILO C 138 (Minimum Age Convention) in 1998. Section 73 of Jordan's Labour Code of 1996 prohibits the employment of minors less than 16 years old, except as apprentices in non-hazardous jobs. Employers who violate the law are fined as much as 500 dinars (710 dollars), which is doubled for repeat offences. Children between 16 and 18 are prohibited from working in potentially hazardous jobs, limited to working six hours per day, and must receive one-hour breaks for every four consecutive working hours. Children under 18 are also banned from working after 8 pm, on national or religious holidays, and on weekends.<sup>38</sup> The minimum age for migrant domestic workers is 18.<sup>39</sup> These prohibitions,

36 Fair Wage Network, *The minimum wage increase in Jordan from 1st of February 2012*, (webpage, 31 December 2011). Available from: [www.fair-wage.com/en/fair-wage-observatory/new-legal-provisions/109-the-minimum-wage-increase-in-jordan-from-1st-of-february-2012.html](http://www.fair-wage.com/en/fair-wage-observatory/new-legal-provisions/109-the-minimum-wage-increase-in-jordan-from-1st-of-february-2012.html)

37 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007).

38 US State Department, *Human Rights Report 2010 - Jordan* (2010). Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)

39 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

however, do not include persons who perform work outside the framework of an employment contract, and thus do not cover migrant workers employed in the informal economy.<sup>40</sup>

## REGULATION OF EMPLOYMENT AGENCIES

Increased regulation of employment agencies was an important aspect of the amendments to the Labour Law in 2009. According to new regulations, employment agencies must now provide a financial guarantee of 50,000 dinars (70,500 dollars) before receiving a licence to operate. Additionally, agencies are required to ensure that employers demonstrate good conduct and comply with the rules and regulations regarding the employment of migrant domestic workers. Regulations also stipulate that employers are responsible for 10 per cent of the total cost involved in bringing the worker to the employer.<sup>41</sup> The government may confiscate the financial guarantee paid by the recruitment agency if it commits a violation of the rules or abuses a migrant domestic worker.

The MoL's Directorate for Domestic Workers<sup>42</sup> is tasked with: monitoring employment agencies during and after registration; issuing and renewing work permits; answering queries made to the domestic workers' hotline; implementing awareness-raising campaigns regarding the rights of women migrant workers and the duties and responsibilities of employers and recruiting agents; and receiving and following up on complaints.<sup>43</sup> The MoL also works with the Domestic Helpers Recruitment Agencies Association to address any violations or complaints.

According to the US Department of State's 2012 TIP Report, in 2011 the MoL's inspectorate division investigated nine recruitment agencies, suspended 20 offices, and forwarded four cases to the Magistrates' Court with a recommendation for closure. All four offices were subsequently closed.

## HEALTH CARE AND FAMILY PLANNING: ACCESS TO HEALTH SERVICES, WORK SAFETY

The Ministry of Labour enforces laws related to health and safety requirements. Migrant workers in the Qualified Industrial Zones as well as domestic workers are most susceptible to health violations including substandard housing. However, workers do not have a statutory

40 CEACR, *Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Jordan (ratification: 1998)*, (Geneva, 2011).

41 Ali S Zaghal and Arda Freij-Dergarabedian, *Migration-Related Institutions and Policies in Jordan*, the Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM), (CARIM-AS 2004/04) (San Domenico di Fiesole, Italy, 2004). Available from: [www.carim.org/Publications/CARIM-AS04\\_04-Dergarabedian-Zaghal.pdf](http://www.carim.org/Publications/CARIM-AS04_04-Dergarabedian-Zaghal.pdf)

42 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

43 UNIFEM and Friends of Women Workers Association, *Migrant Women Workers in Jordan: The Cases of Runaways* (Amman, 2007).

right to remove themselves from hazardous conditions without risking the loss of their jobs.<sup>44</sup>

Migrant domestic workers are also required to undergo medical check-ups before entering Jordan to verify that they do not have any contagious diseases.<sup>45</sup> Where women are compulsorily tested for contagious diseases, including for HIV/AIDS, this is often without their consent. While they are denied access to their own test results, these are often handed over to agents and employers, leading to denial of jobs and deportation if women test positive for HIV/AIDS.

These violations of the right to health, safety and privacy are contrary to article 12 of CEDAW on equal rights to health and healthcare. However, Jordan's draft social security law (2010) does indicate under article 3 that domestic workers and agricultural workers are covered under protections relating to family allowances as well as insurance provisions covering: health; work-related injuries; unemployment; maternity; old age; disability, and death.<sup>46</sup> When enacted, the Social Security Law will be a robust example of a gender-sensitive, rights-based practice in line with CEDAW.

## MATERNITY PROTECTION

Labour legislation has been revised to increase protection against termination of employment due to pregnancy, as well as to provide maternity-related benefits. Under Jordanian law these benefits include: 10 weeks' paid maternity leave; breaks for breastfeeding; two years' unpaid leave to accompany a husband who is transferred outside the region for work; the creation of in-house nurseries in workplaces with more than 20 married women employees; regulations defining the industries, occupations and hours in which women may not be employed and the exceptions to those regulations; and rules prohibiting the dismissal of a pregnant employee from the sixth month of pregnancy.<sup>47</sup> Domestic workers, however, are not covered by maternity leave legislation.<sup>48</sup>

## ECONOMIC AND SOCIAL BENEFITS

Article 13 of CEDAW obliges States parties to "take all appropriate measures to eliminate discrimination against women in economic and social life in order to ensure, on a basis of equality of men and women, the same rights." Good practices that make these rights a reality include an equal right to participate in recreational activities, sports, and all aspects of cultural life, following article 13(c) of the CEDAW.<sup>49</sup> Jordan provides a best

44 US State Department, *Human Rights Report 2011 - Jordan* (2011). Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

45 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

46 Jordan, *Draft Social Security Law of 2010*, Arts 3 and 4.

47 Human Rights Council, *Resolution 5/1*, Working Group on the Universal Periodic Review (Fourth session, Geneva, February 2009), p. 19. Available from: [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc)

48 International Labour Organization, *Decent Work for Domestic Workers*, (Ninety-ninth session, Geneva, 2010). Available from: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf)

49 UNIFEM, *Gender Equality Laws*

practice of a gender-sensitive measure to eliminate discrimination against women in social life by guaranteeing a weekly rest day for migrant domestic workers.<sup>50</sup> This enables them to build social and cultural bonds that can develop into a supportive community. Such bonds are critical to diminish feelings of isolation and alienation, which have harmful effects on the psychological health and wellbeing of migrant domestic workers.

Furthermore, a day off allows these women migrant workers time to seek access to information, health care, legal services, peer and social networks for care and assistance.<sup>51</sup> Moreover, such support networks can contribute to a positive migration experience for migrant domestic workers, and may increase their willingness to renew contracts after they have completed their first two-year term. In this way, the country of employment will also benefit from migrant domestic workers with greater work experience who are more conversant in the national language, culture, and society.<sup>52</sup>

## EQUALITY BEFORE THE LAW

Article 15 of the CEDAW requires States parties to accord to women equality with men before the law, including laws related to freedom of association and freedom of movement.

### Freedom of Association

Jordan ratified the Convention on the Right to Organize in 1968 – however in practice, freedom of association for migrant workers is curtailed. According to a 2009 European Commission progress report on human rights in Jordan, laws adopted in 2008 “increased state control over the creation of societies (prior Government approval required), their membership, their funding (no domestic or foreign funding without prior Government approval) and their functioning in general, without judicial oversight (a civil society organization can be dissolved by decision of the relevant ministry).”<sup>53</sup> While foreign workers are not permitted to form unions, they can join existing unions<sup>54</sup> thanks to a provision added to the draft amendments to the Labour Code in February 2009.<sup>55</sup> The Government has also aided in the establishment of migrant worker trade union committees, and has increased the number of labour inspectors in export-processing zones to monitor discrimination based on union activity.<sup>56</sup>

50 International Labour Organization, *The Special Working Contract for Non-Jordanian Domestic Workers* (Geneva, 2003). Available from: [www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=28](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=28)

51 CARAM Asia, *APWLD NGO Consultation with the UN Special Rapporteur on Violence Against Women*, (Manila, 2007)

52 UNIFEM, *Good Practices to Protect Women Migrant Workers*

53 International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning the Right to Organize and Collective Bargaining Convention – Jordan* (Geneva, 2010). Available from: [http://ec.europa.eu/world/enp/pdf/progress2009/sec09\\_517\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2009/sec09_517_en.pdf)

54 US State Department, *Human Rights Report 2010*

55 Working Group on the Universal Periodic Review, *Jordanian national report to the Human Rights Council*, (2009), p. 13.

56 CEACR, *Individual Observation concerning the Right to Organize and Collective Bargaining Convention – Jordan*.

The Public Gathering Law was also amended in 2008, allowing political parties and charity organizations to hold routine meetings and activities without prior approval from the Government. While the Government still must grant approval for demonstrations, if the Governor's Office does not respond to requests within two days they considered granted.

Restrictions upon the freedoms of assembly and association for women migrant workers constitute violations of article 15 of CEDAW on equality before the law, including laws relating to freedom of assembly and association. However, amendments to the Labour Code allowing migrant and domestic workers to join unions and demonstrate signify gender-sensitive, rights-based good practice in action.

### Women's Access to Justice

Jordan has a range of measures to assist women migrant workers to access the justice system.

Embassies and consulates have played a crucial role in providing shelter for abused migrant domestic workers. According to the US Department of State Human Rights Report, during 2009 an estimated 300 domestic workers from the Philippines, 275 from Indonesia, and 400 from Sri Lanka took shelter at their respective embassies in Amman. Most reportedly fled forced labour conditions, including unpaid wages, sexual violence and physical abuse. The Jordanian Government facilitated access to justice by created a working group to individually examine cases and even waived fines for some who had overstayed their visa.<sup>57</sup>

Migrant domestic workers whose rights have been violated can also file complaints with the Directorate for Domestic Workers against recruitment agencies. Free legal aid is available to migrant workers,<sup>58</sup> and the MoL has the authority to close down agencies that are found to violate the law. However, although the Ministry conducts regular inspection of recruitment agencies it has no power to follow up on payment of salaries or working hours.<sup>59</sup> Resolving disputes amicably with the assistance of a recruitment agency or embassy is encouraged as a first measure before resorting to the judicial system, where cases can be costly and may take years to be concluded. Migrant workers may also report cases of abuse or assault to the police.<sup>60</sup>

Complainants can also contact Jordan's National Centre for Human Rights, in person at the office, or by calling either the office or a 24-hour hotline.<sup>61</sup> UN Women's Regional Office for Asia and the Pacific noted that the existing complaint mechanisms have not thus far registered many cases of violations, even though NGOs report that violations exist. There therefore appears to be a need to support the Government in establishing a complaint system which is also linked to the National Commission for Human Rights for greater checks and balance.<sup>62</sup>

57 US State Department, *Human Rights Report 2010 - Jordan*.

58 Ali S. Zaghal and Arda Freij-Dergarabedian, *Migration-Related Institutions and Policies in Jordan*.

59 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

60 Jordan, Ministry of Labour and UNIFEM, *Domestic Workers Project Booklet*.

61 Available from: <http://www.nchr.org.jo/english/ElectronicServices/ComplaintForm.aspx>

62 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

Jordan's Ministry of Social Welfare and Family Protection also operates a hotline for victims of violence, sexual exploitation or harassment.<sup>63</sup>

Additionally, a government-run shelter for abused women provides psychological and medical services to a small number of foreign domestic workers who have been sexually assaulted by their employers and subsequently referred to the shelter by the Family Protection Department of the Public Security Directorate. Many of these domestic workers are likely trafficking victims.

Despite these gender-sensitive approaches to ensure access to justice, as noted above the Government does not adequately ensure that identified victims are not penalized for unlawful acts committed as a direct result of being trafficked. Victims are often arrested and detained if they are unable to produce valid residency documents or when their employers file false claims of theft against them.<sup>64</sup> The threat of fines, detention and deportation means fewer abused workers will leave their employers, leaving them vulnerable to prolonged situations of human trafficking.<sup>65</sup>

## REDRESS FOR VIOLENCE AGAINST WOMEN

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) recently reported concern about the prevalence of violence against women in Jordan, the absence of a specific law protecting women, and the lack of prosecution and punishment of perpetrators of violence including domestic violence. The Committee was concerned that social attitudes, especially those of law enforcement officials and the judiciary, may deter women from reporting cases of violence against them.<sup>66</sup>

The CEDAW Committee has also expressed concerns about the insufficient number of accessible shelters and crisis centres for female victims of violence in both urban and rural areas in Jordan. However, it did note the establishment of the Family Reconciliation Centre as a refuge for women fleeing abusive situations and the preparation of a draft law to give non-governmental organizations licences to establish and run shelters. The Committee was also concerned about the possible promotion of reconciliation over women's protection and safety by the Family Reconciliation Centre, as well as the continuing practice of placing abused and at-risk women in protective custody and depriving them of their liberty. It called upon Jordan to replace the practice of protective custody with other measures to ensure that women are protected while their liberty is upheld, such as transferring them to safe shelters like the Family Reconciliation House established in the country in 2007.<sup>67</sup>

63 UNIFEM, *Good Practices to Protect Women Migrant Workers*

64 US Department of State, *Trafficking in Persons Report 2010*

65 Ibid.

66 International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning the Worst Forms of Child Labour Convention, 1999 - Jordan*, (Geneva, 2011).

67 CEDAW, *op. cit.* (2007)

## F. ANALYSIS AND CONCLUSIONS

The Jordanian women's movement has made a number of important gains in the country, including the publication of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the official gazette, which gave it the force of law. Additionally, Jordan has adopted several gender-sensitive and rights-based policy reforms for migrant workers including:

- The Special Working Contract for Non-Jordanian Domestic Workers.
- Amendments to the Labour Code to cover informal workers, including migrant domestic workers. Since 2008 the Government has introduced regulations regarding the rights and duties of domestic workers, employers, and recruitment agencies. These include requiring employers to pay salaries into a bank account, and provide medical insurance and 14 days of medical leave, in addition to 14 days of annual leave. Migrant domestic workers now have maximum daily working hours, and a weekly rest day.
- Inspection of recruitment agencies and closure of those that fail to comply with the Labour Code or domestic worker bylaws, or that have complaints filed against them.
- Free legal aid for migrant workers.
- A National Strategy and Action Plan to Combat Human Trafficking (2010-2012) that includes provisions for a specific visa to allow human trafficking victims to receive residency and work permits while they pursue a legal case.

UN Women has supported efforts for inclusion of women migrant workers in the Labour Code. Not only did this result in the formulation of the Standard Working Contract, the Government also established a monitoring committee to assess the situations of women migrant workers in employers' houses. Media campaigns have raised awareness in this destination country regarding the rights of migrant workers.

In the Covenant of Ethical Conduct and Good Practices, also developed with support by UN Women in 2005, recruitment agencies of nine Asian countries including Jordan agreed on far-reaching business standards geared towards protecting women migrant workers, especially domestic workers. Financial exploitation and deliberate misinformation of these women by illegal recruiters lead not only to economic ruin, but also to physical and sexual violence. Through the Covenant, recruitment agencies commit themselves to: embarking on information campaigns for migrant workers and employers; providing social security and insurance programmes for migrant workers; and establishing resource and welfare centres in countries of destination.

In Jordan, as in other countries, the substantial gap between laws and policies on paper and in practice must be closed to fully empower all women, including migrant workers. The Government has been urged to enforce legal protections such as regular salary payments, a maximum 10-hour working day and a weekly day of rest to curtail abuse by employers and recruitment agencies.<sup>68</sup> Also, "honour killings" of women suspected of illicit relationships

68 Amnesty International, *Isolated and Abused: Women Migrant Domestic Workers in Jordan*, (webpage, 30 October 2008). Available from: <http://www.amnesty.org/en/news-and-updates/report/isolated-and-abused-women-migrant-domestic-workers-jordan-20081030>

remain a persistent problem. There were 12 such recorded killings in Jordan between January and November 2010. Often the perpetrators of these killings have received only lightly punishment by police and the courts. There have been several attempts to introduce harsh penalties for such “honour crimes”, but, even with the strong backing of the royal family, these attempts have been rejected by Jordan’s Lower House. In May 2010, the Government decreed amendments to the penal code to ensure that perpetrators of “honour” crimes receive the full penalty of the law.

Furthermore, Jordan needs to enforce the legal protections for migrant domestic workers it has put in place over the past three years. Rights groups such as Human Rights Watch and the Tamkeen centre for Legal Aid have pointed out that despite new protections for migrant domestic workers such as regulated working hours, weekly days off, and the criminalization of human trafficking, enforcement remains negligible. Human Rights Watch suggests five key areas for action to give more meaning to the various reforms:

- 1) All employers and domestic workers should know their legal rights and obligations. Many domestic workers have been exploited in their countries of origin and are unfamiliar with Jordan’s culture and laws. The government should provide migrant domestic workers have a copy of their contract and orientation upon arrival. UN Women would add that this orientation should be gender-responsive and rights-based, as well as culturally and linguistically appropriate.
- 2) The MoL should prioritize implementation of a 2011 ministerial decision obliging employers to pay domestic workers’ salaries into bank accounts, which will make it harder to cheat workers out of their wages, and easier to resolve salary claims quickly and fairly. Non-payment of salaries is a frequent complaint and despite the creation of a domestic workers’ committee in 2010, salary disputes often take months to resolve.
- 3) The MoL, at the time that HRW’s recommendations were written, only had five labour inspectors assigned to investigate the situation of domestic workers who rarely used their legal authority to visit homes. Inspectors told Human Rights Watch that they had never used their power to fine employers who require domestic workers to work seven days a week without rest for 16 hours a day (a common scenario, the research found), despite being aware of such instances. The Ministry should increase the number of inspectors and evaluate their performance in rigorously enforcing the law. And Jordanian prosecutors should investigate cases involving domestic workers that amount to forced labour or trafficking under the 2009 trafficking law.

Authorities should also bear in mind that abuse cases are very difficult for migrant domestic workers to report to police in instances where the worker cannot leave the house to make the complaint.

- 4) HRW recommended that Jordan should change the 2009 Labour Ministry regulation and provision in the Standard Working Contract prohibiting a worker from leaving the home without her employer’s consent, even after working hours. As stated earlier, this reform has been enacted.
- 5) Jordan must make it easier for abused domestic workers to return home. Such women who escape typically return to recruitment agencies or embassies, or start working in the informal economy. Their passports are often withheld by their former employers. In many cases, the escaped worker overstays her legal residency because the employer never

applied for a residency permit as required under the law. Since Jordanian law imposes fines for overstaying one's residency, these domestic workers accrue huge fines they cannot pay. The law should be reformed to hold the employer accountable while allowing the worker to promptly return home.

Jordan has proven itself to be a leader in protecting migrant workers among the Arab States and major destination countries for domestic workers. In June 2011, Jordan supported a new international labour treaty to protect domestic workers. The true test of these reforms will be whether Jordan closes the gaps between laws and policies on paper and in practice. "If so, the improvement in migrant domestic workers' rights would be revolutionary," according to Human Rights Watch.<sup>69</sup>

## G. RECOMMENDATIONS

CEDAW Committee Recommendations include asking the Government to:

### Policy Reform

- Enact a comprehensive gender equality law that includes a definition of discrimination against women in line with article 1 of CEDAW.
- Enforce a minimum wage rate that applies to women migrant domestic workers.
- Address the differences in entitlement to maternity leave between the public and private sectors. The CEDAW Committee also recommends that the Government review ILO recommendations concerning maternity leave, adapt the national situation to these recommendations and consider coverage of such leave through social insurance schemes to prevent private employers from discriminating against women in recruitment.
- Amend the Anti-Human Trafficking Law 2008 to ensure that penalties prescribed for labour-trafficking offenses are sufficiently stringent.
- Amend the Labour Code to ensure that the new version fully complies with CEDAW and is rights-based, ensuring substantive equality to women domestic and migrant workers, and includes sufficiently stringent penalties for forced-labour offences.
- Reform the Labour Code again to prohibit discrimination against women and sexual harassment, and to guarantee female employees the same benefits on the same terms as male employees, as well as access to redress mechanisms.
- Update the Special Working Contract to include protections on maximum working hours, overtime pay, the right to privacy and freedom of mobility.
- Change section 73 of the Labour Code, which prohibits the employment of minors under 16, to include those who work outside an employment contract and are employed in the informal economy.

69 Christoph Wilcke, Researcher, Middle East & North Africa division, Human Rights Watch, "Migrant Domestic Workers in Jordan: Where There's a Will, There's a Way", *Huffington Post*, (Washington DC, 12 October 2011). Available from: [http://www.huffingtonpost.com/christoph-wilcke/migrant-domestic-workers-\\_b\\_1007369.html](http://www.huffingtonpost.com/christoph-wilcke/migrant-domestic-workers-_b_1007369.html)

### **Welfare Benefits for Migrant Workers**

- Provide sufficient temporary shelters for women migrant workers who wish to leave abusive employers, husbands or relatives and provide facilities for safe accommodation during trials.

### **Enforcement**

- Ensure that employers and recruiters do not confiscate or destroy women migrant workers' travel or identity documents. The CEDAW Committee also recommends that the Government end the practice of forced seclusion of women migrant workers, especially where domestic workers are locked up employers' homes. Police officers should be trained to protect the rights of women migrant workers from abuses of their freedom of movement.

## REFERENCES

- Amendments to the Jordanian Labour Law by Dana Abdaljaleel-Jordan Office <http://altamimi.newsweaver.ie/Newsletter/1q5wiprfuvm90wdis92cbz>
- CARAM Asia (2007), APWLD NGO Consultation with the UN Special Rapporteur on Violence Against Women, Manila, the Philippines.
- CEACR: Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100) Jordan (ratification: 1966) Published: 2011
- CEACR (2011) Individual Observation concerning the Worst Forms of Child Labour Convention: Jordan.
- CEDAW (2007), Concluding Comments of the Committee on the Elimination of Discrimination against Women: Jordan, CEDAW/C/JOR/CO/4.
- CEDAW (2000), Concluding Comments of the Committee on the Elimination of Discrimination against Women: Jordan, CEDAW/C/2000/I/CRP.3/Add.1/Rev.1.
- CEDAW (2007), Concluding Comments of the Committee on the Elimination of Discrimination against Women: Jordan, CEDAW/C/JOR/CO/4.
- Friends of Women Workers Association, Migrant Women Workers in Jordan: The Cases of Runaways, at 18 (undated).
- Human Rights Watch (2009), Slow Movement: Protection of Migrants' Rights in 2009.
- Human Rights Watch and the Amman-based Tamkeen centre for Legal Aid and Human Rights, Domestic Plight: "How Jordanian Laws, Officials, Employers, and Recruiters Fail Abused Migrant Domestic Workers."
- ILO (2003), The Special Working Contract for Non Jordanian Domestic Workers.
- ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted in its 2010 Individual Observation concerning the Right to organize and Collective Bargaining Convention.
- ILO: CEACR, 2010 Individual Observation concerning the Right to Organize and Collective Bargaining Convention - Jordan.
- Human Rights Watch Press release (Munich) April 8, 2011.
- ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) note in its 2011 Individual Observation concerning the Worst Forms of Child Labour Convention which Jordan ratified in 2000
- The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) 2011 Individual Observation on Jordan.
- ILO (2003), The Special Working Contract for Non Jordanian Domestic Workers.
- Ministry of Labour and UNIFEM, Domestic Workers Project Booklet (undated).
- Jordan National Report, Working Group on the Universal Periodic Review Fourth session, Geneva, 2-13 February 2009, p. 13.
- Jordan National Report submitted in accordance with paragraph 15 (A) of the Annex to the HUMAN RIGHTS COUNCIL RESOLUTION 5/1, HUMAN RIGHTS COUNCIL, Working Group on the Universal Periodic Review Fourth session, Geneva, 2-13 February 2009, p. 19.
- Ministry of Labour and UNIFEM, Domestic Workers Project Booklet, (undated).
- Social Security Law (Law No. 19 of 2001), articles 3 and 4.
- Signal, Ali S. and Arad Freij-Dergarabedian, Migration-Related Institutions and Policies in Jordan, (2004).
- UNIFEM (2005), Claim and Celebrate Women Migrants' Human Rights Through CEDAW.
- UNIFEM (2005), Good Practices to Protect Women Migrant Workers.
- UNIFEM (2008), Legal Protection for Migrant Domestic Workers in Asia and the Arab States.
- UNIFEM Arab States Regional Office, Migrant Workers in Jordan, A Concept Paper on the Status of Female Domestic Migrant Workers in Jordan (2000).
- UN Women, East, and South East Asia Office (2011), Country Snapshots.
- US Department of State Trafficking in Persons Report 2010

UNIFEM (2010), Gender Equality Laws, Global Good Practice and a Review of Five Southeast Asian Countries.

US Department of State Trafficking in Persons Report 2010

Zaghal, Ali S and Arda Freij-Dergarabedian, Migration-Related Institutions and Policies in Jordan, at 6 (2004) <[http://www.eui.eu/RSCAS/e-texts/CARIM-AS04\\_04-Dergarabedian-Zaghal.pdf](http://www.eui.eu/RSCAS/e-texts/CARIM-AS04_04-Dergarabedian-Zaghal.pdf)>; Exchange rate USD1 = JOD0.71.

## INTERNET

[www.bahrainrights.com](http://www.bahrainrights.com)

<http://globalnation.inquirer.net/13901/watchdogs-jordan-not-protecting-migrant-workers>

<http://www.nchr.org.jo/english/ElectronicServices/ComplaintForm.aspx>

[http://en.wikipedia.org/wiki/Human\\_rights\\_Jordan](http://en.wikipedia.org/wiki/Human_rights_Jordan)

[http://www.ilo.org/declaration/events/lang--en/WCMS\\_159808/index.htm](http://www.ilo.org/declaration/events/lang--en/WCMS_159808/index.htm)

[www.unwomen.org](http://www.unwomen.org)

<http://www.minimum-wage.org/international/en/Jordan>

[http://www.kinghussein.gov.jo/constitution\\_jo.html](http://www.kinghussein.gov.jo/constitution_jo.html)

<http://www.amnesty.org/en/news-and-updates/report/isolated-and-abused-women-migrant-domestic-workers-jordan-20081030>

<http://www.nchr.org.jo/english/ElectronicServices/ComplaintForm.aspx>



Photo credit: UN Women



RECEIVING COUNTRIES

# Republic of Singapore



## A. COUNTRY CONTEXT

Singapore is a small city-state located in South-East Asia. It is comprised of a main island linked by a causeway and a bridge to the southern tip of Malaysia, and around 50 smaller islands. Singapore's population of approximately 5.2 million<sup>1</sup> is made up largely of ethnic Chinese (74.2 per cent) as well as Malays (13.4 per cent) and Indians (9.2 per cent).<sup>2</sup> Singapore is a high-income country<sup>3</sup> and is ranked "very high" on the UNDP's latest human development index.<sup>4</sup> Gross national income was placed at 42,930 US dollars per capita in 2011.<sup>5</sup>

Singapore's robust economy is driven by electronics manufacturing and financial services, and more recently by major investments in pharmaceutical and medical technology production.

Human Development Index (2011)	Rank 26 (Very high human development) <sup>6</sup>
Stock of Immigrants (2010)	1 970 000 <sup>7</sup>
Annual growth rate of immigrant population (2010)	4.1% <sup>8</sup>

1 Available from: <http://data.worldbank.org/country/singapore>

2 Singapore, Department of Statistics, *Yearbook of Statistics - Singapore (2010)*. Available from: [www.singstat.gov.sg/pubn/reference/yos10/yos2010.pdf](http://www.singstat.gov.sg/pubn/reference/yos10/yos2010.pdf)

3 Available from: <http://data.worldbank.org/country/singapore>

4 Available from: <http://hdrstats.undp.org/en/countries/profiles/SGP.html>

5 Available from: <http://data.worldbank.org/country/singapore>

6 Available from: <http://hdrstats.undp.org/en/countries/profiles/SGP.html>

7 World Bank, *Data page - Singapore* (webpage, n.d.). Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Singapore.pdf>

8 Available from: [www.migrationinformation.org/feature/print.cfm?ID=887](http://www.migrationinformation.org/feature/print.cfm?ID=887)

Immigrants as share of population (2010)	40% (2010) <sup>9</sup>
Proportion of female immigrants (2010)	56% (2012) <sup>10</sup>

Singapore is a primarily a receiving country for migrant labour. The number of foreign work permit holders in 2009, including household workers, was 856,000. There were no reliable estimates of the number of foreigners working illegally.<sup>11</sup> Foreign-born workers often fill low-skilled, low-pay positions that Singaporeans are reluctant to take. The Singapore Yearbook of Manpower Statistics published a study in 2009, showing that the construction and manufacturing industries have the highest proportions of foreign workers, with 71 and 48 per cent respectively. Additionally, at the end of 2010, there were an estimated 201,000 migrant domestic workers living and working in Singapore households. Domestic workers originate mainly from Indonesia and the Philippines, and to a lesser extent Sri Lanka, India, Thailand, Myanmar and Bangladesh.<sup>12</sup>

In recent years there has been growing discontent among Singaporeans about the increase in foreign labour, as it has led to greater competition for jobs, housing, transportation and space. As a result, in August 2009, Prime Minister Lee Hsian Long said that the Government would slow the pace of its intake of foreigners, maintaining foreign workers at about 30 per cent of the workforce. He cited physical and social constraints for this move.

## B. KEY GENDER AND HUMAN RIGHTS

Singapore has ratified only two of the nine core international human rights treaties, the CEDAW and the Convention on the Rights of the Child (CRC), making it the country with the lowest number of ratifications within the ASEAN region (tied with Brunei Darussalam). Singapore was also one of only nine states that did not vote for passage of International Labour Organization (ILO) Convention No. 189 on Decent Work for Domestic Workers.<sup>13</sup>

Despite this, Singapore has affirmed its commitment to the promotion and protection of human rights, but insists that “while everyone must adhere to a universal standard of human rights, the interpretation and implementation of rights could not be divorced from their societal context and would evolve as society evolves.”<sup>14</sup> During the 2011 Universal Periodic Review of Singapore’s

9 Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Singapore.pdf>

10 Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Singapore.pdf>

11 US State Department, *Human Rights Report 2011 - Singapore* (2011), p. 29.. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

12 Transient Workers Count Too (TWC2), *Fact Sheet: Foreign Domestic Workers in Singapore (Basic Statistics)*, (webpage, n.d.). Available from: <http://twc2.org.sg/2011/11/16/fact-sheet-foreign-domestic-workers-in-singapore-basic-statistics/>

13 Human Rights Watch, *World Report 2012 – Singapore* (New York, 2012). Available from: [www.hrw.org/world-report-2012/world-report-2012-singapore](http://www.hrw.org/world-report-2012/world-report-2012-singapore)

14 Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Singapore* (Geneva, Eighteenth session, July 2011), p. 3.

human rights record, the Government said it would consider ratifying other core human rights instruments, including the Convention on the Rights of all Migrant Workers, and withdrawing reservations made to the two Conventions it has ratified.<sup>15</sup> It also agreed to consider creating a national human rights institution in accordance with the Paris Principles.<sup>16</sup>

While Singapore generally respects the human rights of its citizens, the government has broad powers to limit citizens' rights and to inhibit political opposition. While Singapore's Constitution guarantees the rights to freedom of expression, peaceful assembly, and association, it is often criticized for broad restrictions it places on these activities in the name of security and public order. For example, outdoor gatherings of five or more persons require a police permit, and the Public Order Act of 2009 mandates that a permit is needed for indoor assemblies as well, if all speakers are not citizens of Singapore.<sup>17</sup> Other criticisms of Singapore's human rights record include the facts that: the Internal Security Act and Criminal Law allows suspects to be arrested and detained indefinitely without charge or judicial review; suspected drug users may be sentenced to "rehabilitation" centres for up to three years without trial; judicial caning is a common punishment for those found guilty of drug trafficking, rape, or immigration offences, and the death sentence is mandatory for at least 20 drug-related offences.<sup>18</sup>

In its most recent review of Singapore, the CEDAW Committee praised the Government for enacting legislative measures to better promote and protect women's rights but also expressed concerns that marginalized women in Singapore are confronted with systemic discrimination. In particular, the Committee noted that foreign wives, foreign domestic workers, Muslim women and women with disabilities suffer from: the absence of clear anti-discrimination mechanisms; the lack of human rights institutions; and inequality before the law and in practice. Additionally, the Committee criticized the fact that migrant domestic workers are excluded from the Employment Act and are deported if found to be pregnant or living with HIV/AIDS.<sup>19</sup>

## C. KEY STAKEHOLDERS

The Ministry of Manpower is charged with maintaining and developing workplace relations and standards. The Ministry's Foreign Manpower Management Division (FMMD) is mandated to facilitate the well-being of foreign workers during the period of their employment in Singapore. The FMMD includes: (1) the Employment Inspectorate Department, which focuses on illegal employment and other violations of labour regulations; (2) the Well-Being Department, which promotes compliance with regulations regarding accommodation, working conditions, and physical well-being; and (3) the Planning and Organization Development Department,

<sup>15</sup> *Ibid.*, p. 18.

<sup>16</sup> *Ibid.*, p. 19.

<sup>17</sup> Human Rights Watch, *World Report 2012 - Singapore*

<sup>18</sup> *Ibid.*

<sup>19</sup> CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Singapore* (CEDAW/C/SGP/CO/4/Rev.1) (Forty-ninth session, 2011). Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

which raises awareness about policies related to foreign workers.<sup>20</sup> The FMMD also manages what its mandate calls the “professionalism” of the recruitment industry, and plays a key role in overseeing and enforcing the Employment Agencies Act.<sup>21</sup> The Government has also established the Ministerial Steering Committee on Foreign Workers to look into and provide for the needs of foreign workers, from housing to recreation.

There are several Civil Society Organizations (CSOs) which advocate on behalf of the rights of women migrant workers. These include:

AWARE, a non-profit gender equality advocacy group that campaigns against laws, public policies, and mindsets that discriminate against women. AWARE has contributed towards the strengthening of laws dealing with domestic violence, provides training to empower women to achieve independence, and provides educational programmes to organizations and the public on issues that affect women. AWARE’s support services provide crisis counselling, assistance in dealing with the authorities, and legal advice to women in need.

The Humanitarian Organization for Migration Economics (HOME) develops research and education on the socioeconomics of migration in Singapore and countries of origin, and provides programmes and direct assistance in response to the special needs of migrant communities, including victims of trafficking and forced labour.

Count Too (TWC2) campaigns for decent wages, medical leave, annual paid holidays, regulated work hours for migrant workers. They have also appealed for the ratification of the Domestic Workers Convention and for the inclusion of domestic workers in the Employment Act of 1968

## D. RATIFICATION RECORD

The following table illustrates Singapore’s ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	5 October 1995 a
ICCPR	-
ICESCR	-
ICERD	-

20 Singapore, Ministry of Manpower, *Foreign Manpower Management Division* (webpage, n.d.). Available from: [www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/foreign-manpower-management-division.aspx](http://www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/foreign-manpower-management-division.aspx)

21 HOME and TWC2, *Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore* (Singapore, 2010). Available from: <http://twc2.org.sg/2011/06/19/justice-delayed-justice-denied-2010/>

ILO C29 Forced or Compulsory Labour	25 October 1965
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	25 October 1965
ILO C100 Equal Remuneration	30 May 2002
ILO C105 Abolition of Forced Labour	-
ILO C111	-
Discrimination in Employment	-
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition Worst Forms of Child Labour	14 June 2001

## E. COMPLIANCE WITH CEDAW

Singapore acceded to the CEDAW in 1995, but reserves the right not to apply provisions of article 2 paragraph a-f and article 16 paragraphs 1(a), 1(c) and 1(h) and paragraph 2, stating these reservations are designed “to protect the rights of minorities in the practice of their personal and religious law... and maintain the delicate balance of Singapore’s multicultural society.”<sup>22</sup> The Government has also justified maintaining its reservation to article 11 paragraph 1, “in order to safeguard the welfare of women and their unborn children from certain hazardous occupations... in view of Singapore’s small population and low total fertility rate.”<sup>23</sup> The CEDAW Committee has urged the Government to withdraw these reservations, stating they are contrary to the objectives of the Convention.

The Inter-Ministry Committee on CEDAW, established in 1996, oversees the implementation of the Convention in Singapore. It represents 16 ministries and public sector agencies which coordinate and implement initiatives to address the needs of women. The Office for Women’s Development within the Ministry of Community Youth and Sports is the Secretariat to the Committee and is responsible for initiating and implementing government policies relating to women.<sup>24</sup>

<sup>22</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/334/28/PDF/N1133428.pdf?OpenElement>

<sup>23</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/334/28/PDF/N1133428.pdf?OpenElement>

<sup>24</sup> <http://app.msf.gov.sg/AboutMSF/OurPeople/DivisionsatMSF/SocialDevelopmentandSupport/OfficeforWomensDevelopment.aspx>

## DISCRIMINATION

Singapore's Constitution guarantees equality before the law and the entitlement of all persons to equal protection of the law<sup>25</sup>. However there is no specific definition of discrimination against women in legislation, including the Women's Charter. Thus the CEDAW Committee has urged Singapore to "incorporate in its Constitution or other legislation a definition of discrimination, in line with article 1 of the Convention, and also to include provisions to prohibit all forms of discrimination against women on all grounds".<sup>26</sup>

Recently Singapore revised its legislation to better align Shariah, or Islamic, law with civil law. In particular it amended the Administration of Muslim Law Act to raise the minimum age of Muslim marriage to 18. However, the Government has been criticized by the CEDAW Committee for preserving a dual marriage system, and for maintaining discriminatory laws related to marriage, divorce and nationality that deny women equal rights with men<sup>27</sup>.

Singapore's Employment Act provides for the basic terms and working conditions for every employee, regardless of nationality, who is under a contract of service with an employer, including migrant workers, however the law specifically excludes domestic workers<sup>28</sup>. Additionally, foreign domestic workers in Singapore are not eligible for limited free legal assistance that is available to other migrant workers, nor are they allowed to marry Singaporeans.<sup>29</sup> Also, unlike other migrant workers, foreign domestic workers face deportation if they become pregnant.<sup>30</sup> These discriminatory laws violate foreign domestic workers' rights to privacy and to marriage which are guaranteed by the Universal Declaration of Human Rights. They also violate CEDAW article 11 on equal employment, article 15 on equality before the law and article 16 on matters related to marriage. The CEDAW Committee expressed concern about the prohibition on pregnancy and marrying Singaporeans in its 2011 Concluding Observations<sup>31</sup>.

## POLICY MEASURES

Several aspects of Singapore's labour migration policy, particularly as it relates to domestic migrant workers, are not gender-sensitive and exacerbate domestic workers' isolation in homes and their risk of abuse. Specifically, Singapore requires that employers post a security bond of 5,000 Singapore dollars (over 4,000 US dollars) for each domestic worker hired. The employer forfeits the bond if their domestic worker runs away or if they fail to pay for the domestic worker's repatriation. This policy was enacted partly to ensure that employers are able to pay for their domestic help to return home at the end of their contract. However, the

25 Singapore, *Constitution*, article 12(1).

26 CEDAW Committee, *Concluding Observations*

27 Ibid.

28 Singapore, Ministry of Manpower, *The Employment Act: Who it covers* (webpage, n.d.). Available from: [www.mom.gov.sg/employment-practices/employment-rights-conditions/employment-act/Pages/default.aspx](http://www.mom.gov.sg/employment-practices/employment-rights-conditions/employment-act/Pages/default.aspx)

29 US State Department, *Human Rights Report 2011*, pp. 29-30.

30 Singapore, *Employment of Foreign Manpower Act*, chap. 91A (S 569/2012) (2012). Available from: [www.mom.gov.sg/Documents/services-forms/passes/WPSPassConditions.pdf](http://www.mom.gov.sg/Documents/services-forms/passes/WPSPassConditions.pdf)

31 CEDAW Committee, *Concluding Observations*

result has been that some employers severely restrict the movement of their domestic help, and in the most egregious cases, lock them in the house, out of fear that the domestic worker will run away. This violates article 15 of the CEDAW's guarantee of freedom of movement<sup>32</sup>.

Another policy that contributes to abuse is the rule prohibiting migrant workers from performing jobs or working for anyone other than what is indicated on their work permit. Only migrant domestic workers and those employed in the construction industry are allowed to switch employers, but they must first receive approval from their current employer. If an employee dares to complain about abuse, they are unlikely to receive permission to change jobs, thus many migrant workers, including construction and domestic workers, endure abuse at work rather than risk termination and deportation<sup>33</sup>. This is not the case for highly skilled expatriate workers who are encouraged to work in Singapore and integrate into Singaporean society. Their visas are not required to be tied to a specific employer and they can apply for permanent residence following a period of two to 10 years<sup>34</sup>.

The policy linking visas and work permits to a specific employer contributes to the specific vulnerability of many women migrant workers, and contradicts the CEDAW Committee's General Recommendation 26 which affirms that migrant women should not be discriminated against in any sphere of their life. "While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. This includes the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle."<sup>35</sup>

## TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Person's Report, "Singapore is a destination country for men, women, and girls from China, India, the Philippines, Indonesia, Sri Lanka, Bangladesh, Thailand, Viet Nam, and elsewhere in South-East Asia, subjected to sex trafficking and forced labour."<sup>36</sup> Many of these individuals are labour migrants who have been deceived about the nature of their work. Upon arrival in Singapore their salaries are withheld, passports confiscated, movement restricted, and some are physically or sexually abused. Debts associated with migrant workers' employment, that can be up to 10 months' wages, also makes them vulnerable to forced labour<sup>37</sup>.

32 Human Rights Watch, *Maid To Order – Ending Abuses against Migrant Workers in Singapore*, (New York, 2005), p. 4. Available from: [www.hrw.org/sites/default/files/reports/singapore1205wcover.pdf](http://www.hrw.org/sites/default/files/reports/singapore1205wcover.pdf)

33 HOME and TWC2, *Justice Delayed, Justice Denied*, p.9.

34 International Organization for Migration, *Labour Migration from Indonesia - An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East* (Jakarta, 2010). Available from: [www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf)

35 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

36 US State Department, *Trafficking in Persons Report 2012 – Singapore* (2012), p. 308. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

37 Ibid.

## PROSECUTION

Singapore is not a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and does not have a comprehensive law to combat trafficking and provide protection for victims. Instead, it criminalizes trafficking through the Penal Code, Women's Charter, Children and Young Persons Act, Employment of Foreign Manpower Act, Employment Agencies Act, Employment Agency Rules, and the Conditions of Work Permits. The US report notes that, while penalties for human trafficking include imprisonment, fines, and caning, the Government has demonstrated limited efforts to enforce the law and combat trafficking in persons<sup>38</sup>.

In its 2011 Concluding Observations, the CEDAW Committee expressed its concern at the continued prevalence of trafficking in women and girls, and urged Singapore to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime. It also urged the Government to ensure the prosecution and punishment of individuals involved in trafficking.<sup>39</sup>

## PROTECTION

Because large debts to recruitment agencies contribute to conditions of forced labour for migrant workers, Singapore's Employment Agencies Act now prohibits recruitment agencies from charging job seekers more than one month's salary per year for a maximum of two years. The Government also recently introduced new tools for identifying victims of forced labour.<sup>40</sup> Importantly, these victims are not prosecuted for immigration or other related offences and are referred to a dedicated unit specifically trained to assist them<sup>41</sup>. Additionally, Singapore's Manpower Ministry recently issued a new regulation granting domestic workers a weekly day of rest. This will allow more opportunities for those domestic workers facing abuse to seek help, thus decreasing the likelihood of being trapped in a situation of forced labour.<sup>42</sup> These are good examples of gender-sensitive policies in line with CEDAW article 6 related to trafficking.

## PREVENTION

In March 2011, Singapore established an Inter-agency Task Force on Trafficking in Persons and adopted the definition of "trafficking in persons" as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>43</sup> In March

38 Ibid.

39 CEDAW Committee, *Concluding Observations*, para. 26.

40 US State Department, *Trafficking in Persons Report 2012*, p. 310.

41 Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, para. 55.

42 US State Department, *Trafficking in Persons Report 2012*, p. 310.

43 Singapore, *Statements to UN General Assembly* (July 2011). Available from: [www.un.org/News/Press/docs/2011/wom1875.doc.htm](http://www.un.org/News/Press/docs/2011/wom1875.doc.htm)

2012, the country's first National Plan of Action to coordinate anti-trafficking activities was launched. The government also increased efforts to educate work permit holders about the dangers of trafficking, through media campaigns and compulsory courses in native languages, on employment rights and responsibilities for all incoming foreign domestic workers and their employers. The CEDAW Committee commended the Government for these efforts but called on it to improve efforts to prevent trafficking by increasing "international, regional and bi-lateral cooperation with countries of origin and transit as well as through training of the judiciary, law enforcement officials, border guards and social workers."<sup>44</sup>

## EMPLOYMENT

Laws that regulate migrant labour include:

- A three-tiered categorization of labour migrants<sup>45</sup>
  1. Highly skilled work permit holders who earn a minimum of 2,500 Singapore dollars per month;
  2. S-pass<sup>46</sup> holders who earn a salary of more than 1,800 Singapore dollars per month;
  3. Unskilled (temporary) workers who earn less than 1,800 Singapore dollars per month
- The Employment Act (EA) – the main labour legislation in Singapore, which covers both migrant and local employees, with the exception of foreign domestic workers. The EA regulates the terms and conditions of employment including rest days, hours of work, overtime, and annual and medical leave<sup>47</sup>.
- The Employment of Foreign Manpower Act (EFMA) – which regulates the terms and conditions for hiring a migrant worker, including payment of salaries, health coverage and repatriation. The EFMA stipulates the responsibilities of employers and employees, including: requirements that migrant workers receive mandatory health check-ups; restrictions on marriage and pregnancy; family reunification; and prohibitions of undesirable and immoral activities<sup>48</sup>.
- The Work Injury Compensation Act (WICA) – which provides for compensation to employees or their families if they are injured or killed in a work-related accident. The act covers all employees who are engaged under a contract of service or apprenticeship, except domestic workers who are excluded.<sup>49</sup>
- The Employment Agencies Act (EAA) – which regulates private employment agencies by stipulating the rules on recruitment procedures, client confidentiality, and workers'

44 CEDAW Committee, *Concluding Observations*, para. 26.

45 International Organization for Migration, *Labour Migration from Indonesia*, p. 53

46 The S Pass allows mid-level skilled foreigners who earn a fixed monthly salary of at least \$2,000 to work in Singapore. Employers must make S Pass applications on behalf of a job candidate. (source: <http://www.mom.gov.sg/foreign-manpower/passes-visas/Pages/default.aspx>)

47 Singapore, *Employment Act*, chap. 91. Available from: <http://www.mom.gov.sg/Documents/employment-practices/changes-to-the-ea.pdf>;

48 Singapore, *Employment of Foreign Manpower Act*

49 Singapore, *Work Injury Compensation Act, Frequently Asked Questions* (webpage, n.d.). Available from: <http://www.mom.gov.sg/legislation/occupational-safety-health/Pages/work-injury-compensation-act-faqs.aspx#general>

wellbeing and repatriation issues. The EAA also addresses unethical practices by employment agencies.<sup>50</sup>

Singapore's main labour laws, the Employment Act and Workmen's Compensation Act, exclude domestic workers from many of the legal protections extended to other workers. These exclusions, while seemingly gender-neutral in that they focus on a category of employment, have a discriminatory impact on migrant women, as these make up the overwhelming majority of domestic workers in Singapore. Singapore's employment law therefore discriminates on the basis of sex and national origin, in violation of article 11 of the CEDAW which requires parties to ensure that women are entitled to the same benefits and conditions of service as men.

In its 2011 Concluding Observations on Singapore, the CEDAW Committee commended the government for the legislative, administrative and educational measures it has taken to protect foreign domestic workers. However, it urged the Government to: ratify ILO Convention No. 11, concerning Discrimination in Respect of Employment and Occupation; ratify ILO Convention no. 189, concerning Decent Work for Domestic Workers; and review and amend Singapore's existing labour legislation so that it applies to foreign domestic workers, and entitles them to adequate wages and decent working conditions.<sup>51</sup>

## EMPLOYMENT CONTRACT

The Singapore government has not developed a binding or official standard employment contract for migrant workers. Instead, employment contracts are usually formulated and implemented by private recruitment agencies. The Association of Employment Agencies of Singapore encourages members to use its model employment contract, and accrediting bodies have also created sample employment contracts. Provisions in these various models generally require adequate food, rest, and lodging for migrant workers, but may not provide specific guidelines on maximum hours of work, periods of continuous rest, or acceptable housing arrangements. These model contracts are a significant improvement over previous informal work arrangements, where there were no written terms of employment. However, they generally provide less protection in terms of benefits, wages, hours of work and rest, worker safety, etc. than that prescribed by the country's main labour law – which does not cover domestic workers.<sup>52</sup>

Employment agencies have considerable influence over migrant workers and provide little opportunity for them to negotiate the terms of their employment contracts. For example, during domestic workers' first two-year contract, the labour agent typically sets the salary, despite the fact that Singapore's policies dictate that contracts be negotiated between the employer and employee. Additionally, although many domestic workers sign a contract before beginning work, very few retain a copy, and thus are unclear about the terms and conditions of employment<sup>53</sup>.

50 Singapore, Ministry of Manpower, *New Employment Agency Regulatory Framework* (webpage, u.d.). Available from: <http://www.mom.gov.sg/foreign-manpower/employment-agencies/Pages/Employment%20Agencies%20Act.aspx>

51 CEDAW Committee, *Concluding Observations*, paras. 31-31.

52 *Human Rights Watch, Slow Reform, Protection of Migrant Domestic Workers in Asia and the Middle East* (New York, 2010), p. 12. Available from: [www.hrw.org/sites/default/files/reports/wrd0410webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/wrd0410webwcover_0.pdf)

53 Human Rights Watch, *Maid To Order*.

The imbalance of power between employers, employment agencies, and migrant workers, means that employees are easily coerced into signing away their rights when entering into a contract. This in turn increases their vulnerability to abuse in the workplace. This is a particularly serious problem for domestic workers who are not covered under the main labour law. This lack of protection for the rights of domestic migrant workers violates article 11 of CEDAW, which requires states to take measures to ensure an equal right to remuneration and equal treatment at work. A standard employment contract guaranteeing full protection equal to that given to other workers would help to ensure that Singapore complies with its international obligations to protect women migrants, and particularly domestic workers.

## MINIMUM WAGE AND MINIMUM AGE

Singapore's lack of a minimum wage, combined with the inability of migrant workers to negotiate the terms of their employment, means these workers are often paid a substandard salary. For example, migrant domestic workers earn far less than Singaporeans who do similar work such as gardening and cleaning. Studies have also shown that industry standards assign different wages to domestic workers according to their national origin.<sup>54</sup> This is an example of gendered forms of racism and xenophobia against women migrant workers, which violates article 5 of CEDAW on discriminatory gender roles and stereotypes, article 11 on equal rights in employment, and article 15 on equality before the law.

To combat this problem some sending countries have enacted minimum wages for their citizens seeking employment in Singapore. For example, pursuant to an agreement with the Government of the Philippines, Singapore employment agencies and companies are allowed to recruit Filipino workers only if the employer is accredited by the Philippine Overseas Employment Administration (POEA), which requires that domestic workers are paid a minimum salary of 400 Singapore dollars per month, and receive free food and lodging, as well as round trip transportation costs<sup>55</sup>.

Pursuant to Singapore's Employment Act the minimum age for an employee is 16, which applies to local as well as foreign workers. Domestic workers are not covered by this Act, however the Employment of Foreign Manpower Act requires that first-time applicants for domestic work be at least 23 years old.

## REGULATION OF EMPLOYMENT AGENCIES

The Singapore government regulates employment agencies through legislation, specifically the Employment Agency Act, licensing conditions, and an accreditation programme. Licensing requirements include furnishing a security bond (not to exceed

54 Average salaries are 220-250 Singapore dollars for maids from Sri Lanka; 280-320 for maids from Myanmar and Indonesia; and 350 for maids from the Philippines. Available from: [www.bestmaid.com.sg/faq.asp#22](http://www.bestmaid.com.sg/faq.asp#22) (retrieved 16 September 2012)

55 Available from: [www.philippine-embassy.org.sg/labor/employment-agency/](http://www.philippine-embassy.org.sg/labor/employment-agency/)

60,000 Singapore dollars), paying an annual license fee (400 Singapore dollars), and having no previous court convictions<sup>56</sup>. Those agencies found to be in violation of regulations are subject to fines and imprisonment, however, the International Organization for Migration (IOM) has criticized the government for not adequately monitoring the activities of these agencies and relying on migrant workers to report problems before taking action<sup>57</sup>. Recently, the Ministry of Manpower has enacted regulatory changes to improve compliance and minimize malpractice, these include: (1) discouraging transactions with unlicensed agencies; (2) expanding investigatory powers, increasing fines, and suspending the operations of agencies being investigated, for malpractice; (3) ensuring better minimum standards of service when employment agencies deal with employers; and (4) ensuring agencies comply with rules for dealing with vulnerable workers, including caps on recruitment fees which cannot exceed one month's salary per year of the contract<sup>58</sup>.

As part of efforts to improve the professionalism of local employment agencies and to improve relations between employers and their domestic help, the Ministry of Manpower requires accreditation of all employment agencies that place foreign domestic workers. The accreditation process requires proper orientation for domestic workers, education programmes for employers to ensure they understand their obligations to their domestic help, and the facilitation of written contracts between employer and employees<sup>59</sup>.

These improved regulations will help to stem the worst abuses against foreign workers, but more can be done to ensure employment agencies play a positive role in women migrant workers' experience while working abroad. The CEDAW Committee's General Recommendation 26 strongly urges countries to sensitize recruitment agencies to the rights of women migrant workers. In particular it suggests training agencies on the forms of sex and gender-based discrimination and exploitation that women migrant workers are likely to experience, and holds the agencies accountable for meeting their responsibilities to promote and protect women migrant workers' rights.

## HEALTH CARE AND FAMILY PLANNING: ACCESS TO HEALTH SERVICES, WORK SAFETY AND MATERNITY PROTECTION

Discriminatory laws prohibit migrant domestic workers from becoming pregnant while living in Singapore. Those found in violation of the law will have their work permit canceled and are subject to immediate deportation. This has resulted in unequal access to health care services, including voluntary abortions, for migrant women, who fear that seeking an abortion will cause them to lose their job and be repatriated to their home country<sup>60</sup>. Female

56 Singapore, *the Employment Agencies Act*. Available from: [www.mom.gov.sg/Documents/foreign-manpower/Employment%20Agencies/EA%20Rules.pdf](http://www.mom.gov.sg/Documents/foreign-manpower/Employment%20Agencies/EA%20Rules.pdf)

57 International Organization for Migration, *Labour Migration from Indonesia*, p. 59.

58 Singapore, Ministry of Manpower, *Executive Summary of the Amendments to the Employment of Foreign Manpower Act (EFMA)* (webpage, u.d.). Available from: [www.mom.gov.sg/Documents/foreign-manpower/EFMA/EFMA-Executive-summary.pdf](http://www.mom.gov.sg/Documents/foreign-manpower/EFMA/EFMA-Executive-summary.pdf)

59 Migrant Forum in Asia, *Good Practices taken by Asian States to Effectively Supervise Recruitment Agencies* (Quezon City, Philippines, 14 October 2009), p. 8. Available from: [www2.ohchr.org/english/bodies/cmwr/docs/DGD/MigranForumAsia.pdf](http://www2.ohchr.org/english/bodies/cmwr/docs/DGD/MigranForumAsia.pdf)

60 Human Rights Watch, *Maid to Order*.

domestic workers are also obliged to undergo medical examinations every six months, including pregnancy and HIV/AIDS tests, which is not required of other foreign workers<sup>61</sup>.

Article 12(1) of CEDAW prohibits discrimination against women in the field of health care and obliges States parties to ensure equal access to health care services. Singapore's discriminatory laws, effectively denying migrant domestic workers the right to end unwanted pregnancies, are in breach of its international obligations to protect women's right to the highest attainable standard of health and to determine the number and spacing of their children. The CEDAW Committee raised this as an issue in its most recent concluding observations, and encouraged Singapore to "review and repeal the law requiring a work-permit holder, including foreign domestic workers, to be deported on grounds of pregnancy or diagnosis of sexually transmitted disease such as HIV/AIDS."<sup>62</sup>

Under the Work Injury Compensation Act (WICA), workers (or their families) who have been injured or killed in an accident are entitled to compensation regardless of fault, as long as the injury arose in the course of employment. The act covers all employees who are covered under a contract, with the exception of domestic workers. Instead, employers of foreign-born domestic workers are required to take out medical insurance and personal accident insurance coverage for each worker. The WICA'S exclusion of domestic workers is discriminatory because it denies this segment of the workforce, the vast majority of whom are women, full protection under the law equal to that afforded other low-paid workers. Thus, Singapore is not meeting its obligations under the CEDAW, which guarantees women the equal right to protection of health and safety in working conditions<sup>63</sup>.

A positive development is a recent decision by the Manpower Ministry to grant foreign domestic workers a weekly rest day, beginning in January 2013. This is a basic labour right that will significantly improve the health and lives of domestic workers, and responds to the CEDAW Committee's recommendation that Singapore ensure that foreign domestic workers are entitled to a day off<sup>64</sup>. The law has been criticized however, for allowing an employer to give the domestic worker monetary compensation in lieu of a rest day. "Given the imbalance of power between employers and domestic workers, there is significant risk of abuse that employers may coerce workers to sign away their day of rest."<sup>65</sup>

## EQUALITY BEFORE THE LAW: FREEDOM OF MOVEMENT

Singapore uses a sponsorship system for domestic workers that ties them to a specific employer. This system also requires the employer to post a security bond, ostensibly to ensure that it is financially capable of paying the domestic workers' return trip home. This system has

61 Singapore, Ministry of Manpower, *Medical requirements for Work Permit (Foreign Domestic Worker)* (webpage, n.d.). Available from: [www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/inform-mom/Pages/medical-examination.aspx](http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/inform-mom/Pages/medical-examination.aspx)

62 CEDAW Committee, *Concluding Observations*, para. 32(b).

63 CEDAW, Art. 12

64 CEDAW Committee, *Concluding Observations*, para. 32(a).

65 Human Rights Watch, *Domestic Workers to Get Weekly Day of Rest*, (New York, 6 March 2012). Available from: <http://www.hrw.org/news/2012/03/05/singapore-domestic-workers-get-weekly-day-rest>

led to restrictions on migrant domestic workers' freedom of movement as some employers, afraid that their domestic help will run away, forbid them from leaving the premises, strictly control their social interactions, and in worst cases confiscate their travel documents and lock employees in the house. Workers are hesitant to complain about such abuse out of fear of having their contract cancelled and being deported.<sup>66</sup>

The CEDAW Committee expressed concern in its 2007 Concluding Comments that this security bond often results in a restriction on the freedom of movement of foreign domestic workers. The Committee requested that Singapore raise the awareness of employers of foreign domestic workers with regard to the purpose of the security bond so that they do not limit foreign domestic workers' freedom of movement<sup>67</sup>.

## WOMEN'S ACCESS TO JUSTICE

Singapore's Ministry of Manpower offers conciliation services for all employees, foreign or local. Migrant workers experiencing difficulties with their employer can access free advisory and mediation services from the Foreign Workers Unit. Claims are then referred to the Labour Court if no agreement can be reached. Migrant workers can also pursue salary claims in Singapore's Labour Court, but many do not due to limited access to information, limited experience in preparing formal hearings, and inability to support themselves financially during the lengthy period of time that it takes to resolve cases<sup>68</sup>.

Singapore's work-permit regulations, which forbid workers from engaging in what it deems "immoral" and "undesirable" activities, also impede migrant women's access to justice<sup>69</sup>. Employers sometimes use this vaguely worded rule to threaten and exploit workers, and submit negative feedback to authorities for the purpose of blacklisting them. The process by which this happens is neither transparent nor fair, and the threat of being blacklisted frequently deters workers who may have legitimate complaints from leaving abusive employment situations or seeking assistance from the authorities<sup>70</sup>.

Singapore provides a free hotline for victims of violence or sexual exploitation, which migrant workers can use to obtain information about their rights. This is an example of best practice since migrant women subject to abuse require legal representation and other services to remedy violations of their rights<sup>71</sup>. The government also supports several NGO-managed shelters serving adult victims of crime or violence as well as shelters for child victims of trafficking, however there are no shelters dedicated to caring for victims of sex trafficking.

66 International Organization for Migration, *Labour Migration from Indonesia*

67 CEDAW Committee, *Concluding Comments of the Committee on the Elimination of Discrimination against Women – Singapore* (CEDAW/C/SGP/3) (Thirty-ninth session, 2007). Available from: [www.un.org/womenwatch/daw/cedaw/39sess.htm#documents](http://www.un.org/womenwatch/daw/cedaw/39sess.htm#documents)

68 US State Department, *Trafficking in Persons Report 2010 – Singapore* (2010). Available from: [www.state.gov/j/tip/rls/tiprpt/index.htm](http://www.state.gov/j/tip/rls/tiprpt/index.htm)

69 Singapore, *Employment of Foreign Manpower Act*

70 HOME and TWC2, *Justice Delayed, Justice Denied*, p. 23.

71 United Nations Department of Economic and Social Affairs, *2004 World Survey on the Role of Women in Development: Women and International Migration*, (A/59/287/Add.1) (ST/ESA/294) (New York, 2006). Available from: [www.un.org/womenwatch/daw/public/WorldSurvey2004-Women&Migration.pdf](http://www.un.org/womenwatch/daw/public/WorldSurvey2004-Women&Migration.pdf)

Some embassies, including the Philippine and Indonesian diplomatic missions, operate shelters for their nationals who have been abused by their employers, or are involved in employment disputes<sup>72</sup>.

Victims of trafficking are legally entitled to remain in Singapore and pursue civil cases against their traffickers. However, investigations and trials can take over a year to conclude and most foreign victims do not have the financial resources to wait out these lengthy periods with no income<sup>73</sup>. These long waiting periods can dissuade other migrant domestic workers with complaints from coming forward, who might opt instead to transfer to another employer or return to their home country<sup>74</sup>.

The Ministry of Manpower has the authority to approve migrant domestic workers' applications to seek new employment if they are abuse victims, or are acting as witnesses in criminal proceedings. However it has been reported that some of these women have had difficulty finding employers willing to hire them, and others were too traumatized to find another employer<sup>75</sup>.

## F. ANALYSIS AND CONCLUSIONS

Singapore has made some efforts to promote the well-being of women migrant labourers, particularly enhancing the oversight of recruitment agencies and mandating regular time off for domestic workers. Significantly, the State has removed blanket reservations to articles 2 and 16 of the CEDAW, and announced plans to ratify the International Convention on the Elimination of All Forms of Racial Discrimination<sup>76</sup>. During the 2011 Universal Periodic Review, Singapore said it welcomed the review process as “a conversation with our citizens, civil society organizations, and fellow UN Member States on our achievements and challenges in the area of human rights”.

Examples of gender-sensitive and rights-based good practices for migrant workers in Singapore include:

- The Foreign Manpower Management Division has placed greater emphasis on managing the professionalism of the recruitment industry and overseeing and enforcing the Employment Agencies Act.
- Singaporean law criminalizes trafficking through its Penal Code, Women's Charter, Children and Young Persons Act, Employment of Foreign Manpower Act, Employment Agencies Act, Employment Agency Rules, and the Conditions of Work Permits. Penalties prescribed for sex trafficking and labour trafficking are sufficiently stringent.

72 US State Department, *Trafficking in Persons Report 2010*

73 Ibid.

74 Human Rights Watch, *Maid to Order*.

75 Ibid.

76 Human Rights Watch, *Singapore: UPR Outcome*, (webpage, 5 October 2011). Available from: [www.hrw.org/news/2011/10/05/singapore-upr-outcome](http://www.hrw.org/news/2011/10/05/singapore-upr-outcome)

- Model contracts outlining employer responsibilities regarding adequate food, rest and lodging for domestic workers are being encouraged by the Association of Employment Agencies. A standard contract offering enhanced protection to migrant domestic workers is currently under review by the Ministry of Manpower.<sup>77</sup>
- Singapore's Ministry of Manpower has instituted mandatory orientation programmes for new employees and new employers, increased commitment to prosecuting cases of unpaid wages and physical abuse, and the introduction of an accreditation programme for employment agencies. The Ministry has also published an information guide advising employers on proper treatment of domestic workers and informing them of the penalties for physical assault and forced confinement.
- The Ministry of Manpower offers dispute resolution services for all employees, foreign or local, and the Foreign Workers Unit of the Ministry provides free advisory and mediation services to foreign workers experiencing problems with employers. In cases where agreement cannot be reached, claims may be referred to the Labour Court for adjudication.
- The government operates a hotline for domestic workers to seek assistance and report cases of abuse or exploitation.
- The authorities fine or imprison employers who abuse their domestic help. In 2009 the Ministry of Manpower collected unpaid wages on behalf of domestic workers in 219 cases.
- In January 2013 a new law will go into effect mandating one day off per week for domestic workers.
- Victims of trafficking are allowed to remain in the country to assist in the investigation and prosecution of their abusers.
- A National Plan of Action is in place to help co-ordinate anti-trafficking programmes and activities.

Despite these positive developments, a number of obstacles stand in the way of women migrant workers claiming their human rights: Singapore was one of only nine states that did not vote for passage of International Labour Organization (ILO) Convention No. 189 on Decent Work for Domestic Workers.

- However, Singapore does not include domestic workers under the country's main labour law, which leaves them vulnerable to abuse and exploitation. While domestic workers are recognized under Singapore's Employment of Foreign Manpower Act, the legislation does not regulate pay or working hours.
- Singapore has not ratified the Palermo Protocol nor has it enacted a comprehensive Anti-Human Trafficking law to provide victim protection and assistance.
- Vaguely worded prohibitions on undesirable and immoral conduct leave domestic workers at risk of blacklisting by employers.
- Foreign Domestic workers are not included under the Work Injury Compensation Act (WICA).
- Singapore has no minimum wage
- Government policies prohibiting domestic workers from marrying nationals, and deporting them if they become pregnant, are discriminatory.

77 Githu Muigai, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Human Rights Council (A/HRC/17/40/Add.2) (Geneva, Seventeenth session, 25 March 2011). Available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/123/13/PDF/G1112313.pdf>

## G. RECOMMENDATIONS

### ***Policy reforms***

- Incorporate the CEDAW Convention into Singapore's domestic laws
- Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- Ensure paid maternity leave for all women employees, regardless of nationality and marital status.
- Enact legal reforms to include domestic workers under main labour laws including WICA.
- Discontinue policy of cancelling employment contracts and deporting domestic migrant workers who become pregnant.
- Adopt legislation guaranteeing equal pay for equal value work
- Adopt legislation on sexual harassment at the workplace and including sanctions, civil remedies and compensation for victims, and ensure all migrant workers are covered by the law.
- Adopt legislation ensuring that foreign domestic workers are entitled to adequate wages, decent working conditions.
- Ratify the ILO Conventions No.111 concerning Discrimination in Respect of Employment and Occupation and the ILO Convention No.189 concerning Decent Work for Domestic Workers.
- Incorporate in the Constitution or other appropriate legislation a definition of discrimination against women, encompassing both direct and indirect discrimination, in line with article 1 of CEDAW, and also include provisions to prohibit discrimination against women on other grounds, in particular marital status, age, disability, and national origin.
- Lift bans that prohibit women migrant workers from marrying Singapore nationals and that mandate deportation in case of pregnancy.
- Revise the labour migration policy to ensure that it is gender-sensitive, rights-based and protects informal sector workers, including domestic workers.
- Amend the policy that ties migrant domestic workers' work permits to particular families. Ensure that women and girl victims of trafficking have adequate support so that they can provide testimony against their traffickers and have access to adequate assistance and remedies.
- Ratify the International Convention of the Protection of the Rights of All Migrant Workers and Their Families (ICMW) without delay.
- Adopt a fair minimum wage and ensure all women migrant workers are covered by the law.
- Earmark at least 50 per cent of the monthly levy on employers of domestic workers for services geared toward women migrant workers.
- Ensure that women migrant workers have the ability to access remedies when their rights are violated.

## REFERENCES

- Abella, Manolo. "Driving forces of labour migration in Asia", in World Migration 2003 (Geneva: International Organization for Migration, 2003).
- Asian Forum for Human Rights and Development (FORUM-ASIA), Oral Statement Delivered by Mr. Kong Soon Tan, Thursday, 22 September 2011, The Universal Periodic Review on 6 May 2011, during which Singapore's human rights record was reviewed by other UN Member States. 18th Regular Session of the UN Human Rights Council. Item 6: Universal Periodic Review (UPR) Plenary on Singapore)
- Concerns at UN Review of Singapore's Gender Equality (AWARE, the Humanitarian Organization for Migration Economics (H.O.M.E.), Sayoni and the Singapore Council of Women's organizations (SCWO) express concerns at the UN review of Singapore's gender equality.
- CIA World Factbook - Unless otherwise noted, information in this page is accurate as of October 14, 2011.
- CEDAW (2007), Concluding Observations: Singapore, CEDAW/C/SGP/CO/3.
- Demand for foreign workers in S'pore likely permanent' by Ewen Boey | Yahoo! Newsroom.
- Employment Act (Chapter 91) Singapore.
- Home & Transient Workers Count Too (2010), Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore.
- Human Rights Watch (2005), Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore.
- IOM (2010), Singaporean Government Policy On Labour Migration.
- 18th Regular Session of the UN Human Rights Council Item 6: Universal Periodic Review (UPR) Plenary on Singapore Asian Forum for Human Rights and Development (FORUM-ASIA) Oral Statement Delivered by Mr. Kong Soon Tan
- Singapore Constitution, article 12(1).
- UNIFEM (undated), CEDAW Briefing Kit.
- UNIFEM (2005), Claim and Celebrate Women Migrants' Human Rights Through CEDAW.
- UNIFEM (2005), Claim and Celebrate Women Migrants' Human Rights Through CEDAW.
- UNIFEM (2005), Claim and Celebrate Women Migrants' Human Rights Through CEDAW.
- UNIFEM (2010), Gender Equality Laws: Global good practice and a review of five Southeast Asian countries.
- UPR Compilation Report, Singapore.
- UPR Stakeholder Report, Singapore.
- UNDP Human Development Report, 2010.
- United Nations Department of Economic and Social Affairs (2004), 2004 World Survey on the Role of Women in Development: Women & International Migration, (E/CN.4/2004/76).
- US Department of State (2010), Trafficking in Persons Report.
- US Department of State (2010), Trafficking in Persons Report.

## INTERNET

[www.aware.org.sg](http://www.aware.org.sg)

[http://www.indexmundi.com/singapore/economy\\_overview.html](http://www.indexmundi.com/singapore/economy_overview.html)

[http://news.bbc.co.uk/2/hi/americas/country\\_profiles/1143240.stm](http://news.bbc.co.uk/2/hi/americas/country_profiles/1143240.stm)

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/singapore?profile=economy>

<http://edition.cnn.com/2011/10/30/world/asia/little-rest-for-singapores-silent-army/>. Little rest for Singapore's silent army by Hilary Whiteman, CNN October 31, 2011.

<http://www.hrw.org/news/2011/10/05/singapore-upr-outcome>

<http://www.hrw.org/news/2011/10/05/singapore-upr-outcome>.

<http://edition.cnn.com/2011/10/30/world/asia/little-rest-for-singapores-silent-army/>. Little rest for Singapore's silent army by Hilary Whiteman, CNN October 31, 2011.

<http://www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/foreign-manpower-management-division.aspx>

<http://www.hrw.org/news/2011/10/05/singapore-upr-outcome>

[www.hrw.org](http://www.hrw.org)

Editorial, People's Action Party, Petir, "New Phase in Politics", July/August 2011).

<http://www.hrw.org/news/2011/10/05/singapore-upr-outcome>

<http://www.hrw.org/news/2011/10/05/singapore-upr-outcome>

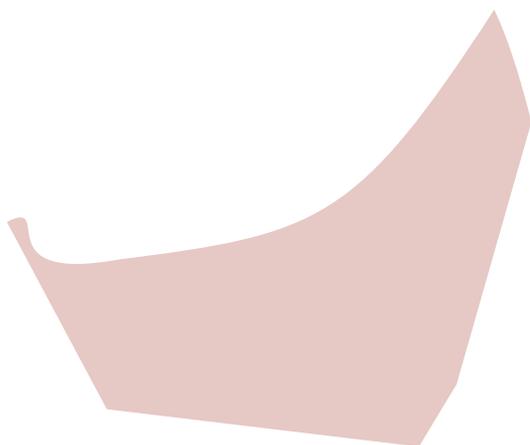


Photo credit: United Nations/Bilal Asif Awan



RECEIVING COUNTRIES

# United Arab Emirates



## A. COUNTRY CONTEXT

The United Arab Emirates (UAE) is a country in the Middle East, bordered by Oman, Saudi Arabia, the Persian Gulf and the Gulf of Oman. Only 19 per cent of the UAE's 5.3 million people are Emirati. Citizens from other Arab nations and Iran make up another 20 per cent, while South Asians comprise 50 per cent of the population. Islam is the official religion.<sup>1</sup> UAE is a high-income country<sup>2</sup> with very high human development.<sup>3</sup> Gross national income was placed at 40,040 US dollars per capita in 2011.<sup>4</sup>

The UAE is the world's third-largest exporter of oil,<sup>5</sup> and for the past three decades, oil and finance have been the main drivers of the economy. However, due to falling oil prices, the government has made efforts to diversify, and today oil and gas revenues make up only 25 per cent of the country's gross domestic product (GDP), with tourism, real estate and manufacturing playing a larger role.<sup>6</sup>

- 
- 1 US Central Intelligence Agency, *The World Factbook 2012 – UAE*, (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
  - 2 Available from: <http://data.worldbank.org/country/united-arab-emirates>
  - 3 Available from: <http://hdrstats.undp.org/en/countries/profiles/AE.html>
  - 4 Available from: <http://data.worldbank.org/country/united-arab-emirates>
  - 5 Available from: [www.uae-embassy.org/uae/energy](http://www.uae-embassy.org/uae/energy)

Human Development Index (2011)	Rank , Very High Human Development <sup>7</sup>
Stock of Immigrants 2011	4,293,300 <sup>8</sup>
Net Migration Rate (per 1 000 population) 2005-2010	106.3 <sup>9</sup>
Immigrants as share of population (2012)	80% <sup>10</sup>

UAE is primarily a receiving country for migrant labour, and in the past several decades, a massive influx of foreign workers and professionals has fundamentally changed the face of society. Almost all of the unskilled construction workers and domestic help are foreigners.<sup>11</sup>

The large proportion of foreign workers in the UAE has caused some resentment among the native population, and as a result the Government has developed a national strategy to “Emiratize” the workforce and reduce the share of expatriate workers.<sup>12</sup> The Kafala system is another way of regulating the employment and residency of immigrant workers. Under the Kafala system, foreign workers’ visa and legal status are tied to their sponsor or employer, who must take full economic and legal responsibility for the worker. The system is controversial because it renders employees completely dependent on their sponsor and has led to abuse and exploitation by employers. In recognition of this, in 2011 the government enacted changes to the labour code to eliminate the requirement that foreign workers receive permission from their employer before changing jobs. While this was a welcome move, the new policy does not apply to day labourers, construction workers or domestic workers, a significant proportion of the migrant worker population.

Other reforms to improve the conditions of migrant workers have included initiatives to curb high recruitment costs for employees, and control systems to ensure salaries are not withheld by employers. Additionally, the Government showed flexibility during the recent global financial crisis, by allowing foreign workers who lost their jobs to change employers without having to return to their country of origin, and allowing them three months to search for new employment.<sup>13</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

The UAE has ratified or acceded to four of the nine core international human rights treaties, specifically: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Convention to Eliminate All

6 US Central Intelligence Agency, *The World Factbook 2012*.

7 Available from: <http://hdrstats.undp.org/en/countries/profiles/AE.html>

8 US Central Intelligence Agency, *The World Factbook 2012*.

9 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, UN Women South Asia and the VV Giri National Labour Institute (New Delhi, 2012), p. 106. Available from: [www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/](http://www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/)

10 University of California at Davis, “GCC: Migrants”, in *Migration News*, vol. 19 No. 2, April 2012. Available from: [http://migration.ucdavis.edu/mn/comments.php?id=3759\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/comments.php?id=3759_0_3_0)

11 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p. 107.

12 *Ibid*, p. 108.

13 Steinmeyer, Vanessa, *oral comments at Experts’ Group Meeting*, UNESCAP (Bangkok, 18 October 2011).

Forms of Racial Discrimination (CERD); and the Convention on the Rights of Persons with Disabilities (CRPD). Notably the UAE is one of only 18 countries that has not ratified the International Convention on Civil and Political Rights (ICCPR).<sup>14</sup> The CEDAW Committee has encouraged the Government to ratify the remaining human rights treaties to which is not yet a party, noting that adherence to all of the treaties “enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life”.<sup>15</sup>

Currently there is no National Human Rights Institution (NHRI) in the UAE, and thus no comprehensive complaints mechanism for women, including women migrant workers, who have experienced violations of their human rights.<sup>16</sup> However, during the Universal Periodic Review, the government stated that it was considering establishment of an NHRI in accordance with the Paris Principles.<sup>17</sup> To that end, in 2011, the UN Office of the High Commissioner for Human Rights (OHCHR) provided the UAE with assistance for activities aimed at establishing an NHRI, including legal advice for draft legislation.<sup>18</sup>

There is no universal indicator of the status of women’s rights in the UAE as women there have different rights based on citizenship status, nationality, religion and occupation. For example, many professional Emirati women, and those who belong to the ruling class, are able to enjoy full social benefits, including free housing, health care and education, and are allowed more liberal social conventions, such as living alone. However prevailing social and cultural norms prohibit most single women from living on their own. Migrant women on the other hand, particularly those working in the informal sectors, have fewer benefits and even fewer rights, including employment protections.

Despite this social stratification, the UAE has made some progress in the promotion and protection of women’s human rights. In 2007, the United Nations Development Programme (UNDP) reported several positive outcomes of the UAE’s policies on gender, particularly in the areas of women’s empowerment and education, noting that the “state legislations in the UAE do not discriminate on the basis of gender with respect to education, employment or the quality of services provided.”<sup>19</sup> The Government has committed to maintain this momentum and recently stated that it “intends to establish a new benchmark for gender empowerment in the region.”<sup>20</sup> To date, achievements include: a 90-per-cent literacy rate for women; 77 per cent of women have enrolled in higher education; women have begun training as muftis, or Sunni Muslim scholars to qualify as interpreters of Islamic law; women are now part of the Security Forces and have trained to be fighter pilots; and several cabinet ministers are women.<sup>21</sup> In the UNDP’s Gender-Related Development Index for 2009, the UAE ranked 35th among 182 countries, and 25th place in the world for gender empowerment.<sup>22</sup>

14 Available from: [www.echr.org.uk/?page\\_id=345](http://www.echr.org.uk/?page_id=345)

15 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – United Arab Emirates* (CEDAW/C/ARE/CO/1) (Forty-fifth session, 2010), para. 52. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

16 *Ibid.*, para. 20

17 *Ibid.*

18 Office of the High Commissioner for Human Rights, *Annual Report of OHCHR and the Secretary General on National Institutions for the Promotion and Protection of Human Rights* (Geneva, 1 May 2012), paras. 9 and 40.

19 Office of the High Commissioner for Human Rights, *Women in the United Arab Emirates: A Portrait of Progress* (Geneva, n.d.). Available from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX3_E.pdf)

20 Available from: [www.uae-embassy.org/uae/women-in-the-uae](http://www.uae-embassy.org/uae/women-in-the-uae)

21 Permanent Mission to the of the UAE to the United Nations. Available from: [www.un.int/wcm/content/site/uae/cache/offonce/home/pid/19817](http://www.un.int/wcm/content/site/uae/cache/offonce/home/pid/19817)

22 *Ibid.*

Although these are welcome developments, legal, economic and cultural discrimination against women, both citizens and non-citizens remains widespread. Domestic abuse, including spousal abuse, is common. Women do not have the same rights regarding marriage or inheritance. Those who work in the private sector often do not receive equal benefits, and many women face discrimination in promotions and wage levels.<sup>23</sup> With respect to women migrant workers, many suffer from violations of their human rights, particularly those working in domestic settings. In 2009 the Indonesian embassy in Abu Dhabi registered a 24-per cent increase in domestic worker exploitation incidents compared to 2008,<sup>24</sup> and in October 2010, makeshift shelters in Abu Dhabi and Dubai housed more than 300 runaway Philippine domestic workers, many of whom alleged abuse against their employers.<sup>25</sup> Complaints from women migrant workers include being charged exorbitant recruitment fees, unpaid wages, food deprivation, long working hours, forced confinement, and physical or sexual abuse.<sup>26</sup>

Some private-sector companies have taken steps to ensure protection of migrant workers' human rights. For example, the New York University (NYU) and the US-based Guggenheim Art Museum have committed to ensuring that migrant workers employed on their construction projects in Abu Dhabi receive regular payment of wages, rest breaks and days off, employer-paid medical insurance, reimbursement for recruitment fees, and ensure that they are able to keep their own passports. Additionally, both organizations have hired independent firms to monitor work conditions on the projects and report publicly on violations of workers' rights.<sup>27</sup>

## C. KEY STAKEHOLDERS

The Ministry of Labour (MOL) is charged with enforcing all labour law regulations. Specifically, the MOL is responsible for approving all private sector labour contracts, issuing/cancelling work permits (or labour cards), imposing labour bans when necessary, and mediating employment disputes.

The Ministry of Foreign Affairs is charged with implementing the Government's strategy to combat human trafficking – which consists of four pillars: legislation; enforcement; victim support; and international cooperation, including bilateral agreements.<sup>28</sup>

The General Women's Union (GWU) has branches in the various emirates and aims to develop frameworks for women's action in the UAE, and improve the status of women through religious activities, cultural events, health education, social programmes, domestic violence shelters and collaboration with federal ministries.<sup>29</sup>

23 US State Department, *Human Rights Report 2011 – United Arab Emirates* (2011), pp. 18-20. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

24 Migrant Rights, *Increase in Registered Cases of Abuse of Indonesian Maids in Abu Dhabi*, (2010). Available from: [www.migrant-rights.org/2010/04/02/increase-in-registered-cases-of-abuse-of-indonesian-maids-in-abu-dhabi/](http://www.migrant-rights.org/2010/04/02/increase-in-registered-cases-of-abuse-of-indonesian-maids-in-abu-dhabi/)

25 Human Rights Watch, *World Report 2011 – United Arab Emirates* (New York, 2011). Available from: [www.hrw.org/world-report-2011/united-arab-emirates](http://www.hrw.org/world-report-2011/united-arab-emirates)

26 US State Department, *Human Rights Report 2011*, section 7.

27 Human Rights Watch, *World Report 2012 – United Arab Emirates* (New York, 2012). Available from: [www.hrw.org/world-report-2012/united-arab-emirates](http://www.hrw.org/world-report-2012/united-arab-emirates)

28 United Arab Emirates, Ministry of Foreign Affairs, *Human Trafficking* (webpage, n.d.). Available from: [www.mofa.gov.ae/mofa\\_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx](http://www.mofa.gov.ae/mofa_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx)

29 General Women's Union (webpage, n.d.). Available from: [www.gwu.ae/About.aspx?Lang=AR&SectionID=8&RefID=62](http://www.gwu.ae/About.aspx?Lang=AR&SectionID=8&RefID=62)

Dubai Foundation for Women and Children (DFWAC) and Ewaa in Abu Dhabi are non-profit organizations that operate hotlines and emergency shelters which offer women and children victims of domestic violence, child abuse, and human trafficking immediate protection and support. Both organizations provide medical treatment, psychological care and counselling, access to legal services, temporary housing, basic education and training, and safe transport back home for victims, when required.<sup>30</sup>

The Emirates Centre for Human Rights is a non-governmental organization, whose aim is to promote human rights and highlight abuses where they take place in the UAE. The Emirates Centre publishes regular updates related to restrictions on freedoms, prison conditions, arbitrary detention, and exploitation and abuse of migrant workers.<sup>31</sup>

The MIGRANTE UAE is a chapter of MIGRANTE International – an international alliance of Philippine Migrant organizations. The Migrante UAE works to advance the interests of the more than 500,000 Filipinos working in the UAE, specifically by promoting their rights and welfare, and serving as an intermediary during disputes.<sup>32</sup>

## D. RATIFICATION RECORD

The following table illustrates the UAE's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	6 October 2004 a
ICCPR	-
ICESCR	-
ICERD	20 June 1974 a
ILO C29 Forced or Compulsory Labour	27 May 1982
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	-

30 [http://www.mofa.gov.ae/mofa\\_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx](http://www.mofa.gov.ae/mofa_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx)

31 Emirates Centre for Human Rights (webpage). Available from: [www.echr.org.uk/](http://www.echr.org.uk/)

32 Available from: [www.migranteuae.org/3/index.php?option=com\\_content&view=article&id=45&Itemid=49](http://www.migranteuae.org/3/index.php?option=com_content&view=article&id=45&Itemid=49)

ILO C100 Equal Remuneration	24 February 1997
ILO C105 Abolition of Forced Labour	24 February 1997
ILO C111 Discrimination in Employment	28 June 2001
ILO C138 Minimum Age for Admission to Employment	2 October 1998
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	28 June 2001

## E. COMPLIANCE WITH THE CEDAW

The UAE acceded to the CEDAW in 2004, but has reserved the right not to apply provisions of articles 2(f), 9, 15 (2), 16 and 29 (l). Reservations to articles 2, 15(2) and 16 stem from the UAE's belief that they conflict with Shariah law. A reservation was made to article 9 because the UAE considers the acquisition of nationality an internal matter which is governed by national legislation.<sup>33</sup>

The CEDAW Committee has stated that these reservations impact negatively on the enjoyment by women of their rights. In particular reservations to articles 2 and 16 are inconsistent with the object and purpose of the CEDAW and should be withdrawn.<sup>34</sup>

## DISCRIMINATION

In 2010, the CEDAW Committee noted its concern that, while "article 25 of the Constitution provides for equality before the law regardless of race, nationality, religious belief or social status, ... the Constitution and other domestic legislation do not embody the principle of equality between women and men nor do they contain a definition of discrimination against women in accordance with article 1 of the Convention."<sup>35</sup> As a result the Committee called upon the UAE to "fully incorporate into the Constitution or other appropriate domestic legislation the principle of equality between women and men in accordance with article 2 (a) of the Convention, as well as a definition of discrimination on the basis of sex in line with article 1 of the Convention, and extend State responsibility for acts of discrimination by public and private actors in accordance with article 2 (e) of the Convention, with a view to achieving formal and substantive equality between women and men."<sup>36</sup>

<sup>33</sup> Available from: [www.un.org/womenwatch/daw/cedaw/reservations-country.htm](http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm)

<sup>34</sup> CEDAW Committee, *Concluding Observations*, paras. 16-17.

<sup>35</sup> *Ibid*, para. 14.

<sup>36</sup> *Ibid*, para. 15.

In the UAE, Islamic law governs matters related to family and personal status for Muslims. Several of these laws, particularly those related to divorce, inheritance, and child custody, grant men privileged status and discriminate against women. For example, Emirati men, but not women, are allowed to have as many as four polygamous marriages; Muslim women are forbidden to marry non-Muslims; Emirati men married to non-citizens automatically pass citizenship onto their children but Emirati women married to foreign spouses face additional hurdles in this regard; and foreign men working in the country can obtain residence permits for their families for three years, while foreign women can only obtain permits for a renewable one-year period. Women may only ask for a divorce in exceptional circumstances and can only inherit one-third of assets while men are entitled to inherit two-thirds.<sup>37</sup> With respect to rape and domestic violence, the Sharia courts require a very high burden of proof for rape cases, and the law does not recognize spousal rape. The penal code allows men to use physical means, including violence, at their discretion against female family members. Additionally, non-citizen women may be imprisoned and deported if they bear children out of wedlock – and even with DNA evidence, courts cannot force men to accept responsibility for fathering a child.<sup>38</sup>

In addition to de jure gender discrimination, widely accepted stereotypes and cultural practices regarding the respective roles of women and men also contribute to gender inequality. The CEDAW Committee has urged the government to adopt a national strategic plan, firstly to promote the idea that men and women should equally share responsibilities related to family matters, and secondly to promote equality of status of men and women in private and public life. To that end, the Committee recommends revising school curricula, providing gender-equality training to teachers, conducting awareness-raising campaigns about gender equality, and encouraging the media to project positive images of women.<sup>39</sup>

The UAE's labour law also discriminates against women by excluding domestic workers from coverage. While the law is at face value gender-neutral, it has a discriminatory impact because the vast majority of domestic workers are migrant women. This discriminatory exclusion results in migrant women being forced to work excessively long hours for extremely low wages and being subjected to mental and physical abuse. The Committee to Eliminate Racial Discrimination has commented on both the gender and racial dimensions of this exclusion, noting that such bias in the legal system, as well as in private spheres of life, subjects migrant women domestic workers to discriminatory employment conditions and leaves them with little access to remedies and complaint mechanisms.<sup>40</sup>

## POLICY MEASURES

The CEDAW Committee has recognized that, because non-nationals constitute the vast majority of the UAE's population, social integration in Government policies is a challenge. Nevertheless, the Committee urged the Government to take into account the contribution

<sup>37</sup> Human Rights Watch, *World Report 2012*.

<sup>38</sup> *Human Rights Report – United Arab Emirates*, pp. 18-19, U.S. State Department, 2012.

<sup>39</sup> CEDAW Committee, *Concluding Observations*, paras. 24-25.

<sup>40</sup> Convention on the Elimination of All Forms of Racial Discrimination (CERD), *General Comment XXV*, (A/55/18, ann. V) (20 March 2000). Available from: <http://www.unhcr.ch/tbs/doc.nsf/0/76a293e49a88bd23802568bd00538d83?Opendocument>

of women migrant workers to national development when enacting and implementing policies.<sup>41</sup>

The UAE has recently enacted several reforms to its labour policies that better protect the rights of foreign workers. For example, in January 2011, the Government issued new regulations to ensure that migrant workers do not have to pay any fees, either in the Emirates or the country of departure, to secure jobs in the UAE. In the event that a worker is charged a fee, the recruitment agency must reimburse the worker.<sup>42</sup> This policy reform is in line with the CEDAW Committee's General Recommendation 26, which noted that women migrant workers who are heavily burdened by debt from recruitment fees may be unable to leave abusive situations, particularly if they have no other way to pay their debts.<sup>43</sup> Thus, ensuring that women migrant workers do not have to pay recruitment fees is a gender-sensitive rights-based good practice in line with CEDAW.

Additionally, Cabinet Decision No. 25 of 2010 abolished the "Sponsorship Transfer" mechanism. Thus, foreign labourers are no longer automatically banned for six months from seeking new employment if their previous employment ends prematurely. Now employees need only to cancel their existing work permit and apply for a new one, as long as they are sponsored by a new employer. Prior to these reforms, foreign workers who left their existing job within two years due to a breach of their employment terms or a dismissal were unable to seek new employment for a six-month period unless they held a no-objections certificate (NOC) to renew visas and change jobs, issued by their previous employer.<sup>44</sup>

In addition to introducing a more flexible mechanism for transferring sponsorship from one employer to another, Cabinet Resolution No. 25 of 2010 also introduced several new types of work permits that will benefit migrant workers:

- (1) New part-time work permits allow part-time work with more than one entity, which now makes it possible for foreign workers to take up second part-time jobs as long as they have approval from the first employer.
- (2) Temporary Work Permits allow nationals and non-nationals to be employed on a specific project or in a role which is not for more than six months in duration. Ministerial Resolution 1188 of 2010 also provides that the Ministry of Labour may issue a temporary work permit to an employee who has instituted a claim in the labour courts. This permit therefore, enables employees who are involved in litigation against their former employers to continue to earn a living while claims against any former employer proceed through the courts.
- (3) Work permits are now allowed for university and college students who are sponsored by the institute in the UAE at which they are enrolled. This permit is also available to expatriate

41 CEDAW Committee, *Concluding Observations*, paras. 9-10.

42 Human Rights Watch, *UAE: Stepped-Up Harassment of Rights Defenders* (New York, 26 January 2011). Available from: [www.hrw.org/news/2011/01/26/uae-stepped-harassment-rights-defenders](http://www.hrw.org/news/2011/01/26/uae-stepped-harassment-rights-defenders)

43 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 15. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

44 United Arab Emirates, Ministry of Labour, *Employment Contracts and Durations* (webpage, n.d.). Available from: [www.abudhabi.ae/egovPoolPortal\\_WAR/appmanager/ADeGP/Citizen?\\_nfpb=true&\\_pageLabel=p20160&lang=en&id=20180](http://www.abudhabi.ae/egovPoolPortal_WAR/appmanager/ADeGP/Citizen?_nfpb=true&_pageLabel=p20160&lang=en&id=20180)

wives sponsored by their husband, though it is not clear if expatriate husbands under their expatriate wife sponsorship can also obtain a work permit.

- (4) Worker Transfer Permits apply to non-national employees wishing to transfer from one employer to another.
- (5) Work Permits for Personnel Sponsored by their Kin apply to individuals who are sponsored for UAE residence purposes by their family, including: women below the age of 18; the husband of a UAE woman; and children of a UAE woman.<sup>45</sup>

These policies allowing more flexibility for migrant workers are good rights-based practices as they protect workers' rights to freedom of movement and the right to choose their employment. Additionally, they give migrant workers more options and power to demand decent working conditions, as they will not automatically be deported for complaining about abuse. Indirectly, these new policies will also promote greater employer accountability. However, because domestic workers are exempt from labour laws, they will not benefit from these new policies. This is discriminatory because it leaves domestic workers, the vast majority of whom are women, without the same protections that are available to other workers.

## TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Person's (TIP) Report, the UAE is a destination country for women subjected to forced labour and forced prostitution. Many women from South and South-East Asia seek work in the UAE as domestic servants, secretaries, beauticians and hotel cleaners. However, restrictive employment sponsorship laws, particularly for foreign domestic workers, give employers inordinate power to control women migrant workers' movements; threaten them with abuse of legal processes; and make them vulnerable to exploitation and forced labour.<sup>46</sup>

In response, the Government has implemented new procedures for identifying trafficking victims, drafted a new law to protect domestic workers, and continued to implement and enforce its Wage Protection System, to ensure workers receive their wages. Additionally in April, 2012, the UN Special Rapporteur on Trafficking in Persons was invited by the Government to conduct a fact finding mission and recommend ways in which the Government can improve efforts at combating trafficking.<sup>47</sup>

Although these are positive efforts, more must be done to address concerns raised by the CEDAW Committee, including the persistence of trafficking in women and girls into the UAE for economic and sexual exploitation; and the lack of statistical data on women being trafficked in and out of the country.<sup>48</sup>

45 Ibid.

46 US State Department, *Trafficking in Persons Report 2012 – United Arab Emirates* (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

47 Ibid.

48 CEDAW Committee, *Concluding Observations*, para. 28.

## PROSECUTION

The UAE has ratified the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), and in 2006, it adopted Federal Act No. 51 on the suppression of human trafficking – which sufficiently defines and penalizes trafficking.<sup>49</sup> Additionally, the Government established a National Committee for the Suppression of Human Trafficking, a national plan to combat trafficking, and a special court to hear human trafficking cases.<sup>50</sup> A recent report by the US State Department commended the Government’s law enforcement efforts and training of judicial and law enforcement officials as well as staff in the social services agency on trafficking issues. Additionally, the planned finalization of a central database for law enforcement officers working on anti-trafficking cases will help to improve prosecution efforts.<sup>51</sup>

These measures are all examples of good rights-based practices in line with article 6 of the CEDAW, which obligates States Parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

However, while anti-trafficking measures have improved, particularly to combat sex trafficking, the US Trafficking in Persons Report for 2012 notes that efforts to combat forced labour and labour trafficking are lacking. This is partly because laws that prohibit behaviour that contributes to forced labour – such as withholding passports – are not enforced. In the Universal Periodic Review conducted in 2008, the NGO Stakeholders’ Report section alleged that debt bondage and forced labour are prevalent in the UAE. The report explained that recruitment services in the sending countries lure migrants en masse, promising them jobs and salaries that may never materialize. “Having at times handed over their entire life savings, these workers do everything possible to secure what they believe are legally enforceable contracts and work visas. On arrival in the host country, they are deeply indebted and out of options. They have little choice but to work for local sponsors or employers under highly exploitative conditions that may essentially amount to forced labour or servitude.”<sup>52</sup>

While the new victim identification procedures implemented in 2011 are designed to better recognize victims of forced labour or labour trafficking, better enforcement of laws to prevent migrant workers from becoming victims in the first place is needed. Failure to enforce laws prohibiting recruitment agencies and employers from subjecting migrant women to forced labour violates article 2 of the CEDAW which requires States Parties to adopt appropriate measures, including sanctions, that prohibit discrimination against women.

49 International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning the Worst Forms of Child Labour Convention, 1999 – United Arab Emirates* (No. 182) (Geneva, 2010).

50 US State Department, *Trafficking in Persons Report 2012*.

51 *Ibid.*

52 Mafiwasta and International Federation for Human Rights (FIDH), *UAE - Universal Periodic Review, Stakeholders’ Report*, submissions by NGOs (Abu Dhabi, 2008).

## PROTECTION

Designated police personnel and standard operating procedures for identifying trafficking victims means they are generally not punished for unlawful acts committed as a result of having been trafficked. Instead female victims are referred to transitional facilities or government-funded shelters in Abu Dhabi, Dubai, Ras al Khaimah, and Sharjah, which provide protection, counselling, and rehabilitation services, including medical, psychological, legal, educational, and vocational assistance.<sup>53</sup> These are good gender-sensitive practices in line with the CEDAW Committee's General Recommendation 26, which urges governments to train criminal justice officers on the rights of migrant women and ensure gender sensitive services for migrant women that need assistance, including emergency shelters.<sup>54</sup>

## PREVENTION

The Government has implemented a vigorous anti-trafficking awareness and education campaign within the country, including at airports, and in embassies of migrant sending countries. As part of this campaign, pamphlets on worker's rights and resources for assistance are distributed in source-country languages. The Government has also presented lectures on forced labour issues to tens of thousands of foreign workers in companies and institutions throughout the country.<sup>55</sup> These efforts, combined with a victim-assistance hotline and systems for ensuring that contracts are valid and wages are paid, are good rights-based practices. Together they decrease the chances that women will fall victim to trafficking and are in line with article 6 of the CEDAW. The CEDAW Committee has commended these efforts but "further calls upon [the UAE] to increase prevention efforts through international, regional and bilateral cooperation with countries of origin, transit and destination and involvement of non-governmental organizations to prevent trafficking through information exchange."<sup>56</sup>

## EMPLOYMENT

The Government has been under public pressure to reduce the share of foreign workers in the country, in order to reduce unemployment among UAE nationals. Thus, since 2007, it has implemented policies to curtail the influx of migrant labour, including: "(1) strict action to send back illegal and unskilled expatriates in the UAE; (2) making the recruitment of unskilled labour costly; (3) replacing foreign labour with national in the public sector undertakings; and (4) not renewing the labour cards of private sector employees above the age of 60 except for a few categories of professionals".<sup>57</sup> Policies that limit opportunities for foreign labourers in favour of nationals are discriminatory because they deny migrant women the right to mobility.

53 US State Department, *Trafficking in Persons Report 2012*.

54 CEDAW Committee, *General recommendation No. 26*, paras. 26(g) & (i).

55 US State Department, *Trafficking in Persons Report 2012*.

56 CEDAW Committee, *Concluding Observations*, para. 29.

57 Rakhee Thimothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p.108.

Additionally, such policies often result in sending the labour migration process underground, which increases women's vulnerability to trafficking, violence and other human rights abuses.<sup>58</sup> As stated above, the CEDAW Committee has urged the UAE to take into account the contribution of women migrant workers to national development when enacting and implementing policies.<sup>59</sup>

Despite policies designed to limit migrant labour, the majority of workers in the private sector, particularly in low-skill positions, are foreigners. The Federal Labour Law No. 8 (1980) covers all employees including migrants (with a few exceptions such as domestic workers) and governs most employment matters, including: maximum working hours; breaks; annual leave; overtime; compensation for work-related injuries and death; severance pay; and requirements for employers to pay repatriation costs on completion of contract. Additionally, the law allows a worker to abandon her work if the employer fails to honour either contractual or legal obligations to the worker.<sup>60</sup>

Despite these protections in the law, a lack of enforcement has led to allegations of abuse and exploitation of migrant workers. In the US State Department's 2011 Human Rights Report, it found that: "foreign workers frequently did not receive their wages from employers on time, sometimes for extended periods"; "low-skilled employees continue to face substandard living conditions"; and "a number of workers have been killed or injured on job sites due to inadequate safety measures."<sup>61</sup> The law prohibits workers from forming or joining unions and there is no right to collective bargaining, making it difficult for employees to raise work-related issues and demand better treatment. Consequently, migrant worker suicides have been linked to poor working conditions, abusive employers, heavy debts caused by exploitative recruitment agencies, and low wages relative to high costs of living.<sup>62</sup>

The fact that domestic workers are not covered by the labour law makes them even more vulnerable to physical violence, sexual abuse, withholding of passports, and restrictions on mobility and communications. Additionally, because of their isolation, these women are often unaware of their rights and thus have limited access to legal services and redress. Prohibitions on domestic workers transferring employment means that when problems arise and women escape, they risk becoming "irregular" and face deportation.<sup>63</sup> Excluding migrant domestic workers from the protection of the labour law violates articles 2 and 11 of the CEDAW, which obligates States Parties to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women," and guarantees women equal access to benefits and conditions of employment including equal remuneration, social security, protection of health and safety, and decent working conditions.<sup>64</sup>

58 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, UNIFEM, (New York, 2005), p. 23. Available from: [www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

59 CEDAW Committee, *Concluding Observations*, paras. 9-10.

60 David Keane and Nicholas McGeehan, "Enforcing migrant workers' rights in the United Arab Emirates", *International Journal on Minority and Group Rights*, vol. 15 iss. 1 (2008), pp. 85-86. Available from: <http://mena2010wjp.org/wp-content/upload/2010/08/Migrants-workers-rights-UAE.pdf>

61 US State Department, *Human Rights Report 2011*, pp. 27-28.

62 *Ibid*, pp. 24 and 28.

63 Migrant Forum in Asia, "Women Migrant Workers in the UAE: Not Quite in the Portrait", *NGO Submission to 45th Session of CEDAW Committee* (Quezon City, Philippines, 2010), p.4.

64 CEDAW, arts. 2 and 11.

## EMPLOYMENT CONTRACTS

The UAE has implemented mandatory employment contracts for domestic workers that specify the duration of contract, salary, accommodation, healthcare, repatriation costs, arrangements for settlement of disputes, recruitment fees, adequate breaks, paid vacation, and methods for coordinating with concerned embassies.<sup>65</sup> While standard contracts offer some protection against employer abuse, they do not serve as an adequate substitution for extending equal protection to domestic workers under the labour law. Thus, in its Concluding Observations the CEDAW Committee welcomed the unified contract but urged the government to strengthen legal protections for domestic workers by taking further steps to guarantee equal application of all labour laws and guarantee all workers the fundamental right of freedom of association.<sup>66</sup> In response to such criticisms, the Government has proposed a draft law to regulate the employment of domestic help. The new law has yet to be approved or signed, but rights groups have said it holds promise for significant improvements in addressing worker abuse.<sup>67</sup>

## MINIMUM WAGE AND MINIMUM AGE

There is no established minimum wage in the UAE. Monthly salaries for domestic or agricultural workers are estimated to be 400 dirhams (110 dollars) and for construction workers, 600 dirhams (164 dollars).<sup>68</sup> While the labour law provides for overtime pay, it does not cover domestic workers, leaving them vulnerable to working long hours for little pay.<sup>69</sup> Because the labour law's exclusion of domestic workers results in a large percentage of women migrant workers being paid less than others who are doing similar work, it is discriminatory and in violation of article 11 1(d) of the CEDAW, which obligates States Parties to ensure that women receive equal remuneration for work of equal value.

Although salaries for migrant workers are very low, employers withholding wages has been a common complaint. To remedy this, the Government initiated a Wage Protection System (WPS) that electronically verifies payment of wages, and fines employers who do not pay wages on time. Reports show that in 2011, 3.3 million workers received their wages via direct deposit through the WPS.<sup>70</sup> However, as with other provisions of the labour law, this does not apply to domestic workers and thus discriminates against a large proportion of the women migrant workers.

The minimum age for normal, regular work is 18, and children 15 or older are allowed to work with written approval from a legal guardian, as long as it is minor work performed during the day for a maximum of six hours per day.<sup>71</sup> Some labour-sending countries

65 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p.108.

66 CEDAW Committee, *Concluding Observations*, paras. 36-37, CEDAW Committee, Forty-fifth Session, 2010.

67 Human Rights Watch, *UAE: Proposed Law to Benefit Domestic Workers* (New York, 11 May 2012). Available from: [www.hrw.org/news/2012/05/11/uae-proposed-law-benefit-domestic-workers](http://www.hrw.org/news/2012/05/11/uae-proposed-law-benefit-domestic-workers)

68 US State Department, *Human Rights Report 2011*, p. 26.

69 Ibid.

70 Ibid, p. 27.

71 United Arab Emirates, Ministry of Labour, *Employment Contracts and Durations*

have enacted minimum ages for their citizens migrating to the UAE for work especially in some vulnerable sectors of labour such as domestic work. For example, the Philippines has set a minimum age of 23 for all those wishing to migrate for employment as domestic workers.<sup>72</sup>

## REGULATION OF RECRUITMENT AGENCIES

It is well documented that many recruitment agencies take advantage of prospective women migrant workers by charging high placement fees. These fees often require workers to take out loans that may take months or years to repay, and can lead to debt bondage. The employer or sponsor also pays a fee to the recruitment service and pays for the worker's airfare, employment visas and work permits, and return airfare. Some unscrupulous employers however, have allegedly falsely accused employees of theft in order to avoid paying the price of the return airfare.<sup>73</sup>

To address these problems, in January 2011, the UAE Ministry of Labour issued new regulations and licensing requirements for private employment/recruitment agencies that better protect migrant workers. According to these new regulations, individuals or entities that are in violation of labour laws, including non-payment of wages or non-compliance with housing standards, will be banned from hiring new workers or have their operations suspended. Agencies are also banned from collecting any money from recruited workers and will be required to "reimburse all sums levied from the worker either by the agency or any other individual or entity, within or outside the UAE". Also, employment agencies will be held "jointly liable with third party users of their services for meeting wage and other obligations to workers ... and agencies are principally responsible for meeting these obligations in the event the third party fails to do so".<sup>74</sup>

These new regulations are good rights-based practices as they better protect women migrant workers, many of whom use recruitment agencies, from unethical conduct by the agencies, as well as the third party users. This is in line with General Recommendation 26, which obligates States Parties to "adopt regulations and design monitoring systems to ensure that recruiting agents and employments agencies respect the rights of all women migrant workers." General Recommendation 26 also calls upon States Parties to "include into their legislation a comprehensive definition of irregular recruitment along with the provision of legal sanctions for breaches of the law by recruitment agencies."

72 Graziano Battistella and Maruja MB Asis, "Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes", *Discussion paper series No. 2011-12*, Philippine Institute for Development Studies (Makati City, July 2011). Available from: <http://dirp4.pids.gov.ph/ris/dps/pidsdps1112.pdf>

73 Mafiwasta and FIDH, *UAE - Universal Periodic Review*

74 Global Forum on Migration & Development, Platform for Partnerships, *Private Employment Agencies – New Regulation UAE*, (webpage, 7 April 2011). Available from: [www.gfmd.org/en/pfp/practices/item/178-private-employment-agencies-%E2%80%93-new-regulation-uae#](http://www.gfmd.org/en/pfp/practices/item/178-private-employment-agencies-%E2%80%93-new-regulation-uae#)

## HEALTHCARE AND WORKPLACE SAFETY

In 2006, the Government decreed that employers should be required to provide health insurance for low-skilled workers. Following that decree, in 2008 Abu Dhabi passed a law requiring employers and business owners to provide health insurance coverage for employees, including all non-UAE nationals and their families. Subsequently, Dubai announced plans to phase in mandatory health insurance by 2015.<sup>75</sup> Ensuring adequate healthcare is a good, rights-based practice in line with article 12 of the CEDAW, which obligates States Parties to ensure women access to health care on an equal basis with men.

To the extent that the UAE's new regulations exclude domestic workers however, this is discriminatory as many of the country's women migrant workers are employed as domestic help. The isolation of domestic workers in private homes heightens their risk of ill treatment, psychological, physical, and sexual abuse, as well as food deprivation, illness, and forced confinement. Thus, excluding domestic workers from regulations requiring health coverage for employees is a violation of article 2 of the CEDAW requiring States Parties to adopt measures prohibiting discrimination against women. The CEDAW Committee commented on this issue in its Concluding Observations, where it recommended that special attention be paid to the health needs of women non-nationals.<sup>76</sup>

Migrant workers with HIV/AIDS and other health conditions also face discrimination. UAE regulations require all migrant workers requesting or renewing their residence visa to undergo health screenings, including blood tests and chest X-rays. Those who test positive for HIV/AIDS, hepatitis B or C, tuberculosis or leprosy are quarantined and deported, without access to medical services or support. Commenting on mandatory HIV/AIDS testing, the CEDAW Committee cautions States Parties to respect the human rights of women migrants by ensuring all medical testing is voluntary, and providing free or affordable services when necessary.<sup>77</sup> UAE law requires employers to provide employees with a safe working and living environment. During 2009, the press reported a number of workers injured or killed in the workplace due to inadequate safety measures.<sup>78</sup> In response the Ministry of Labour hired additional safety and health inspectors, primarily at construction sites, and fined employers who violated rules on workplace safety or midday breaks. The ministry also employed interpreters to assist foreign workers in understanding employment guidelines.<sup>79</sup> However, because domestic workers are not considered employees and their sponsors are not legally employers they do not fall under the labour law, and private homes where domestic workers are employed are not subject to workplace safety inspections. This is discriminatory and in violation of article 11(f) of the CEDAW which obligates States Parties to ensure women's right to protection of health and safety in working conditions.

75 Human Rights Watch, *The Island of Happiness, Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi* (New York, 2009), p. 6. Available from: [www.hrw.org/sites/default/files/reports/uae0509webwcover\\_4.pdf](http://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf)

76 CEDAW Committee, *Concluding Observations*

77 CEDAW Committee, *General recommendation No. 26*, para. 24(d).

78 US State Department, *Human Rights Report 2010 – United Arab Emirates* (2010). Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)

79 US State Department, *Human Rights Report 2011*, p. 26.

## EQUALITY BEFORE THE LAW

### **Freedom of Association**

In the UAE, all political organizations are illegal, and workers do not have the right to organize, form trade unions, bargain collectively, or strike.<sup>80</sup> Additionally, all associations and NGOs are required to register with the Ministry of Social Affairs, and many receive government subsidies. Registration rules require that all voting organizational members, as well as board of directors, must be Emirati citizens. A report on human rights by the US State Department has pointed out that this excludes the vast majority of the population from fully participating in such organizations.<sup>81</sup> By denying migrant workers the right of association and of collective bargaining, limiting their participation in NGOs, and impeding human rights organizations from functioning independently, the Government is contributing to migrant worker abuse and exploitation.<sup>82</sup> Ensuring migrant workers the freedom to associate is fundamental to their ability to enjoy other rights. Recognizing this, in General Recommendation 26 the CEDAW Committee stated that States Parties must ensure that constitutional and civil law, as well as labour codes, provide to women migrant workers the same rights and protection that is extended to all workers in the country, including the right to organize and freely associate. In its Concluding Observations the CEDAW Committee urged the UAE to become a party to ILO Conventions No. 87 and 98 on the rights to organize and bargain collectively, and guarantee to all workers, especially female workers, the fundamental principle of freedom of association.

### **Freedom of Movement**

Article 15(4) of the CEDAW requires States Parties to accord to women equality with men before the law, including laws related to freedom of movement. Confiscating passports violates the right to freedom of movement and is prohibited by UAE law.<sup>83</sup> In 2001, a Dubai Court of Cassation stated that employers are not permitted “to confiscate the passport of an employee and prevent him from his natural right to travel and move, whatever the nature of the relationship.” The retention of migrant workers’ passports is nonetheless commonplace in the UAE and there has been confusion in the judiciary over its illegality.<sup>84</sup> In General Recommendation 26, the CEDAW Committee makes it clear that governments must ensure “employers and recruiters do not confiscate or destroy the travel or identity documents belonging to women migrants. States Parties should also take steps to end the forced seclusion or locking in the homes of women migrant workers, especially those working in domestic service”.<sup>85</sup> Labour law reforms initiated in the UAE in 2011 were aimed at reducing or eliminating this practice, however, in order to provide meaningful protection the law must be effectively enforced. Additionally, as recommended by the CEDAW Committee, police officers should be trained on this matter in order to protect the rights of women migrant workers.

80 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p.108.

81 US State Department, *Human Rights Report 2011*, p. 13.

82 Mafiwasta and FIDH, *UAE - Universal Periodic Review*.

83 Human Rights Watch, *The Island of Happiness*.

84 Mafiwasta and FIDH, *UAE - Universal Periodic Review*.

85 CEDAW Committee, *General recommendation No. 26*, para. 26(d).

## WOMEN'S ACCESS TO JUSTICE

### **Redress for Violations of Workers' Rights**

All employees covered by the labour law, including migrant workers, may file employment dispute complaints with the Ministry of Labour, which serves as mediator between the parties. Those complaints not resolved in mediation can then be filed with the labour court, and subsequently forwarded to the conciliation council. Professional associations with a majority citizen membership may also raise work-related issues, file grievances and petition the government for redress.<sup>86</sup>

Because domestic workers are exempt from the labour law, this method of dispute resolution is not open to them. Instead domestic workers must rely on provisions written into their contract to settle any dispute with their employer. Many migrants seek assistance from their respective embassies when disputes arise, however not all diplomatic missions are able to provide adequate legal assistance to their nationals.<sup>87</sup> Excluding domestic workers from labour law protections limits their access to justice mechanisms, is discriminatory, and violates article 15 of the CEDAW which obligates States Parties to “accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.”

## REDRESS FOR SEXUAL AND GENDER-BASED VIOLENCE

Women migrant domestic workers are very vulnerable to gender-based violence, due to their isolation and limited access to information about their rights. Despite frequent reports of foreign domestic workers being sexually assaulted by their employers, those who run away are often treated as suspects by UAE authorities. Because domestic workers are not covered under the labour law, and because their legal status in the country is directly tied to employment with their sponsor, they have limited access to legal advice and redress mechanisms.<sup>88</sup>

Legal assistance is particularly important in cases of rape, because the law in the UAE places an extremely high burden of proof on victims to show that sex was non consensual. Additionally, the very act of reporting a rape puts a woman in danger of being charged with illicit sex.<sup>89</sup> While the CEDAW Committee has taken note of the UAE's initiatives to protect women from violence by supporting shelters, counselling services and hotlines for victims, it said it remained “deeply concerned about the lack of protection of female migrant workers, especially domestic workers, when reporting cases of violence against them may lead to them being treated as offenders, or accused of a crime, or deported.”

86 US State Department, *Human Rights Report 2011*, p. 24.

87 International Labour Organization, *Gender and Migration in the Arab States - The Case of Domestic Workers* (Geneva, 2009), p. 102-103.

Available from: [www.academia.edu/855502/Gender\\_and\\_Migration\\_in\\_Arab\\_States\\_The\\_case\\_of\\_domestic\\_workers](http://www.academia.edu/855502/Gender_and_Migration_in_Arab_States_The_case_of_domestic_workers)

88 Migrant Forum in Asia, “Women Migrant Workers in the UAE”, p. 4.

89 US State Department, *Human Rights Report 2011*, p. 18.

## F. ANALYSIS AND CONCLUSIONS

The UAE has been a leader in the Arab world in promoting equality for women. The World Economic Forum's Gender Gap Report 2011 noted that "The United Arab Emirates continues to hold 1st position among the Arab countries and improves its performance relative to its own score of 2010."<sup>90</sup> The CEDAW Committee has also taken note of the UAE's progress in promoting and protecting women's human rights. In its most recent Concluding Observations, the Committee commended the Government for: high levels of education attained by women nationals; efforts to ensure more women participate in political life; and various initiatives that "encourage participation of women in all economic areas and in particular the business sector, such as the establishment of councils of businesswomen and the creation of a businesswomen award".<sup>91</sup>

While women migrant workers do not benefit directly from many of these initiatives, the UAE has initiated some gender-sensitive rights-based good practices that better protect the rights of migrant women. Some of these include:

- Establishment of a National Committee for the Suppression of Human Trafficking and a National Plan to Combat Trafficking, a national plan to combat trafficking, and a special court to hear human trafficking cases.
- Finalization of a central database for law enforcement officers working on anti-trafficking cases to improve prosecution efforts.
- Designated police personnel and standard operating procedures for identifying trafficking victims, to ensure victims are not punished for unlawful acts committed as a result of having been trafficked.
- Adoption of Federal Act No. 51 on the suppression of human trafficking, which sufficiently defines and penalizes trafficking.
- Establishment of shelters for female and child victims of trafficking and abuse that provide medical, psychological, legal, and vocational assistance to female victims of trafficking.
- Anti-trafficking information and education campaigns within the UAE and with source country embassies, including an advertisement campaign in the Abu Dhabi and Al Ain international airports.
- Establishment of a website to raise awareness about trafficking and a toll-free hotline to report labour abuses. Amendments to Federal Labour Law No. 8 (1980) to better safeguard the rights of temporary contractual workers.
- Information campaigns in source country languages on migrant workers' rights.
- New regulations banning recruitment agencies from directly or indirectly collecting fees from migrant workers; and making agencies jointly liable with third-party users of their services for meeting wage and other obligations to workers.
- 2011 changes to the labour code eliminating the requirement that foreign workers receive permission from their employer before changing jobs.
- Advances in education including: a 90-per-cent literacy rate for women; 77 per cent of women enrolled in higher education; training of women as muftis, or Sunni Muslim scholars to qualify as interpreters of Islamic law.
- Abolishing the six-month ban on seeking new employment, if a migrant worker's previous

90 World Economic Forum, *The Global Gender Gap Report 2011* (Geneva, 2011), p. 25. Available from: [www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2011.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf)

91 CEDAW Committee, *Concluding Observations*, paras. 6, 18, and 34.

employment ends prematurely.

- Finalization of draft of new law to protect domestic workers.
- A Wage Protection System (WPS) that electronically verifies payment of wages, and fines employers who do not pay wages on time.
- Invitation of the UN Special Rapporteur on Trafficking to conduct a fact-finding mission and recommend ways in which the Government can improve efforts at combating trafficking.
- Ratification of the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol).
- Establishment of transitional facilities and shelters in Abu Dhabi, Dubai, Ras al Khaimah, and Sharjah, which provide protection, counselling, and rehabilitation services – including medical, psychological, legal, educational, and vocational assistance to female victims of trafficking and violence.
- Government lectures on forced labour issues presented to tens of thousands of foreign workers in companies and institutions throughout the country.
- The Federal Labour Law No. 8 (1980), which covers all employees including migrants (with a few exceptions such as domestic workers) and governs most employment matters, including maximum working hours, breaks, annual leave, overtime, compensation for work-related injuries and death, severance pay, and requirements for employers to pay repatriation costs on completion of contract. Additionally, the law allows a worker to abandon her work if the employer fails to honour either contractual or legal obligations to the worker.
- Mandatory standard employment contracts for domestic workers that specify the duration of contract, salary, accommodation, healthcare, repatriation costs, arrangements for settlement of disputes, recruitment fees, adequate breaks, paid vacation, and methods for coordinating with concerned embassies.
- A 2006 Government decree that employers should be required to provide health insurance for low-skilled workers, as well as a 2008 Abu Dhabi law requiring employers and business owners to provide health insurance coverage for employees, including all non-UAE nationals and their families, and plans in Dubai for phasing in mandatory health insurance by 2015.

These are all positive developments, However as UAE authorities have acknowledged on a website providing information for migrant workers: “The UAE has many good laws on paper - the test will be enforcing them.”<sup>92</sup> Much more work needs to be done to fill the gaps between between laws and implementation. Additionally further changes must be made to the legal framework to ensure women migrant workers enjoy equal protection of the law.

## G. RECOMMENDATIONS

The CEDAW Committee recommended that the UAE:

- Fully incorporate into the Constitution or other appropriate domestic legislation the principle of equality between women and men in accordance with article 2 (a) of the CEDAW, as well as a definition of discrimination on the basis of sex in line with article 1 of the Convention.

92 Available from: [www.dubaifaqs.com/united-arab-emirates.php](http://www.dubaifaqs.com/united-arab-emirates.php)

- Extend State responsibility for acts of discrimination by public and private actors in accordance with article 2 (e) of the Convention, with a view to achieving formal and substantive equality between women and men.
- Duly take into account in gender-equality policies the contribution of migrant workers to national development, in particular women migrant workers.
- Guarantee equal application of all labour laws to women and men regardless of their nationality.
- Guarantee all workers, including female workers, the fundamental principle of freedom of association and equal remuneration for work of equal value.

In addition to these recommendations, the UAE should also consider:

- Ratifying the remaining human rights treaties to which it is not yet a party, particularly the Convention on Migrant Workers, and ILO Conventions No. 87 and No. 98.
- Establishing a national human-rights institution in accordance with the Paris Principles.
- Repealing or amending all discriminatory civil laws related to marriage and family life.
- Repealing discriminatory penal codes that allow men to use physical violence against female family members.
- Enacting a law prohibiting spousal rape.
- Withdrawing reservations to the CEDAW, particularly to articles 2 and 1, as such reservations are inconsistent with the purpose of the Convention.
- Undertaking initiatives to eliminate gender stereotypes and biases regarding the roles of women in private and public life. Such initiatives may include revised school curricula, gender equality training for teachers, and awareness-raising campaigns with members of the media.
- Including domestic workers under the labour laws to ensure their equal right to benefits, remuneration and conditions of employment.
- Abolishing the Kafala sponsorship system.
- Improving collection of data on women being trafficked into and out of the country.
- Better enforcing laws prohibiting employers from withholding employees' passports.
- Repealing discriminatory "Emiratization" policies that limit opportunities for migrants to work in the UAE.
- Allowing migrant workers to form and join unions, and participate in collective bargaining. Establish a minimum wage for all workers that allows for a decent standard of living.
- Stopping the deportation of migrant workers who test positive for HIV/AIDS and other conditions, and instead providing them with adequate medical care, counselling and support services.
- Requiring work safety inspections of private homes where domestic workers are employed.
- Allowing migrant workers to fully participate in the work of NGOs – and allowing NGOs to operate independently.
- Undertaking measures to ensure women migrant workers, especially domestic workers have adequate access to justice mechanisms and legal assistance. Putting in place easily accessible dispute resolution mechanisms and repealing or amending laws that prevent women migrant workers from using the courts and other systems of redress.
- Amending the standard contract for domestic workers to include: a ceiling on working hours per week; provisions for a rest day or overtime pay; workers' compensation; greater specification of "adequate breaks"; and one month of paid vacation every two years.

## REFERENCES

- Amnesty International, Fresh Claims of Abuse of Indonesian Domestic Workers in Saudi Arabia, 19 November 2010.
- CEACR (2010), Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No. 182) - United Arab Emirates.
- CEDAW Committee (2010), Concluding Observations – United Arab Emirates, CEDAW/C/ARE/CO/1.
- Human Rights Watch (2009), The Island of Happiness: Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi.
- Human Rights Watch, United Arab Emirates, Abu Dhabi, May 2009, <http://www.hrw.org/en/reports/2009/05/18/island-happiness-0>.
- Khalife, Nadya. guardian.co.uk, Tuesday 29 June 2010 08.00 BST. <http://www.guardian.co.uk/commentisfree/2010/jun/29/uae-rape-victims-women>
- The Global Competitiveness Report 2011/2012 issued by the World Economic Forum.
- Recommended by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and related intolerance visited the UAE in 2009.
- Saleh Al Jabri, Director of the Establishments Department at the Ministry, The Khaleej Times 27 July 2010.
- United Arab Emirates, Ministry of Labour, Regulation of Private Employment Agencies, 3 January 2011.
- Universal Periodic Review, Stakeholders' Report, the United Arab Emirates.
- US State Department, Human Rights Report 2010, United Arab Emirates.
- US Department of State Trafficking in Persons Report 2011: United Arab Emirates.
- Universal Periodic Review, Stakeholders' Report, the United Arab Emirates.
- UAE Statistics Bureau, [www.emirates247.com](http://www.emirates247.com).

## INTERNET

- <http://www.dubaifaqs.com/ministry-of-labour-uae.php>
- <http://www.dubaifaqs.com/united-arab-emirates.php>
- <http://emirateseconomist.blogspot.com/2011/06/countries-ranked-by-gdp-per-capita.html>
- <http://www.employmentlawalliance.com/firms/clydeco/articles/transferring-sponsorship-in-the-uae>
- <http://www.guardian.co.uk/commentisfree/2010/jun/29/uae-rape-victims-women>
- [http://en.wikipedia.org/wiki/Women\\_in\\_the\\_United\\_Arab\\_Emirates](http://en.wikipedia.org/wiki/Women_in_the_United_Arab_Emirates).
- [http://en.wikipedia.org/wiki/Economy\\_of\\_the\\_United\\_Arab\\_Emirates](http://en.wikipedia.org/wiki/Economy_of_the_United_Arab_Emirates)
- <http://www.emirates247.com/business/uae-leads-arab-world-in-gender-equality-wef-2011-11-03-1.426750>
- <http://www.hrw.org/world-report-2011/united-arab-emirates>
- [http://www.indexmundi.com/united\\_arab\\_emirates/population.html](http://www.indexmundi.com/united_arab_emirates/population.html). CIA World Fact book –
- [http://internationalbusiness.wikia.com/wiki/U.A.E.\\_Personnel\\_and\\_Labor\\_Laws#The\\_Kafala\\_System](http://internationalbusiness.wikia.com/wiki/U.A.E._Personnel_and_Labor_Laws#The_Kafala_System)
- [http://www.khaleejtimes.com/DisplayArticle09.asp?xfile=data/theuae/2011/September/theuae\\_September142.xml&section=theuae](http://www.khaleejtimes.com/DisplayArticle09.asp?xfile=data/theuae/2011/September/theuae_September142.xml&section=theuae)
- <http://www.hrw.org/world-report-2011/united-arab-emirates>.
- <http://www.jewishpolicycenter.org/blog/2010/10/sharia-law-and-gender-equality-in-the-uaeRel>
- <http://www.thebigprojectme.com/2011/06/12/uae-expat-labour-laws-to-change/>

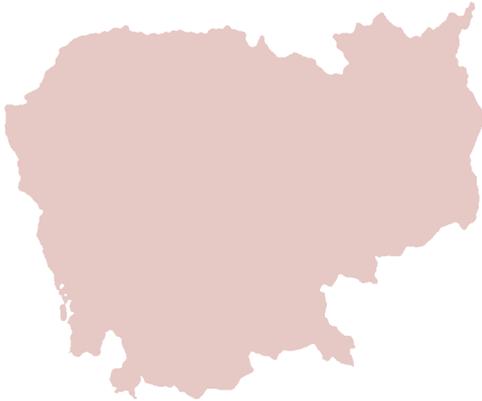


Photo credit: United Nations/Sek Leong Lai



## SENDING COUNTRIES: SOUTHEAST ASIA

# Kingdom of Cambodia



## A. COUNTRY CONTEXT

Cambodia is located on the South-East Asian peninsula, bordered by Thailand, Lao Peoples Democratic Republic, Viet Nam, and the Gulf of Thailand. The population is almost 15 million, 80 percent of whom live in rural areas. Over 95 percent of Cambodians are Khmer-speaking Buddhists, and over half of the population is less than 25 years old. Cambodia is a post-conflict country having survived decades of civil war, when at least 1.5 million people died at the hands of the Khmer Rouge. Since the late 1990s it has been politically stable, and national elections held in July 2008 were relatively peaceful. However, long-term development after decades of war remains a challenge. Most rural areas are in need of basic infrastructure, and much of the population lacks education and productive skills.<sup>1</sup> Cambodia is a low-income country<sup>2</sup> with medium human development.<sup>3</sup> Gross National Income was placed at 830 dollars per capita in 2011.<sup>4</sup>

Recent improvements in agricultural production, strong growth in construction and services, and expansion of the garment sector have led to economic development. Between 2004 and 2008 the economy grew about 10 percent per year, however it contracted slightly in 2009 as a result of the global economic slowdown. Increased tourism and renewed exports helped the economy to regain momentum and in 2011 it grew by 6.5 percent. The garment industry is an important part of the economy contributing more than 70 percent

---

1 US Central Intelligence Agency, *The World Factbook 2011 – Cambodia* (Webpage, 2011). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>

2 Available from: <http://data.worldbank.org/country/cambodia>

3 Available from: <http://hdrstats.undp.org/en/countries/profiles/KHM.html>

4 Available from: <http://data.worldbank.org/country/cambodia>

of Cambodia's exports. The industry employs more than 300,000 people - about 5 percent of the work force.<sup>5</sup>

Human Development Index (2011)	Medium human development <sup>6</sup>
Stock of migrants from Cambodia 2009	210,000 <sup>7</sup>
Share of population migrating for work (2009)	1.4%
Estimated proportion of female migrants (2010)	50% <sup>8</sup>

Cambodia is primarily a sending country for migrant labour. Low wages, chronic poverty, landlessness, unemployment, lack of access to markets, debt, and natural disasters such as droughts and floods all serve as push factors for Cambodians to emigrate for work. At the same time, increasing demand for low-skilled workers on the international labour market, along with higher wages, act as a pull factors for unemployed and underemployed Cambodians. The vast majority of Cambodians migrating for work emigrate to neighbouring Thailand. The International Labour Organization (ILO) has pointed out that: "The movement of labour from Cambodia to Thailand has long been characterized by the irregular migration as the legal channel for going abroad is relatively new, costly and inconvenient for most of the workers. Since labour emigration from Cambodia is expected to rise due to a number of internal and external reasons, the government is faced with the challenge to develop and strengthen its legal framework and institutions to manage it."<sup>9</sup>

## B. KEY GENDER AND HUMAN RIGHTS

Cambodia has ratified or acceded to six of the nine core human rights conventions, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its optional protocol. It has signed, but not yet ratified, the Convention on the Protection of the Rights of All Migrant Workers and members of their Families (CMW). In its 2006 Concluding Observations on Cambodia, the CEDAW Committee noted that States' adherence to major international human rights instruments "enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life." The Committee therefore urged the Government of Cambodia to consider ratifying the Convention on Migrant Workers.<sup>10</sup>

5 US Central Intelligence Agency, *The World Factbook 2011*.

6 Available from: <http://hdrstats.undp.org/en/countries/profiles/KHM.html>

7 International Labour Organization, *Review of Labour Migration Management, Policies and Legal Framework in Cambodia*, (Geneva, May 2009), p. 4. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_106497.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_106497.pdf)

8 Cambodia Committee for Women (CAMBOW) and Cambodian NGO Committee on CEDAW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia*, (Phnom Penh, 2010), p. 55. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOSubmission\\_Cambodia56.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOSubmission_Cambodia56.pdf)

9 International Labour Organization, *Review of Labour Migration Management*, p. ix.

10 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Cambodia* (CEDAW/C/KHM/CO/3) (Thirty-fourth session, 2006), para. 40. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

Although Cambodia has ratified many human rights conventions, application and implementation have been slow. Human rights concerns include: high levels of corruption in all branches of government; a culture of impunity for violations of the law; lack of access to justice for the poor; restrictions on freedom of expression; and forced evictions.<sup>11</sup> To address human rights concerns, the Government has established Commissions for the Protection of Human Rights and Receipt of Complaints in the National Assembly and the Senate. Both Commissions are mandated to facilitate, receive and address all complaints made by citizens who believe their rights have been violated. Additionally, the Cambodian Human Rights Committee was established to assist the Government in the development of human rights policies and to coordinate investigation and resolution of human rights abuses.<sup>12</sup> The Government has also initiated several policy measures to promote and protect the legal, political and social rights of women, including: gender mainstreaming action plans; gender-responsive planning and budgeting; affirmative action to increase women's political participation; and educational programmes that promote the principle of equality between men and women in private and public life.<sup>13</sup>

Despite progress in developing human-rights mechanisms and legal frameworks, large disparities remain between men and women with respect to health, literacy, political participation and access to resources.<sup>14</sup> Women migrants are particularly vulnerable to human rights abuses. In its 2012 World Report, Human Rights Watch described the conditions faced by Cambodian women and girls recruited as domestic workers. "Recruitment agents often forge fraudulent identity documents for children, offer cash and food incentives as 'loans' that leave migrants deeply indebted, confine recruits in training centres in Cambodia for months and intimidate those who try to escape. Many recruitment centres have inadequate food, water, and access to medical care. In 2011 three women recruits died while confined in the centres, and authorities failed to undertake thorough investigations into their deaths or hold anyone accountable."<sup>15</sup>

In addition to being exploited by recruitment agencies, Cambodian women also face a host of human rights abuses upon arrival in destination countries. Some report being subjected to trafficking, forced labour and pressure to engage in prostitution, while others are subject to harassment by immigration and law enforcement officials, employers who confiscate their travel documents, and dangerous working conditions.<sup>16</sup> In its Concluding Observations for Cambodia, the CEDAW Committee noted its concern that "Cambodian women, especially young women who migrate in neighbouring countries in search of work opportunities, are extremely vulnerable to becoming victims of various forms of violence, exploitation and trafficking". The Committee called upon the Government to "focus on the causes of women's migration and to develop policies and measures to protect migrant women against exploitation and abuse".<sup>17</sup>

11 CAMBOW and Cambodian NGO Committee, *Implementation of the CEDAW*, p. 6.

12 Cambodia, *Combined Fourth and Fifth Periodic Reports of Cambodia to the CEDAW Committee* (Phnom Penh, 11 August 2011), paras. 12-13.

13 *Ibid*, paras. 43 and 51.

14 CAMBOW and Cambodian NGO Committee, *Implementation of the CEDAW*, p. 2.

15 Human Rights Watch, *World Report 2012 – Cambodia*, (New York, 2012). Available from: [www.hrw.org/world-report-2012/world-report-2012-cambodia](http://www.hrw.org/world-report-2012/world-report-2012-cambodia)

16 CAMBOW and Cambodian NGO Committee, *Implementation of the CEDAW*, p. 55.

17 CEDAW Committee, *Concluding Observations*, paras. 21 and 22.

## C. KEY STAKEHOLDERS

The Ministry of Labour and Vocational Training (MoLVT), in cooperation with the Ministry of Foreign Affairs and the Ministry of the Interior, manages the sending of Cambodian workers abroad. Its mandate includes: selecting and licensing employment agencies; monitoring and evaluating recruitment agencies; withdrawing licenses from employment agencies who do not follow relevant laws, issuing sub-decrees and other regulations; providing medical checks to migrant workers prior to departure; resolving labour disputes between migrant workers and domestic employment agencies and between migrant workers and their employers; supporting the employment agencies in sending workers abroad; and preventing illegal recruitment.

The Manpower Training and Overseas Sending Board, under the Ministry of Labour and Vocational Training, acts as a public recruitment agency to manage the migration of Cambodian workers abroad. The Board is composed of three units: 1) administrative and finance, 2) recruiting and training, and 3) sending and management.

### NGOS<sup>18</sup>

**CARAM Cambodia** focuses on empowering migrant workers and their communities. Through research, training, advocacy and provision of services it aims to promote and protect the rights of migrants and reduce vulnerabilities related to labour migration.

**Legal Support for Children and Women (LSCW)** aims to prevent violence and abuse against women and children through: advocacy- and capacity-building initiatives; provision of free legal advice; rights-awareness campaigns; training for law students; technical support to government; and participation in national, regional and international efforts to counter trafficking and protect the human rights of migrants.

**Cambodia Working Group for Domestic Workers (CWGDW)** is a network of civil society stakeholders founded in November 2011 to collaborate and unite advocacy efforts and resources to respond to issues affecting domestic workers, and to encourage the Royal Government of Cambodia to ratify the new ILO Convention 189 concerning decent work for domestic workers.

**Cambodian Women's Crisis centre (CWCC)** provides shelter, counselling, skills training and legal assistance to women victims of domestic violence, rape and human trafficking. CWCC also conducts research, awareness-raising campaigns and community-based education, and lobbies the government for greater protection for victims.

**Cambodian Women for Peace and Development (CWPD)** contributes to improving the quality of life of Cambodian women and their families by focusing on four key areas, namely: reproductive health and HIV/AIDS prevention; community development and economic

18 IOM, Review of Labour Migration Dynamics in Cambodia available at <http://piasdgserver.usp.ac.fj/apmrn1/fileadmin/files/docs/cambodia/LMReportCambodia.pdf>

empowerment; law enforcement and good governance; and natural environment protection and management.

**LICADHO**, a national Cambodian human rights organization established in 1992, aims to promote respect for the civil, political, economic and social rights of Cambodian people through: monitoring, collecting and investigating human rights violations perpetrated by the State and violations made against women and children; providing legal advice by a paralegal team; providing legal representation by human rights lawyers; conducting rights-awareness campaigns; engaging in advocacy efforts; and conducting outreach to vulnerable populations.

## D. RATIFICATION RECORD

The following table illustrates Cambodia's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
ICERD	28 November 1983
MWC	27 September 2004 s
CEDAW	15 October 1992 a
ICCPR	26 May 1992 a
ICESCR	26 May 1992 a
ILO C29 Forced or Compulsory Labour	24 February 1969
ILO C87 Freedom of Association	1999
ILO C97 Migration for Employment	23 August 1999
ILO C98 Right to Organize and Collective Bargaining	23 August 1999
ILO C100 Equal Remuneration	23 August 1999
ILO C105 Abolition of Forced Labour	-
ILO C111 Discrimination in Employment	-
ILO C138 Minimum Age for Admission to Employment	14 March 2006
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	14 March 2006

## D. COMPLIANCE WITH CEDAW

The CEDAW Committee has noted that article 31.1 of Cambodia's Constitution "stipulates recognition of and respect for international human rights agreements, that article 45.1 calls for the abolition of all forms of discrimination against women, and that the Convention takes precedence over domestic law." However, it expressed concern that the CEDAW is not self-executing and is not directly applicable in court proceedings. Thus the Committee urged the Government to "take immediate measures to ensure that the Convention becomes fully applicable in the domestic legal system".<sup>19</sup> To address some of these concerns, in July 2007, the Constitutional Council in Cambodia issued a ruling, which made clear that all international Conventions like CEDAW or CRC, along with all other international laws ratified by Cambodia, are directly applicable in Cambodian courts.

However, experts note that despite this Constitutional imperative, many judges and legal officers are not aware of CEDAW's existence, and thus judges rarely take it into account when adjudicating cases.<sup>20</sup> Thus the Government must do more to comply with the CEDAW Committee's recommendation, and raise awareness among legal professionals including judges, prosecutors and lawyers, so that the CEDAW and other human rights conventions to which Cambodia is a party become well known and used in judicial processes.<sup>21</sup>

## DISCRIMINATION

Additionally, the CEDAW Committee expressed concern that there is no specific definition in Cambodian law of the nature and forms of discrimination against women. Accordingly, it urged Cambodia to include in domestic law a definition of discrimination against women that encompasses both direct and indirect discrimination in line with article 1 of CEDAW.<sup>22</sup> An effective anti-discrimination clause must prohibit discrimination against women "by public and private actors in all areas of their lives and in the exercise of all fundamental rights and freedoms. It should also explicitly prohibit discrimination across a range of intersections including but not limited to race, class, disability, and sexual orientation".<sup>23</sup>

While the Constitution and domestic laws do not include a specific definition of discrimination, Cambodia has enacted policy measures for achieving equality and has created regulations that punish acts of discrimination against women. For example, the Penal Code punishes those that refuse to give property or services to anyone based on sex, and the law prohibits making employment decisions on the basis of sex.<sup>24</sup>

19 Ibid, paras. 9 and 10.

20 Ke Bunthoeurn, "Legal Framework of NGOs in Cambodia", in *International Journal of Not-for-profit Law*, vol. 13, issues 1-2 (April 2011), p. 9. Available from: [www.icnl.org/research/journal/vol13iss1/art\\_1.htm](http://www.icnl.org/research/journal/vol13iss1/art_1.htm)

21 CEDAW Committee, *Concluding Observations*.

22 Ibid, paras. 11 and 12.

23 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries*, (March 2010), p.3. Available from: [http://cedaw-seasia.org/docs/Aw\\_GEL\\_incover050609Feb10.pdf](http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf)

24 Cambodia, *Combined Fourth and Fifth Periodic Reports*.

Despite this de jure equality, in fact discrimination remains a reality for most women. Discriminatory moral codes and social practices mean that the rights and freedoms articulated in the Constitution and other laws and policies do not necessarily benefit women as intended. For example, according to gender advocates, “social pressure and poverty means that most girls do not receive the same level of education as boys. This lack of education prevents women from participating in political life, as they often lack confidence to work in the public sphere. Women deprived of educational opportunities are also less likely to reach key positions in the private sector ... Consequently, Cambodian women are more vulnerable to poverty than men. Women not only have lower incomes, but also lack access to certain economic opportunities due to discriminatory attitudes which limit their occupational choices.”<sup>25</sup>

The failure of the Government to adequately address stereotyping of women and girls is in violation of article 5 of the CEDAW, which calls upon States parties to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

## POLICY MEASURES

Cambodia has several policies that aim to regulate labour migration, including Sub-decree 57 issued in 1995, which regulates migration abroad for work. Its focus is mainly on the responsibilities of recruitment agencies, conducting pre-departure trainings for migrants, and coordination efforts regarding the return of migrant workers. It is not enforceable in destination countries. Sub-decree 57 does not cover standard contracts that can be enforced in destination countries, nor does it provide minimum standards for specific labour rights that migrant workers are entitled to. It does however obligate recruitment agencies to sign written contracts with workers.<sup>26</sup>

Recently a new Sub-decree, no. 190 on the Management of Sending of Cambodian Workers Abroad through Private Recruitment Agencies, was enacted which supercedes some provisions of Sub-decree 57. This new regulation includes some positive changes by requiring that: recruitment agencies are periodically inspected by the Ministry of Labour; lawyers are provided for migrants engaged in legal proceedings abroad; contracts between agencies and workers are written in the Khmer language; and training centres ensure a “decent” standard of living.<sup>27</sup> These are good practices that promote the rights of migrant women to information and access to justice.

25 CAMBOW and Cambodian NGO Committee, *Implementation of the CEDAW*, p. 3.

26 CARAM Asia, *Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia*, (Kuala Lumpur, 2011). p. 8. Available from: [www.caramasia.org/reports/FDWlegislationAsia.pdf](http://www.caramasia.org/reports/FDWlegislationAsia.pdf)

27 Human Rights Watch, “Cambodia: New Regulation Short-Changes Domestic Workers”, (webpage, 30 August, 2011). Available from: [www.hrw.org/news/2011/08/30/cambodia-new-regulation-short-changes-domestic-workers](http://www.hrw.org/news/2011/08/30/cambodia-new-regulation-short-changes-domestic-workers)

However, critics charge that in many ways, the new Sub-decree 190 actually represents a step backwards as it eliminates some of the rights previously afforded to workers, and fails to address serious problems raised over the years by NGOs and migrant worker advocates. For example, under the old Sub-decree 57, workers were entitled to at least 1.5 days of paid holidays per month. Sub-decree 190 eliminates that provision and now merely specifies that employment contracts must specify working conditions and benefits. Article 9 of Sub-decree 57 required that information regarding salary, repatriation provisions, transport expenses and insurance premiums be included in the contract, however Sub-decree 190 no longer requires this. Sub-decree 57 required that disputes must be resolved according to the contract signed by involved parties, but Sub-decree 190 removed this requirement.<sup>28</sup> Additionally, Sub-decree 190 fails to address several major gaps in the original Sub-decree 57. LICADHO has said the problems still faced by Cambodian migrant workers include those related to: “i) debt bondage through the provision of enticement loans to workers, ii) recruitment of underage girls, iii) illegal detention and mistreatment of workers in pre-departure training centres, iv) the facilitation and use of forged legal documents (passports, birth certificates), v) failure to provide copies of contracts to workers, vi) failure to pay workers their full salaries and/or not paying any salary until the end of the contract, and viii) recruitment agencies preventing and obstructing contacts between workers and their relatives”.<sup>29</sup>

According to the CEDAW Committee’s General Recommendation 26, States parties must formulate a gender-sensitive rights-based policy to regulate and administer all aspects and stages of migration, to promote safe migration and ensure the protection of the rights of women migrant workers. Specifically, with respect to recruitment agencies, the CEDAW Committee has urged the Government to ensure women migrant workers receive appropriate gender- and rights-based pre-departure information and training that raise their awareness of potential exploitation. The General Recommendation also urges governments to “seek the active involvement of women migrant workers and relevant NGOs in such policy formation, implementation, monitoring and evaluation.”<sup>30</sup> Cambodia’s policies on migration fail to address several serious human rights violations regularly faced by women migrant workers, including debt bondage and mistreatment and confiscation of documents. Although these issues have been well documented and shared by NGOs and migrant worker advocates over the past few years, the policies on migration still contain many gaps and thus are not in compliance with the CEDAW.

In October 2011, the Government of Cambodia banned recruitment, training and sending of domestic workers to Malaysia, following many reports of abuse exploitation, and in some cases deaths. The ban has been put in place temporarily in order to give the Government time to enact new laws, and initiate processes and mechanisms that will ensure safe migration.<sup>31</sup> States parties to the CEDAW are obligated to ensure that women receive equal protection

28 LICADHO, *Comments on the Sub Decree on “the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies”*, (Phnom Penh, August 2011), pp. 2-4. Available from: [www.licadho-cambodia.org/reports.php?perm=160](http://www.licadho-cambodia.org/reports.php?perm=160)

29 Ibid.

30 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15 2008) (Forty-second session, 2008), paras. 23 (a) and (b), and 24(b)(i). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

31 Cambodian Working Group for Domestic Workers (CWGDW), “Cambodia’s Ban on Domestic Workers to Malaysia is an Opportunity for Change to Protect the Rights of Migrant Workers”, (Phnom Penh, 12 February 2012). Available from: <http://atnc.asia/wp/2012/02/cambodias-ban-on-domestic-worker/>

under the law, thus regulations to protect the rights of women migrant workers to be free from abuse and exploitation are good practices. However, imposing a ban on domestic workers migrating for employment in Malaysia has a discriminatory impact on women, as it is mainly women who fill these jobs. Additionally, research has shown that such bans often drive women who are desperate to work to migrate through informal channels, thus increasing their risk of exploitation and trafficking.<sup>32</sup> For these reasons, General Recommendation 26 calls upon States parties to the CEDAW to lift discriminatory bans or restrictions on migration.<sup>33</sup> Instead, Cambodia should ensure that domestic workers can migrate safely through better regulation of recruitment agencies, promoting the use of contracts with minimum standards, and ensuring domestic workers have access to justice mechanisms for obtaining redress when violations occur. Since the ban, the Government has begun negotiating a Memorandum of Understanding (MoU) with the Malaysian Government to protect the rights of Cambodian migrant workers in Malaysia.<sup>34</sup> This is a step in the right direction and hopefully will make the domestic worker ban unnecessary and ensure women equal opportunities in employment.

## TRAFFICKING AND FORCED LABOUR

The anti-trafficking legislative framework in Cambodia includes the 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation, which provides the definitions and sentences applicable to unlawful recruitment, cross-border transfer of persons and the act of buying, selling, or exchanging a human being for the purposes of exploitation. The Penal Code addresses the unlawful confinement of people as well as forgery of official documents, bribery of officials and identity fraud.<sup>35</sup> The 2009 Policy on National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking includes guidelines to improve victim treatment and protection; and the 2011-2013 National Plan of Action on Trafficking is the Government's policy framework for combating trafficking.

Despite these legislative efforts, according to the US State Department, Cambodia remains a source, transit, and destination country for men, women and children who are subject to forced labour and sex trafficking. The Report notes that many women who voluntarily choose to migrate to Thailand, Malaysia, and other destinations for work become victims of forced labour, sex-trafficking, domestic servitude, and debt bondage.<sup>36</sup>

### Prosecution

In its 2006 Concluding Observations, the CEDAW Committee observed that Cambodia should seek to properly implement its trafficking policy. Since that time the Government has taken several steps to address this issue. In 2008, the Government enacted the Law on Suppression of

32 Human Rights Watch, "Nepal: Protect, Don't Ban Young Women Migrating to Gulf", (New York, 14 August 2012). Available from: [www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf](http://www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf)

33 CEDAW Committee, *General recommendation No. 26*.

34 US State Department, *Trafficking in Persons Report 2012*, p. 107.

35 Asia Foundation, *Cambodia's labour Migration - Analysis of the Legal Framework*, (San Francisco, April 2011). Available from: <http://asiafoundation.org/resources/pdfs/LegalFrameworkLabourTrafficking.pdf>

36 US State Department, *Trafficking in Persons Report 2012*, p. 106-7.

Human Trafficking and Commercial Sexual Exploitation which prohibits all forms of trafficking and prescribes sufficiently stringent penalties for those convicted. Pursuant to this law, in 2011 the Government convicted eight owners, staff members, and managers from three licensed labour recruitment agencies for trafficking-related offenses. Cambodia's anti-trafficking law conforms with the CEDAW Committee's General Recommendation 26 which urges Governments to include in their legislation the provision of legal sanctions for breaches of the law by recruitment agencies.<sup>37</sup>

Despite this progress however, widespread corruption continues to impede Cambodia's anti-trafficking efforts. For example, the US State Department's report notes that "In December 2011, the former head of the Phnom Penh Municipal Police's Anti-Human Trafficking and Juvenile Protection Department was convicted in absentia and sentenced to seven years' imprisonment on complicity charges, including accepting payments from brothels in exchange for protection and information on future raids. However, corruption allegations were never addressed by the Phnom Penh Municipal Court or the Anti-Corruption Unit and the convicted offender fled prior to being apprehended and remains at large."<sup>38</sup> Observers note that it is this culture of impunity that allows employment agencies to engage in illegal recruitment practices that contribute to trafficking.<sup>39</sup> Lack of enforcement of anti-trafficking laws is in violation of article 6 of the CEDAW, which obligates States parties to "take all appropriate measures ... to suppress all forms of traffic in women and exploitation of prostitution of women."

## Protection

Cambodia has put into place systematic procedures to identify and protect victims of trafficking. In 2009, it issued its Policy and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking. The government also signed agreements with Viet Nam and Thailand regarding victim identification and repatriation, and a MoU with Malaysia was recently approved.<sup>40,41</sup> These MoUs represent good rights-based policies that comply with the CEDAW Committee's recommendation to Cambodia that it further strengthen bilateral, sub-regional and multi-lateral cooperation to combat trafficking.<sup>42</sup>

The National Task Force on Anti-Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children is mandated to oversee the implementation of these policies at both the national and sub-national level in each of the provinces. Policies related to victim protection dictate that women and girls who are identified as trafficking victims be referred to shelters run by NGOs, or to the government-run shelter in Phnom Penh. Policies also afford victims the right to seek legal action against their traffickers and encourage them to assist in investigations.<sup>43</sup> These are good rights-based practices in line with the CEDAW committee's Concluding Observations, which urged Cambodia to ensure that victims of trafficking are not prosecuted for crimes related to their having been trafficked.<sup>44</sup>

37 CEDAW Committee, *General recommendation No. 26*, para. 24(c)(i).

38 US State Department, *Trafficking in Persons Report 2012*, p. 108

39 US State Department, *Trafficking in Persons Report 2012*, p. 108.

40 US State Department, *Human Rights Report 2011 – Cambodia*, (2011). Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

41 Asia Foundation, *Cambodia's labour Migration*.

42 CEDAW Committee, *Concluding Observations*, para. 20.

43 US State Department, *Trafficking in Persons Report 2012*, p. 108.

44 CEDAW Committee, *Concluding Observations*, para. 20.

In its 2006 Concluding Observations the CEDAW Committee also requested that Cambodia collect comprehensive information and data on trafficking of women and girls. However, the TIP Report noted that while several ministries contributed statistics to the trafficking database, the information was inaccurate and incomplete. Because women migrant workers are particularly vulnerable to being trafficked, General Recommendation 26 urges the Government to ensure adequate data collection, research and analysis on the particular problems and needs faced by this group.<sup>45</sup>

## Prevention

Recently, the Government has undertaken several initiatives to prevent human trafficking, including sponsorship of anti-trafficking awareness day in December 2011, when approximately 40,000 participants, and three million TV viewers heard testimonies from sex-trafficking victims and commitments from senior government officials to intensify the fight against human trafficking.<sup>46</sup> This is an example of a good practice in line with General Recommendation 26 which encourages States parties to use “the media, information and communication sectors to contribute to awareness-raising on migration issues, including ... women’s vulnerability to exploitation and discrimination and the various sites at which such exploitation occurs”.<sup>47</sup>

While media campaigns and rights-awareness initiatives are important strategies in preventing trafficking, they must be backed by effective government policies aimed at prevention. To that end, Cambodia recently enacted Sub-decree 190 on regulating recruitment agencies. However, critics charge that this new sub-decree fails to prohibit actions that often lead to trafficking and forced labour, and thus is not a meaningful prevention strategy. For example, the policy does not address the amount in pre-departure fees that recruitment agencies may charge, nor does it provide for adequate monitoring of agencies to avoid abuse, prevent corruption, and enforce criminal penalties.<sup>48</sup> These omissions, as well as other significant gaps fail to prevent trafficking and forced labour of migrant women and thus are in violation of articles 2 and 6 of the CEDAW, which obligate governments to take all appropriate measures to ensure promotion and protection of women’s human rights, and to suppress the trafficking and exploitation of women.

## EMPLOYMENT

Article 36 of Cambodia’s Constitution states that, “citizens of either sex shall enjoy the right to choose any employment according to their ability and to the needs of society.” Article 3 of the 1997 Labour Law defines labourers as “every person of any sex and nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private.”<sup>49</sup>

45 CEDAW Committee, *General recommendation No. 26*, para. 23(c).

46 US State Department, *Trafficking in Persons Report 2012*, p.108.

47 *Ibid*, para. 24(b)(vi).

48 US State Department, *Trafficking in Persons Report 2012*, p. 108.

49 Cambodia, *Combined Fourth and Fifth Periodic Reports*, para. 139.

This law covers all who are employed in the formal sector, however those employed in the informal sector, such as street traders and domestic workers, are not entitled to rights and benefits under this law.<sup>50</sup>

Benefits afforded to employees under the Labour Law include: a maximum 48-hour work week; prohibition of a seven-day-a-week work; prohibition of termination due to pregnancy; 90 days of maternity leave at half the normal wage; breastfeeding breaks during work hours; provision of a nursing room and day care centre for children of women working in establishments with more than 100 employees – for smaller establishments, employed mothers must reimburse day-care expenses; six months sick leave; one-and-a-half days per month paid annual leave; compensation and medical assistance for work-related illnesses and accidents; and the prohibition of sexual harassment.<sup>51</sup> These provisions of the Labour Law represent good rights-based practices that recognize the contributions of women in the workplace. Specifically, the Labour Law’s prohibition of pregnancy-based discrimination and its provisions for breastfeeding and day care are in compliance with article 11 of the CEDAW which obligates governments to prevent discrimination against women on the grounds of maternity and provide necessary services to enable parents to combine family obligations with work responsibilities.

In addition to enacting legislation to promote gender equality in the workplace, various government ministries have developed strategic plans aimed at promoting the role of women in economic development. For example, the National Strategic Development Plan (NSDP) includes several priority actions “aimed at reducing gender-based discrimination in the labour market and encouraging greater entry by women into higher level jobs”. Additionally, Gender Mainstreaming Action Plans implemented within the Ministry of Commerce and the Ministry of Industry, Mines and Energy include “building the capacity, skills and confidence of women in the informal economy; increasing women’s access to microfinance; promoting registration of businesses owned by women; and increasing women’s access to information, trade and services”.<sup>52</sup> These initiatives are in line with article 11 of the CEDAW which obligates States parties to promote and protect women’s rights to free choice of profession and employment, promotion, job security and all benefits and conditions of service as well as the right to receive vocational training.

Despite this, the fact remains that most Cambodian women are employed in informal sector and thus are not protected by these positive legislative and policy efforts. According to some estimates, only 17 percent of Cambodian women are employed in the formal sector, while 83 percent participate in the informal economic sector, including self-employment (mainly small-scale farming and household business operations) or family work without remuneration.<sup>53</sup> Wages for women in the informal economy are on average 30 percent lower than wages for men doing similar work.<sup>54</sup> Factors contributing to this disparity include gaps in education and literacy rates between men and women. Other factors include women’s lack of experience and enterprise skills, lack of awareness about marketing, social discrimination,

50 Cambodia, *Labour Law 1997*. Available from: [www.mekongmigration.org/labourlaw/images/labourlaw/pdf/cambodia/1%20Labour%20Law%20of%20Cambodia%201997.pdf](http://www.mekongmigration.org/labourlaw/images/labourlaw/pdf/cambodia/1%20Labour%20Law%20of%20Cambodia%201997.pdf)

51 Ibid.

52 CAMBOW and Cambodian NGO Committee, *Implementation of the CEDAW*, pp.49-50

53 Ibid, pp. 48.

54 Ibid, p. 55.

lack of resources such as credit, and lack of production means.<sup>55</sup>

The CEDAW Committee commented on this in its 2006 Concluding Observations, where it noted its concern “about occupational segregation and the concentration of women in the low-wage and unskilled labour sectors.” It urged Cambodia to “ensure equal participation for women and men in the labour market” and enact measures to “ensure that women receive equal pay for both equal work and work of equal value, and equal social benefits and services.” Excluding informal sector jobs, in particular domestic help, from the protection of the Labour Law is discriminatory as these jobs are largely filled by women. Thus, in order to comply with obligations under the CEDAW Cambodia must enact legislation and policies that protect the rights of this segment of the workforce.

Because women have limited economic opportunities in Cambodia, many look to migration for employment as a viable way out of poverty. Thus the CEDAW Committee has also called upon Cambodia to “focus on the cause of women’s migration and to develop policies and measures to protect migrant women against exploitation and abuse.”<sup>56</sup>

## EMPLOYMENT CONTRACT

Migrant workers are required by law to enter into a contract with their recruitment agency in Cambodia, which is often a sub-agency to the principle recruiting agency in the destination country. Contracts must specify working conditions, job status, types of work to be done, and benefits. However, the law does not specify minimum standards for specific labour rights that migrant workers are entitled to, and there is no standardized employment contract which can be enforced in Cambodia or the destination countries.<sup>57</sup>

One study that analysed a sample of contracts between Cambodian migrant domestic workers and their recruitment agencies noted that “while the rights of the recruitment agencies were clearly delineated, no mention was made of the recruitment agency’s obligations vis a vis the domestic worker.”

“Instead, the substantive terms of contracts focus almost entirely on various aspects of the burden of debt incurred by the migrant worker, including the: obligation of the domestic worker to repay the agency for debts incurred; terms of how the money is to be repaid to the agency; liability of a guarantor, and liability of the migrant and/or their guarantor to reimburse the recruitment agency for all charges in the event of breach or non-fulfillment of contract by the migrant.”<sup>58</sup>

Advocates have also reported that fraud is rampant in the recruitment system and that the terms and conditions of contracts signed between workers and agencies in Cambodia are

55 Ibid, p. 48.

56 CEDAW Committee, *Concluding Observations*, para. 22.

57 CARAM Asia, *Reality Check!*, p. 8.

58 UN Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, (Bangkok, 2011), p. 33. Available from: [www.no-trafficking.org/reports\\_docs/uniap\\_cb\\_recruitment\\_agency\\_report.pdf](http://www.no-trafficking.org/reports_docs/uniap_cb_recruitment_agency_report.pdf)

often not the same as the terms in contracts between the migrant workers and employers in destination countries. One report found that, “usually, the contracts signed in Cambodia provide higher wages promising rest days, etc. but when the worker arrives in destination countries, they receive lower wages than what the agents had promised them.”<sup>59</sup> Additionally, many migrant workers complain that they do not understand the terms of their contracts, and are not allowed to keep a copy, which makes it difficult to pursue legal action in cases where there are disputes.

The lack of standardized employment contracts and legal minimum standards, combined with the limited oversight of recruitment agencies, makes many women migrating for work vulnerable to abuse and exploitation. This violates article 11 of the CEDAW regarding equal rights in employment, as well as article 15 on equality before the law. In line with General Recommendation 26, Cambodia must do more to ensure that prospective women migrant workers understand the contents of their labour contracts, as well as their legal rights and entitlements and procedures for invoking redress mechanisms.<sup>60</sup>

## BILATERAL AGREEMENTS

Cambodia concluded a MoU on employment cooperation with Thailand in 2002. One of the primary purposes of the agreement was to address the two countries’ concerns over human trafficking, and address safe migration issues for Cambodian citizens. The MoU details the governments’ commitments to: ensuring appropriate procedures for employment, and effective return of migrant workers who have completed their work assignment; sharing information and collaborating on the prevention of undocumented cross-border labour practices and employment; and introducing measures for labour protection.

According to the agreement, governments will apply national laws to protect the rights of those covered by the MoU, workers will receive the same wages and benefits as national workers, and labour disputes are to be governed by the national laws in the country of employment. This is an example of gender-sensitive, rights-based good practice. The creation of bilateral agreements between countries of origin and countries of employment that are in line with international standards, specify methods of migration management to be jointly implemented, and guarantee coverage under labour laws of the country of employment, help to ensure the promotion and protection of women’s human rights.<sup>61</sup> The CEDAW Committee has commented on the importance of bilateral cooperation and agreements regarding migration, and the important role they play in encouraging governments to share experiences of best practices and relevant information to promote the full protection of the rights of women migrant workers.<sup>62</sup>

59 CARAM Asia, *Reality Check!*, p. 9.

60 CEDAW Committee, *General recommendation No. 26*, para. 24(b)(i).

61 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment* (2005), p. 7. Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

62 CEDAW Committee, *General recommendation No. 26*, para. 27(b).

## MINIMUM AGE AND MINIMUM WAGE

### Minimum Age

Sub-decree No. 57, article 3 sets the official minimum age for work abroad at 18 years, but there are many reports of underaged girls and boys having been illegally recruited for work abroad.<sup>63</sup> The minimum age to migrate as a domestic worker is 21, however Cambodian girls as young as 14 have sought help for abuse suffered by their employers in Malaysia.<sup>64</sup> In a recent UN study in Malaysia, over 20 percent of Cambodian domestic workers interviewed by researchers were under 18 at the time of pre-departure training, and an additional 25 percent were between the ages of 18 and 21.<sup>65</sup> Article 32 of the UN Convention on the Rights of the Child (CRC) obligates States parties to protect children, defined as anyone below the age of 18, from economic exploitation. The Government's failure to adequately enforce child labour laws and effectively monitor recruitment agencies is therefore in violation of Cambodia's international legal obligations under the CRC. Additionally, the fact that many women below the age of 21 are migrating through formal channels in violation of regulations indicates a severe lack of oversight and monitoring of recruitment agencies. This is not in compliance with the CEDAW Committee's General Recommendation 26 which urges governments to design good monitoring systems that ensure good practices among recruitment agencies.<sup>66</sup>

### Minimum Wage

Cambodia's Labour Law specifies that the minimum wage must ensure every worker a decent standard of living compatible with human dignity. However, the government has not set a national minimum wage, with the exception of the garment industry where, as of January 2012, the minimum wage for workers was 66 dollars a month.<sup>67</sup> Low wages in the garment industry, and other sectors where women are the majority of employees, contribute to poverty and are one of the major factors driving women to migrate abroad for work. The CEDAW Committee has noted that sex-specific divisions of labour, in the formal and informal manufacturing and service sectors, are factors influencing women's migration.<sup>68</sup> Thus, Cambodia should enact a national minimum wage that ensures workers a decent standard of living, and make migration for work a choice rather than a necessity for women.

## REGULATION OF EMPLOYMENT AGENCIES

The Ministry of Labour and Vocational Training (MLVT) is mandated with regulating the process of Cambodians migrating abroad for employment purposes. Sub-decree No. 190, chapter 3, articles

63 Cambodia, Ministry of Labour and Vocational Training, and the International Labour Organization, *Policy on Labour Migration for Cambodia*, (Phnom Penh, 2005). Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_145704.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_145704.pdf)

64 International Labour Organization, *Cambodian Domestic Workers in Malaysia, Challenges in Labour Migration Policy, and Potential Mechanisms for Protection*, (Geneva, 15 January 2012),, ps. 5, 8 and 10.

65 UNIAP, *Recruitment Agencies*, p. viii.

66 CEDAW Committee, *General recommendation No. 26*, para. 24(c).

67 Available from: [www.betterfactories.org/content/documents/1/Synthesis%20Report%2027th%20\(En\).pdf](http://www.betterfactories.org/content/documents/1/Synthesis%20Report%2027th%20(En).pdf)

68 CEDAW Committee, *General recommendation No. 26*, para. 8.

6 to 9 describe the requirements that recruitment agencies must meet, including an office address, sufficient staff, office materials, communication and transportation means and a training centre in accordance with specifications. Additionally, once authorized, recruitment agencies must be able to deposit a guarantee of 100,000 US dollars in riel into the account of the MLVT.

Recruitment agencies are responsible for the workers they represent for the stages from recruitment to the commencement of their employment. For example, Sub-decree 190, chapter 7, article 19 states that the recruitment agencies shall be responsible for the application forms and health check-up for Cambodian workers to be sent abroad, as required by the receiving country. Additionally, Prakas (or Declaration) 108 of 2006 on Education of HIV/AIDS, Safe Migration, and Labour Rights for Cambodian Workers Abroad states that recruitment agencies are responsible for training workers on the work system, customs, and traditional and basic laws of the country in which they will be working, as well as health issues, safe migration and labour rights.

The MLVT is charged with inspecting and monitoring the recruitment agencies. According to article 40 of the Sub-decree, those agencies found to be in violation of the law will be penalized and punished. However, a recent study by the UN Interagency Project on Human Trafficking (UNIAP) found that a lack of oversight and monitoring resulted in recruitment agencies violating laws and regulations with impunity. For example, the study found that: most women did not receive the training they were entitled to under the law; most contracts did not meet the minimal requirements of the law; exorbitant fees led to migrant women working between 4.5 and 12 months without pay to reimburse debts to the agency; and mechanisms for complaining about abuse were onerous and limited.<sup>69</sup>

The lack of oversight and monitoring of recruitment agencies results in violations of the law that increase women's vulnerability to exploitation and abuse. Therefore, the government must do more to comply with the CEDAW Committee's General Recommendation No. 26 and ensure that women migrant workers receive "rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation, including: recommended contents of labour contracts, legal rights and entitlements in countries of employment, procedures for invoking formal and informal redress mechanisms, processes by which to obtain information about employers, cultural conditions in countries of destination, stress management, first aid and emergency measures, including emergency telephone numbers of home embassy, and services; information about safety in transit, including airport and airline orientations and information on general and reproductive health, including HIV/AIDS prevention."<sup>70</sup>

## OCCUPATIONAL SAFETY AND HEALTH

A large percentage of Cambodian women who migrate abroad for work go to Malaysia where they are employed as domestic help.<sup>71</sup> Many of these women are subjected to dangerous

69 UNIAP, *Recruitment Agencies*, p. ix.

70 CEDAW Committee, *General recommendation No. 26*, para. 24 (b) (i).

71 UNIFEM, *Cambodian Women Migrant Workers, Findings from a Migration Mapping Study* (2006).

working conditions that threaten their safety and health.<sup>72</sup> These positions were previously filled by women from Indonesia, which used to be the main supplier of domestic workers to Malaysia. However, a number of high-profile cases of abuse led Indonesia to suspend sending workers to Malaysia until it could secure a bilateral agreement on the rights of migrant workers. It is during this time that Malaysia began recruiting domestic help from Cambodia.<sup>73</sup> Subsequently in 2011, at least nine Cambodian women died in Malaysia while performing domestic work.<sup>74</sup> As a result, Cambodia's Prime Minister imposed a temporary ban similar to Indonesia's.

Since that time, Indonesia and Malaysia have entered into a MoU to guarantee domestic workers a weekly day of rest, the ability to keep their passports and the right to communicate with their families, and again Indonesian women have begun to migrate to Malaysia for work. Critics argue however, that the agreement is insufficient and offers less protection than those afforded to other workers under the Labour Law,<sup>75</sup> and they point out that the week the MoU was finalized, another Indonesian worker died of alleged abuse in the workplace.<sup>76</sup>

Cambodia is in the process of negotiating a MoU with Malaysia that is similar to Indonesia's. In its Concluding Observations the CEDAW Committee called upon Cambodia to develop measures to better protect migrant women from exploitation and abuse, and to establish sanctions for discrimination.<sup>77</sup> To that end, Cambodia's MoU with Malaysia should not only address minimum standards for working in domestic settings, but also contain mechanisms requiring better monitoring of workplaces where women predominate. Failure to monitor female-dominated workplaces and impose sanctions for violations of health and safety laws contravenes the CEDAW. As a State party to the CEDAW, the Cambodian Government is obligated to ensure that agreements with countries where Cambodian women migrate for work reflect the Convention's legal guarantee of the right to equal protection of health and safety in working conditions.

## EQUALITY BEFORE THE LAW

### Women's Access to Justice: Redress for Violations of Workers' Rights

Women migrant workers face many challenges in accessing justice mechanisms and seeking redress. The lack of employment contracts, fear of arrest, detention and deportation for reporting employer abuse, and lack of awareness about existing complaint mechanisms make it difficult for women to claim their rights.<sup>78</sup> Additionally, a 2009 report by the Government found that most women migrants from Cambodia have little formal education or knowledge of foreign languages. "Their limited ability to make themselves understood by their employers

72 Asia Foundation, *Cambodia's labour Migration*, p. 38.

73 International Labour Organization, *Cambodian Domestic Workers in Malaysia*, p. 3.

74 Mathew Rullo, "An Abhorrent Trail of Abuse", *Phnom Penh Post*, 24 January 2014. Available from: [www.phnompenhpost.com/plans/form](http://www.phnompenhpost.com/plans/form).

75 International Labour Organization, *Cambodian Domestic Workers in Malaysia*, p. 3

76 Mathew Rullo, "An Abhorrent Trail of Abuse"

77 CEDAW Committee, *Concluding Observations*, paras. 22 and 28.

78 CARAM Asia, *Reality Check!*

has been a major source of frustration and isolation for some of the women, especially those working as domestic workers. Domestic workers tend to work in private homes and are dependent on their employers for shelter, food, and other support. With limited knowledge of the local language and limited protection under the labour law, they have little or no recourse in making claims regarding their legitimate rights at work.”<sup>79</sup>

Despite these difficulties, some women migrant workers and their family members have lodged complaints against recruitment agencies with the local police in Cambodia. As a result, in 2010 the Ministry of the Interior and the General Commissariat of the Cambodian National Police Force launched an investigation which resulted in findings against six agencies and the arrests of eight people for the illegal detention of prospective migrant domestic workers, the production of false documents and for hiring underage girls as migrant domestic workers.<sup>80</sup> However, it is rare that migrant workers ever receive compensation from recruitment agencies that have violated the law. Agencies dissuade workers from pursuing claims by arguing that the workers or their families had knowledge of, or were complicit in, an element of the irregularity, for example by providing false identification documents. Recruitment agencies also often allege that families still owe them money, and thus they claim they are the ones who have the claim for compensation.<sup>81</sup> In its Concluding Observations the CEDAW Committee encouraged Cambodia to ensure that women have access to means of redress for rights violations, including legal aid, and disseminate information about labour legislation among women to make them aware of their rights.<sup>82</sup>

Chapter 9 of Cambodia’s 2011 Sub-decree 190 states that any dispute between recruitment agencies and the workers prior to the departure shall be resolved in accordance with the Labour Law and other applicable regulations of Cambodia. For disputes arising between foreign employers and workers who are working abroad, both the recruitment agency as well as the embassy or representative mission of Cambodia to the receiving country shall participate in the resolution process. However, while the section refers to the Labour Law, it does not refer to the employment contract signed by the involved parties, thus making it difficult to claim contractual rights.<sup>83</sup> Additionally, without dissemination of regulations and laws governing migration, adequate pre-departure training that explains to migrant workers how to claim their rights and seek redress, and adequate legal aid, true access to justice will remain out of reach for many women.

## F. ANALYSIS AND CONCLUSIONS

Since the 2006 CEDAW Concluding Comments, Cambodia has enacted many legal reforms that evidence increasing responsiveness to gender and human rights issues. Additionally, the

79 Cambodia and the International Labour Organization, *Policy on Labour Migration*, p. 15.

80 CARAM Asia, *Reality Check!*, p. 14.

81 Asia Foundation, *Cambodia’s labour Migration*, p. 48.

82 CEDAW Committee, *Concluding Observations*, para. 28.

83 LICADHO, *Comments*, p.4.

Government has made significant efforts to increase protection for women migrant workers by: enacting new policies to better regulate recruitment agencies; signing the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and concluding bilateral labour migration and trafficking agreements with destination countries. Other gender-sensitive rights-based good practices that benefit Cambodian women migrant workers have also been undertaken, including:

- Ratification of most core international human rights treaties including the Convention on Elimination of Discrimination against Women (CEDAW).
- Article 31.1 of Cambodia's Constitution stipulates recognition of and respect for international human rights agreements, and article 45.1 calls for the abolition of all forms of discrimination against women.
- The Penal Code punishes those that refuse to give property or services to anyone based on sex, and the law prohibits making employment decisions on the basis of sex.
- The law establishes that the legal minimum age for work abroad is 18 years.
- Commissions have been established for the Protection of Human Rights and Receipt of Complaints in the National Assembly and the Senate, which are mandated to facilitate, receive and address all complaints made by citizens who believe their rights have been violated.
- The Cambodian Human Rights Committee is mandated to assist the Government in the development of human rights policies and coordinates investigation and resolution of human rights abuses.
- Several policy measures have been initiated to promote and protect the legal, political and social rights of women, including: gender-responsive planning and budgeting, affirmative action to increase women's political participation, and educational programmes that promote the principle of equality between man and women in private and public life.
- The National Strategic Development Plan (NSDP) includes several priority actions "aimed at reducing gender-based discrimination in the labour market and encouraging greater entry by women into higher level jobs".
- Gender Mainstreaming Action Plans implemented within the Ministry of Commerce and the Ministry of Industry, Mines and Energy include "building the capacity, skills and confidence of women in the informal economy; increasing women's access to microfinance; promoting registration of businesses owned by women; and increasing women's access to information, trade and services.
- The Labour Law provides good protection for women employed in the formal sector including: a maximum 48-hour work week; prohibition of seven-day-a-week work; prohibition of termination due to pregnancy; 90 days of maternity leave at half of normal wages; breastfeeding breaks during work hours; provision of a nursing room and day care centre for children of their females who work in establishments with more than 100 employees – for smaller establishments, employees must reimburse day-care expenses; 6 months sick leave; 1.5 days per month paid annual leave; compensation and medical assistance for work-related illnesses and accidents; and prohibition of sexual harassment
- Sub-decree 190 includes some positive changes related to migration by requiring that: recruitment agencies are periodically inspected by the Ministry of Labour; lawyers are provided for migrants engaged in legal proceedings abroad; contracts between agencies and workers are written in the Khmer language and must specify working conditions, job status, types of work to be done, and benefits; and training centres must ensure a decent

standard of living.

- A MoU on employment cooperation with Thailand addresses concerns over human trafficking, and addresses safe migration issues for Cambodian citizens. The MoU details the governments' commitments to: ensuring appropriate procedures for employment, and effective return of migrant workers who have completed their work assignment; sharing information and collaborating on the prevention of undocumented cross-border labour practices and employment; and introducing measures for labour protection.
- Cooperation between Cambodia's recruitment agency association, the government, and UN Women resulted in production of a pre-departure training manual and a code of conduct for recruitment agencies.
- Safe migration campaigns in several provinces, as well as on radio and television, raised awareness of trafficking.
- Enactment of the Law on the Suppression of Human Trafficking and Sexual Exploitation and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking, including guidelines to improve victim treatment and protection, and training for officials on the use of these standards.
- Penal Code provisions address the unlawful confinement of people as well as forgery of official documents, bribery of officials and identity fraud.
- Owners, staff members, and managers from licensed labour recruitment agencies have been convicted for trafficking related offences.
- Systematic procedures are in place for identifying and protecting victims of trafficking.
- Agreements have been negotiated with Viet Nam and Thailand regarding identification of trafficking victims and repatriation.
- Policies were enacted that afford trafficking victims the right to seek legal action against their traffickers and encourage them to assist in investigations.

These are all examples of good policies and programmes that aim to promote and protect the human rights of women migrant workers. However, Cambodia's labour-migration policies have only been formulated very recently and need further elaboration and coherence. Effective implementation of regulations and oversight and monitoring of recruitment agencies and employers must be bolstered.

Additionally, improved data collection and information on migrants, their characteristics, needs and impact in both receiving and sending countries is severely needed.

## G. RECOMMENDATIONS

- Ratify the UN Convention on Migrant Workers, and ILO Conventions on Discrimination in Employment and Abolition of Forced Labour.
- Include in domestic law a definition of discrimination against women that encompasses both direct and indirect discrimination in line with article 1 of CEDAW.
- Conclude bilateral and multilateral agreements with all destination countries where women migrate for work, that ensure the promotion and protection of their human rights.

- Adopt stronger and more comprehensive regulations and design monitoring systems to ensure that recruiting agencies respect the rights of all women migrant workers.
- Make further efforts to address the root causes of women's migration.
- Implement gender-sensitive poverty reduction strategies.
- Ensure women migrants receive gender- and rights-based pre-departure information and training programmes that raise awareness of potential exploitation. Training should include: recommended contents of labour contracts, legal rights and entitlements in countries of employment; procedures for invoking formal and informal redress mechanisms; processes by which to obtain information about employers; cultural conditions in countries of destination; stress management; first aid and emergency measures, including emergency telephone numbers of home embassy, and services; information about safety in transit, including airport and airline orientations; and information on general and reproductive health, including HIV/AIDS prevention.
- Ensure the provision of standardized and authentic health certificates if required by countries of destination and require prospective employers to purchase medical insurance for women migrant workers.
- Ensure that all required pre-departure HIV/AIDS testing or pre-departure health examinations are respectful of the human rights of women migrants. Particular attention must be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.
- Safeguard the remittances of women migrant workers and provide information and assistance to women to access formal financial institutions to send money home and to encourage them to participate in savings schemes.
- Ensure women migrant workers are able to access justice mechanisms and can seek redress for rights violations. Provide legal assistance in connection with migration for work, including legal reviews of employment contracts to ensure they are valid and protect women's rights on a basis of equality with men.
- Enact programmes that facilitate the reintegration of women who have returned from work abroad.
- Raise awareness among legal professionals including judges, prosecutors and lawyers, so that the CEDAW and other human rights conventions to which Cambodia is a party are well known and used in judicial processes.
- Take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.
- Revise provisions of Sub-decree 190 to provide better protection to migrant workers and address issues related to pre-departure fees that lead to: debt bondage; recruitment of underaged girls; forged documents; failure to provide copies of contracts to workers; and failure to pay salaries.
- Require recruitment agencies to ensure migrant workers receive contracts with minimum standards that specify: adequate rest days, annual and sick leave; salary to be paid; repatriation provisions; transport expenses; and insurance premiums. Additionally, require that contracts be referred to during dispute resolution.
- Adequately monitor recruitment agencies to prevent abuse and corruption, and enforce criminal penalties when laws are violated.

- Seek the active involvement of women migrant workers and relevant NGOs in such policy formation, implementation, monitoring and evaluation.
- Lift discriminatory bans or restrictions on migration.
- Address the culture of impunity that allows employment agencies to engage in illegal recruitment practices.
- Ensure adequate data collection, research and analysis on the particular problems and needs faced by women migrant workers.
- Amend the Labour Law to include coverage of domestic workers and enact measures to ensure that women receive equal pay for both equal work and work of equal value, and equal social benefits and services.
- Ensure migrant workers are allowed to keep a copy of their contract so that they may pursue legal action in cases where there are disputes.
- Establish a minimum wage for all workers, including domestic help, that provides for a decent standard of living.
- Ensure the MoU being negotiated with Malaysia regarding Cambodian domestic workers addresses minimum standards for working in domestic settings, and contains mechanisms requiring better monitoring of workplaces where women predominate.

## REFERENCES

- CARAM Asia (2011), *Reality Check! Rights & Legislation for Migrant Domestic Workers Across Asia*.
- CEDAW Committee (2006), Concluding Comments of the Committee on the Elimination of Discrimination against Women: Cambodia, CEDAW/C/KHM/CO/3.
- CEDAW Committee, *General Recommendation No. 26 on Women Migrant Workers*.
- ILO (2009), *Review of Labour Migration Management, Policies and Legal Framework in Cambodia*, ILO Regional Office for Asia and the Pacific.
- Kingdom of Cambodia: *Policy on Labour Migration for Cambodia*, June 2010.
- Comments of Miserere Tanriverdi, Senior Legal Advisor, MOWA, 25 Oct 2011.
- The Asia Foundation (2011), *Cambodia's Labour Migration: Analysis of the Legal Framework*.
- UNDP *Human Development Report*, 2009:144-145
- UNIAP (2011), *Domestic Workers and Recruitment Agencies: Employment between Cambodia and Malaysia*.
- UNIFEM (2005), *Claim and Celebrate Women Migrants' Human Rights Through CEDAW*.
- UNIFEM (2010), *Gender Equality Laws, Global Good Practice and a Review of Five Southeast Asian Countries*.
- UNIFEM (2005), *Good Practices to Protect Women Migrant Workers*.
- UN Women (2011), *Country Snapshots*.

## INTERNET

- [http://www.indexmundi.com/cambodia/demographics\\_profile.html](http://www.indexmundi.com/cambodia/demographics_profile.html)
- <http://www.nis.gov.kh/>
- [http://en.wikipedia.org/wiki/Economy\\_of\\_Cambodia](http://en.wikipedia.org/wiki/Economy_of_Cambodia)
- <http://www.cdri.org.kh/webdata/download/wp/wp58e.pdf>
- <http://sopheapfocus.com/>
- [http://equitasgroup.org/\\_blog/Equitas/post/Forum\\_addresses\\_abuse\\_of\\_Cambodian\\_migrants\\_in\\_Malaysia](http://equitasgroup.org/_blog/Equitas/post/Forum_addresses_abuse_of_Cambodian_migrants_in_Malaysia)

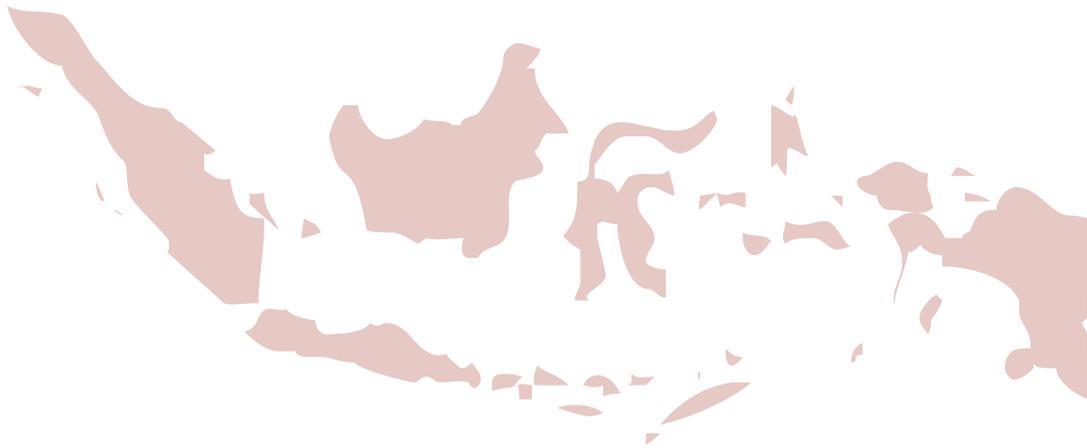


Photo credit: UN Women/Betsy Davis Cosme



## SENDING COUNTRIES: SOUTHEAST ASIA

# Republic of Indonesia



## A. COUNTRY CONTEXT

Indonesia is an archipelago of over 17,500 islands located in South-East Asia between the Indian and Pacific Oceans.<sup>1</sup> It has the fourth-largest population in the world with 234 million inhabitants.<sup>2</sup> Over 85 percent of Indonesians are Muslim, making it the most populous Muslim country in the world. Indonesia is a lower-middle income country<sup>3</sup> and ranks “medium” on UNDP’s latest human development index.<sup>4</sup> Gross National Income was placed at 2,940 dollars per capita in 2011.<sup>5</sup>

Free and fair elections took place in 1999, marking the end to decades of repressive rule, and Indonesia is now the world’s third most populous democracy.<sup>1</sup> The country has experienced strong economic growth in recent years, outperforming its regional neighbours, and has made impressive gains in improving literacy rates and increasing gender equality, particularly in education. However, poverty and unemployment continue to pose challenges with 13 percent of the population living below the national poverty line and half of the population living on less than 2 dollars per day.<sup>7</sup>

1 US Central Intelligence Agency, *The World Factbook 2012 – Indonesia*, (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

2 Available from: <http://www.worldbank.org/en/country/indonesia/overview>

3 Ibid.

4 Available <http://hdrstats.undp.org/en/countries/profiles/IDN.html>

5 Available from: <http://data.worldbank.org/country/indonesia>

6 US Central Intelligence Agency, *The World Factbook 2012*

7 Available from: <http://www.undp.or.id/mdg/>

Human Development Index (2011)	Rank 124, Medium Human Development
Stock of Migrants from Indonesia (2011)	6 million <sup>8</sup>
Annual growth rate of immigrant population	-5.8% (1960-2005)
Immigrants share of population	2.6% (2011)
Proportion of female Immigrants	69% (2012) <sup>9</sup>

Indonesia is primarily a labour-sending country. Recent government reports indicate there are approximately 4.3 million documented Indonesian migrants working outside the country and another 1.7 million who are undocumented. Sixty-nine percent of migrant workers are women, most of whom seek employment as domestic workers in Malaysia, Singapore, Saudi Arabia, and other countries in the Middle East.<sup>10</sup> Migrant workers are major contributors to the economic development of Indonesia, remitting more than 6 billion dollars annually.<sup>11</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Indonesia has ratified or acceded to eight of the nine core international human rights treaties, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1984, and the Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families (CMW) in April, 2012. It has signed but not yet ratified the Convention for the Protection of All Workers from Enforced Disappearance (CED). In its 2012 Concluding Observations, the CEDAW Committee encouraged Indonesia to ratify the CED noting that adherence “to the nine major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life”.<sup>12</sup>

Indonesia has enacted many new policies at national and local levels that are related to the human rights of women. According to the National Commission on Violence against Women (Komnas Perempuan), between 2007 and 2011, 21 different laws and policies were enacted at national level, which “directly and indirectly reinforce guarantees to freedom from discrimination based on gender, race and ethnicity in politics and government.” Some of these include: affirmative action laws to increase women’s political representation; a reproductive

8 US State Department, *Trafficking in Persons Report 2012 – Indonesia* (2012), p. 186. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

9 UNDP, *Human Development Report 2009 - Overcoming barriers: Human mobility and development* (New York, 2009). Available from: [http://hdr.undp.org/en/media/HDR\\_2009\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf)

10 US State Department, *Trafficking in Persons Report 2012*, p. 186.

11 International Organization for Migration, *Labour Migration from Indonesia - An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East* (Jakarta, 2010), p. ix. Available from: [www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf)

12 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Indonesia* (CEDAW/C/IDN/CO/6-7), (Fifty-second session, 2012), para. 51. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/).

rights act which recognizes the right of female rape victims to decide on the fate of their pregnancies and guarantees women's right to be free from violence; mechanisms to improve government coordination on women's empowerment; and integrated services for witnesses and victims of trafficking. During the same time period, 34 new policies were enacted at the local level that also aim at increasing services for women victims of violence, preventing human trafficking and improving health services and education. Indonesia has also played an important role in formulating regional policies and mechanisms for the enforcement of human rights, including the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of Women and Children's Rights (ACWC).<sup>13</sup> In its most recent Concluding Observations the CEDAW Committee expressed its appreciation for these various initiatives and also commended Indonesia for adopting a National Plan of Action on Human Rights 2011-2014, establishing a Migration Task Force and preparing a Bill on Gender Equality.<sup>14</sup>

Notwithstanding this progress, much work still needs to be done to better ensure the promotion and protection of women's human rights. Areas requiring particular attention include: (1) revisions to the criminal code to better protect victims of sexual violence such as rape, sexual torture, sexual exploitation and sexual abuse; (2) revision of family laws in order to prevent female child marriage, the practice of polygamy and gender role stereotypes in the family; (3) amendment of citizenship laws to guarantee equal rights for men and women to keep or change their citizenship, particularly for migrating women who are trafficked for trans-national marriage or sexual exploitation; and (4) enactment of laws to protect female domestic workers.<sup>15</sup>

Women migrant workers are particularly vulnerable to human rights abuses including sexual harassment, non-payment and underpayment of wages, trafficking, rape, illegal confinement, extortion, and passport confiscation. Data published by the Ministry of Foreign Affairs, based on the reports of the embassies of the Republic of Indonesia abroad, stated that abuse cases of Indonesian migrant workers in 2010 reached 4,532. In addition, the National Commission for Women recorded 6,266 cases of sexual violence experienced by women migrant workers in the period 1998-2010.<sup>16</sup> The CEDAW Committee has therefore urged Indonesia to continue its efforts to address these problems and better protect unskilled migrant workers from exploitation and abuse.

## C. KEY STAKEHOLDERS

**The National Agency for Placement and Protection for Indonesian Migrant Workers (BNP2TK1)** is a national body working under the direct supervision of the president to

13 Indonesia, National Commission on Violence against Women, *National Human Rights Institution Independent Report – Regarding the Implementation of the CEDAW in Indonesia, 2007-2011*, (Jakarta, 8 October 2011), para. 7. Available from: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/KomnasPerempuanIndonesia52.pdf>.

14 CEDAW Committee, *Concluding Observations*, para. 5.

15 National Commission on Violence against Women, *Implementation of the CEDAW*, para. 10.

16 Risma Umar, *Note of Women's Solidarity on the Situation of Women Migrant Workers Protection 2010*, Dewan Kordinator website (Jakarta, 5 February 2010). Available from: <http://dk-insufa.info/en/opinia/331-catatan-solidaritas-perempuan-sp-atas-situasi-perlindungan-buruh-migran-perempuan-2010>

integrate services and to share responsibilities in the placement and protection of the overseas workers among various ministries and government agencies.

**Komnas HAM**, Indonesia's national human rights institution is mandated to: conduct education and disseminate information about human rights; propose ratification of or accession to various human rights instruments; monitor and investigate the implementation of human rights treaties, and cooperate with regional and international agencies for the continuous protection of human rights.

**Indonesian Migrant Workers Advocacy Institute of East Lombok (ADBMI)** is a locally based NGO focused on promoting the rights of migrant workers and the needs of trafficking victims. Activities include assisting migrant workers with return and rehabilitation, productive use of remittances, rights training and awareness, and micro finance.

**Association of Indonesian Migrant Workers (ATKI)** conducts information awareness campaigns, advocates for better policies and regulations to protect migrant workers, provides direct assistance, counselling, legal aid, and organizes migrant workers to claim their rights.

**Human Rights Working Group (HRWG)** is an NGO coalition for international human rights advocacy that aims to put pressure on the Indonesian government to execute its international and constitutional obligations to protect, fulfil, respect and promote human rights in the country.

**Kalyanamitra** conducts activities to promote the status of women in Indonesia, including: gender rights awareness campaigns; research; advocacy; knowledge generation; and community facilitation to assist women in addressing the causes of marginalization and discrimination.

**The Indonesian Women's Coalition for Justice and Democracy (KPI)** is a women's civil society organization, which aims to enhance participation and representation of women in decision-making positions and to be a critical pressure group for legal and policy reform. Activities include: political and civic education for women; public policy advocacy; and strengthening and expanding the coalition to have influence at the national level.

**Jakarta Legal Aid Foundation (LBH)**, provides free legal assistance to the poor. It conducts investigations, monitoring and representation of victims of labour abuses and other human rights violations.

**Solidaritas Buruh Migran Karawang, Solidaritas Buruh Migran Cianjur, Solidaritas Perempuan, and Peduli Buruh Migran** are all local NGOs focused on the protection of migrant workers from various districts within Indonesia. They conduct education and rights-awareness campaigns.

**Indonesian National Commission on Violence Against Women (Komnas Perempuan)** is an independent national institution that aims to build a conducive environment for the elimination of all forms of violence against women and the fulfilment of women's rights in Indonesia. Activities include: research; monitoring; recommendations to government ministries, legislators and judicial bodies regarding gender-sensitive laws and policies; and facilitation of networks to prevent violence against women.

**Coordination of Action Research on AIDS and Mobility in Asia (CARAM Asia)**, is an open network of NGOs and CBOs involved in action research, advocacy, coalition building and capacity building with the aim of creating an enabling environment to empower migrants and their communities to reduce all vulnerabilities including to HIV/AIDS and enhance their health rights globally.

**Women’s Solidarity for Human Rights - Solidaritas Perempuan (SP)** has branches in 13 provinces in Indonesia and focuses on the promotion and protection of the rights of women including women migrant workers. SP has assisted in the establishment of four migrant workers’ solidarity organizations, which carry out activities related to trafficking, and migrant worker health including vulnerabilities to HIV/AIDS.

**Indonesian Association for Migrant Workers’ Sovereignty (Migrant CARE, aka Perhimpunan Indonesia untuk Buruh Migran Berdaulat)** promotes global justice for migrant workers, particularly at the regional level in South-East Asia, through building networks, campaigning for regulations and policies, and advocating cases faced by migrant workers. The organization is known for its opposition to the death penalty on migrant workers and for focusing on women migrant domestic workers.

## D. RATIFICATION RECORD

The following table illustrates Indonesia’s ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	April 2012
CEDAW	13 September 1984
ICCPR	23 February 2006 a
ICESCR	23 February 2006 a
ICERD	25 June 1999 a
ILO C29 Forced or Compulsory Labour	12 June 1950
ILO C87 Freedom of Association <sup>9</sup> June 1998	1999
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	15 July 1957
ILO C100 Equal Remuneration	11 August 1958

ILO C105 Abolition of Forced Labour7 June 1999	-
ILO C111 Discrimination in Employment7 June 1999	-
ILO C138 Minimum Age for Admission to Employment7 June 1999	14 March 2006
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	28 March 2000

## E. COMPLIANCE WITH THE CEDAW

### DISCRIMINATION

Indonesia's Constitution, and its Law No. 39/1999 on human rights, prohibit direct and indirect discrimination on the basis of race, sex, religion, political opinion, national and social origin. However, neither law provides a clear definition of discrimination that incorporates article 1 of the CEDAW. Additionally, the decentralization process has allowed many regions of the country to implement laws and policies that discriminate against women by imposing dress codes, restricting movement, severely penalizing allegedly immoral relationships, legitimizing female genital mutilation, and restricting other aspects of women's social and public life.<sup>17</sup> Consequently, the CEDAW Committee has urged the government to repeal or amend all discriminatory laws against women, including those that have already been identified by the National Commission on Violence against Women and the Ministry of Law and Human Rights. The Committee also recommended that the Government "raise the awareness of religious groups and leaders about the importance of amending legal provisions; increase support for law reform through partnerships and collaboration with Islamic jurisprudence research organizations and community leaders supportive of the advancement of women's rights; and obtain information on comparative legislation and jurisprudence in which more progressive interpretations of Islamic law have been codified applied."<sup>18</sup>

In addition to discriminatory laws, "the persistence of adverse cultural norms, practices, traditions, patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family and society" are major impediments to women's full enjoyment of their human rights on an equal basis with men. Such harmful traditions include *sunat perempuan* (female genital mutilation), the *belis*

17 CEDAW Committee, *Concluding Observations*, paras. 13, 15 and 17.

18 *Ibid.*, para. 18.

(dowry) tradition, patiwangi (a degrading ritual that takes place when a woman marries someone from a lower caste), early marriage, and forcing rape victims to marry their rapist. Thus the CEDAW Committee recommended that the Government collaborate with civil society to implement a strategy involving the school system, media, communities, and religious groups and leaders aimed at eliminating these and other harmful traditions, stereotypes and practices.<sup>19</sup>

Indonesia has, however, taken some positive steps in promoting equality for women, such as the newly drafted Act Concerning Gender Equality and Equity, which places a duty on the State to achieve gender equality, and makes discrimination by both public and private actors unlawful in politics, law, government, and education. The Act also indicates that substantive equality must be achieved in the area of public, political and international life.<sup>20</sup> This is an example of a good gender-sensitive rights-based practice in line with key principles of the CEDAW. Additionally, the government has drafted a Law on Domestic Workers, which is currently being debated. However, critics charge that the most recent draft of the law is not fully in compliance with international law and standards, particularly with respect to child domestic workers, hours of work, wages and dispute resolution. Thus, in order to comply with the CEDAW Committee's recommendation to enact comprehensive laws and procedures to safeguard the rights of women domestic workers, parliament should ensure that the final draft complies with international law and standards, and explicitly contains provisions pertaining to the specific needs of women.<sup>21</sup>

## POLICY MEASURES

In an attempt to assist and protect Indonesian migrant workers, and in particular domestic workers, the Ministry of Foreign Affairs issued Regulation No. 4/2008 which requires: a review of regulations in destination countries that have not signed a Memorandum of Understanding (MoU) with Indonesia; the accreditation of private recruitment agencies; and assurance that employment contracts contain articles concerning the protection of labour migrants. The regulation also covers the supervision of contracts and provides that Indonesian embassies and consulates abroad have representatives who can provide assistance and legal aid for Indonesian citizens and labour migrants facing problems.<sup>22</sup>

However, a recent report by the International Organization for Migration (IOM) noted that, while regulation No. 4/2008 aims to protect the most vulnerable labour migrants, it fails to address many problems, including those that emerge during the pre-departure phase in Indonesia. Additionally, the number of labour migrants with problems often exceeds the capacity and staffing levels of Indonesian representative offices abroad. To resolve these problems, the report noted that better coordination is needed between government agencies in Indonesia and key stakeholders on migration "especially between the Ministry of Manpower and Transmigration, the National Authority for the Placement and Protection of

19 Ibid, para. 24.

20 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries*, (March 2010), p. 7. Available from: [http://cedaw-seasia.org/docs/Aw\\_GEL\\_incover050609Feb10.pdf](http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf).

21 Amnesty International, "Parliament must make domestic workers a priority in 2012" (London, 12 February 2012). Available from: [www.amnesty.org/fr/library/asset/ASA21/005/2012/en/78611219-1442-40b4-b1a5-b881130b3356/asa210052012en.html](http://www.amnesty.org/fr/library/asset/ASA21/005/2012/en/78611219-1442-40b4-b1a5-b881130b3356/asa210052012en.html).

22 International Organization for Migration, *Labour Migration from Indonesia*, p. 1.

Indonesian Overseas Workers and the Ministry of Foreign Affairs”.<sup>23</sup> The CEDAW Committee’s General Recommendation 26 also notes the importance of ensuring that women migrant workers and relevant NGOs are involved in the policy-making process.<sup>24</sup>

Other policies aimed at protecting the rights of women migrant workers have also been recently enacted. For example, in early 2012, after eight Indonesian domestic workers fell to their deaths while cleaning windows in high rise apartments in Singapore, the government issued a policy requiring that employment agencies specify in all contracts that domestic workers may not clean the outside of windows or hang laundry from high rise apartments. Subsequently, the Singapore government also enacted regulations with similar prohibitions and required window grills to be installed and locked during cleaning.<sup>25</sup> This is in line with General Recommendation 26, which obligates countries of both origin and destination to formulate policies that promote safe migration and ensure the protection of the rights of women migrant workers.<sup>26</sup>

Also, in 2011, the government lifted a ban on sending Indonesian domestic workers to Malaysia that had been in place since 2009, after multiple cases of physical abuse were reported. The ban was repealed after a Memorandum of Understanding was signed between Indonesia and Malaysia that ensures better protections for migrant workers and obligates employment agencies to uphold provisions of the MoU. The repeal of this ban, which mainly affected women, represents a good rights-based practice in line with General Recommendation 26, which urges governments to lift discriminatory bans on migration, and instead focus on better protections for women who choose to migrate for employment.<sup>27</sup>

Most recently, in May 2012, the government announced a new policy lowering placement fees for migrant domestic workers from an average of 3,000 dollars to 800-1,600 dollars. Additionally, domestic workers will now have the option of taking loans from a bank to pay fees rather than be indebted to their employer. “This way, workers will get a meaningful salary from the start, unlike at present where nearly all Indonesian domestic workers get a mere 20 a month for eight or nine months,” said the activist group, Transient Workers Count Too, or twc2. Migrant workers can also use the scheme to save money or make use of micro-loans to start small businesses when they go back to Indonesia.<sup>28</sup> This represents a good gender-sensitive rights-based practice in line with General Recommendation 26, which states that governments should establish measures to assist women in accessing formal financial institutions and encourage them to participate in savings schemes.<sup>29</sup>

To improve policy responses to the trafficking of women migrant workers the Government has also begun collecting data from various provinces regarding the places of origin of trafficked women, motives for seeking employment which results in women being trafficked, jobs into which women are trafficked and the nature of the exploitation which they experience.

23 Ibid, p. 14.

24 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 23(b). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

25 HOME, SMS and VIVA WANITA, *Shadow Report to 52nd Session of the Committee on Elimination of Discrimination against Women – Indonesia* (Jakarta, July 2012), p. 6.

26 CEDAW Committee, *General recommendation No. 26*, para. 23(a).

27 Ibid, para. 24(a).

28 Transient Workers Count Too (TWC2), “Indonesian Government Changes Maid Hiring Fee Structure”, (Singapore, 7 April 2012). Available from: <http://twc2.org.sg/2012/04/07/indonesian-government-changes-maid-hiring-fee-structure/>

Using this information, the Government has carried out various capacity-building initiatives with immigration officials and the police to curb trafficking.<sup>30</sup> This is in line with General Recommendation 26, which urges governments to conduct and support research and data collection to identify the problems and needs faced by women migrant workers and formulate relevant policies to promote their rights.<sup>31</sup>

## TRAFFICKING

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Indonesia is a major source country for women and children subjected to human trafficking. Many victims are workers who migrate to more developed countries such as Malaysia, Saudi Arabia, Singapore, Kuwait, Syria, and Iraq in search of legitimate employment opportunities, however, upon arrival they face conditions of forced labour and debt bondage. Labour recruiters, including large, well-established recruitment firms as well as smaller independent ones, are responsible for more than half of all cases of trafficking of Indonesian women. The risk of trafficking is especially high for the more than one million undocumented workers living abroad. The decentralization of government makes it difficult to coordinate nationwide anti-trafficking programmes and policies.<sup>32</sup>

### Prosecution

Indonesia's Law No. 21 on Eradication of Trafficking in Persons, passed in 2007, prohibits all forms of trafficking in persons and prescribes penalties of three to 15 years' imprisonment. However, widespread corruption including issuance of false documents, compromised investigations and judicial processes, lax border controls, and officials who profit from commercial sex, are major obstacles to effectively enforcing anti-trafficking laws. Effective law-enforcement efforts are also impeded by a lack of coordination between police, prosecutors, witnesses and courts, and a lack of aggregated nationwide statistics and data on trafficking cases and prosecutions.<sup>33</sup> The CEDAW Committee noted these problems in its most recent Concluding Observations stating its concern about the lack of sufficient data on trafficking, gaps in enforcement of Law No. 21/2007, and gaps in the National Plan of Action on eliminating trafficking. Article 6 of the CEDAW obligates governments to take all appropriate measures to suppress trafficking of women, the Government must therefore do more to criminally prosecute and punish trafficking, convict public officials involved or complicit in trafficking, and create a national protocol for collecting data and better coordination among law-enforcement officials.

In a positive move, Indonesia's parliament passed a new immigration law in March 2011 that provides punishments of up to two years' imprisonment for officials found guilty of aiding and abetting human trafficking or people smuggling. The new law also links human trafficking and people smuggling, allowing traffickers to be criminally prosecuted for smuggling.<sup>34</sup>

29 CEDAW Committee, *General recommendation No. 26*, para. 24(g).

30 HOME, SMS and VIVA WANITA, *Shadow Report*, p.7.

31 CEDAW Committee, *General recommendation No. 26*, para. 23(c).

32 US State Department, *Trafficking in Persons Report 2012*, p. 186-187.

33 Ibid, p. 187.

## Protection

The Ministry of Women's Empowerment reported 358 victims of trafficking in 2011, 111 whom were women. To better assist victims, the government worked with NGOs and the IOM on the 2009 revision of the publication titled Guidelines for Law Enforcement regarding the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases. The Government also runs 172 shelters and trauma clinics at the provincial and district level, and has established 306 Women and Child Service Units in police stations across the country to provide emergency protection and medical services to victims of violence and trafficking. Other trafficking-related programmes are funded by the central Government through block grants to provinces.<sup>35</sup> These are good rights-based practices in line with the CEDAW Committee's General Recommendations 19 and 26, which both urge States parties to the CEDAW to provide safe accommodation and services for victims of violence and abuse.<sup>36</sup> In its Concluding Recommendations, however, the CEDAW Committee noted that in order to better protect victims, including women migrant workers, the Indonesian government must improve data-collection efforts and establish better mechanisms for early identification of victims, and referral to services.<sup>37</sup>

## Prevention

According to the TIP report, the government has made good progress in preventing human trafficking. Some notable efforts include: anti-trafficking in persons campaigns delivered via conferences, radio, newspapers, billboards, pamphlets, school programmes, and neighborhood meetings; improved capacity for monitoring outbound migrant workers and protecting them from fraudulent recruitment practices; a new database and national workers' identify card system and distribution of biometric identity cards to 581,081 migrant workers in 2011; revocation of the licences of 28 recruitment firms in 2011; issuance of Ministerial Decree No. 9/2011 on Early Warning TIP Indicators to branch offices and NGOs who provide support to trafficking victims; publication of a training manual on "Recovery, Return and Reintegration" for trafficking victim care providers; training of anti-trafficking front-line workers from government agencies and non-governmental organizations on how to facilitate victims of trafficking as criminal witnesses; creation of telephone and postal hotlines for reporting suspected trafficking cases; and conclusion of a MoU and establishment of a joint task force with Malaysia to better protect Indonesian domestic workers.<sup>38</sup>

These efforts represent good rights-based practices and comply with the CEDAW Committee's recommendation to Indonesia to increase bilateral cooperation with countries of destination to prevent trafficking, raise awareness among the population on the dangers of trafficking and assist victims of trafficking in obtaining remedies.<sup>39</sup>

34 Ibid, p. 193.

35 Ibid, p. 188.

36 CEDAW Committee, *General recommendation No. 19 on violence against women*, (UN Doc A/47/38 at 1, 1993), (Eleventh session, 1992), para. 24(k). Available from: [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19). See also CEDAW Committee, General recommendation No. 26, para. 26(i).

37 CEDAW Committee, *Concluding Observations*.

38 US State Department, *Trafficking in Persons Report 2012*, p. 188-189

## EMPLOYMENT

According to the Indonesian Government, Indonesian women are discriminated against in all fields of employment, particularly in terms of salary, benefits and opportunities for career development. Lack of education and opportunities to enter the formal work sector are often what lead women to emigrate for employment or to seek work in the informal sector, where there is little legal protections.<sup>40</sup> Domestic workers in particular are excluded from much of the protection afforded to other workers under Indonesia's Manpower Act of 2003, such as regulations regarding minimum wage, overtime pay, the number of hours worked per day, weekly day of rest and social security. Consequently, the CEDAW Committee in its recent Concluding Observations urged Indonesia to: adopt a draft law on domestic workers that is in line with the CEDAW; conduct awareness-raising campaigns on domestic workers' rights; support unions working with domestic workers; strengthen labour-inspection mechanisms; create a system for domestic workers to lodge complaints about employers; and collect data on domestic workers disaggregated by sex, age and place of origin.<sup>41</sup>

Domestic workers who emigrate for work are equally if not more vulnerable to exploitation and abuse by their employers. According to the Indonesian National Commission on Violence against Women, migrant domestic workers are exposed to a compounded risk of violence due to their "multiple identities as women, women workers, migrant workers and domestic workers."<sup>42</sup> Many women are forced to migrate for work because of problems in their place of origin such as poverty, domestic violence and polygamy. These women also face problems during pre-departure and placement, according to the Commission, which include: "fraud and document falsification that erase a person's history; threats of capital punishment for victims of fraud who have limited knowledge of the legal system of the country of destination; entrapment in illegal migration ... leaving women vulnerable to trafficking; unfit working conditions that put health and life at risk; ill treatment due to domestic work patterns involving complex relations and communication problems; and sexual violence that places the victim in a culpable position both under the legal system and during reintegration into the community."<sup>43</sup>

The CEDAW Committee expressed its deep concern about the violence, abuse and exploitation experienced by women migrant workers in destination countries and at the hands of recruitment agencies within Indonesia. It has urged the Government to respond to these issues by "addressing the root causes of women's migration, including through the creation of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or unemployment". Additionally, the Committee encouraged the Government to continue negotiating bilateral agreements with destination countries that promote and protect migrant women's rights and establish mechanisms to address violations of their rights during employment.

The Government has undertaken several initiatives to provide better protection for domestic workers within the country as well as those migrating for work. For example

39 CEDAW Committee, *Concluding Observations*, paras. 29(a), (b) and (d).

40 Indonesia, *Combined Sixth and Seventh Periodic Report of Indonesia to the CEDAW Committee*, (Jakarta, 7 January 2011), p. 35.

41 CEDAW Committee, *Concluding Observations*, paras. 37-38.

42 National Commission on Violence against Women, *Implementation of the CEDAW*, para. 36.

a number of ministries have collaborated on drafting legislation for the protection of domestic workers, which is currently being considered for adoption by the Government. BNP2TKI, a special agency for the placement and protection of Indonesian migrant workers, has developed mechanisms for improving wage standards and revoking problematic recruitment firms' licences. A Coordinating Team for the Repatriation of Problematic Indonesian Migrant Workers and their Families from Malaysia (TK-PTKIB) has helped repatriate hundreds of thousands of migrant workers faced with deportation. Efforts are under way to simplify the migration process through the establishment of: a one-roof service at embarkation and disembarkation gates; decentralization and reorganization at the provincial level of the permit process; and issuance of passports in the regions - with a maximum 3 day processing time, all of which decrease the costs to potential migrant workers.<sup>44</sup> A new government policy called the "live-out system" is also being considered, whereby Indonesian migrant domestic workers would be housed in dormitories instead of living with their employers. And finally, a Domestic Worker Roadmap 2017 has been developed with the goal of stopping the emigration of domestic workers until and unless receiving countries recognize them as formal workers and grant them necessary rights.<sup>45</sup>

These initiatives are good rights-based policies in compliance with General Recommendation 26, which encourages States parties to the CEDAW to "facilitate access for women migrant workers to opportunities abroad, promote safe migration and ensure the protection of women migrant workers".<sup>46</sup>

## EMPLOYMENT CONTRACT

Migration abroad for employment as a domestic worker is regulated by Law No. 39/2004 concerning the Placement and Protection of Indonesian Migrant Workers (PPTKI). This law requires all workers to sign employment contracts with their employers before departure for countries of employment. According to the law employment contracts must contain: the name and address of employer; name and address of workers; worker position and type of job; rights and obligations of the parties; working conditions and requirements covering working hours, wage and payment procedure, leave, break time, and social security; and period of employment specified in the contract.<sup>47</sup>

However, Law No. 39/2004 does not specify the minimum terms and conditions for work, such as: how to calculate deductions for food and accommodation; minimum specifications on living conditions; calculation of working hours; termination procedures; and who is responsible for travel costs of domestic workers to the country of employment and back. It is left up to the employee to negotiate terms with the employer, however problems occur

43 Ibid.

44 Indonesia, *Periodic Report to the CEDAW Committee*, p. 42.

45 Alistair Cook, "The Domestic Workers Convention 2011: Implications for migration domestic workers in Southeast Asia", *NTS Insight April 2012*, The Centre for Non-Traditional Security Studies. Available from: [http://www.rsis.edu.sg/nts/HTML-Newsletter/Insight/pdf/NTS\\_Insight\\_apr\\_1201.pdf](http://www.rsis.edu.sg/nts/HTML-Newsletter/Insight/pdf/NTS_Insight_apr_1201.pdf).

46 CEDAW Committee, *General recommendation No. 26*.

because prospective migrant workers are often asked to sign employment contracts on the spot, without being given adequate time to consider advantages and disadvantages of the contract's terms. Additionally workers often sign contracts in foreign languages without translators. The unequal power relations between employers and employees, combined with a lack of a standard employment contract prescribed by the Government means that many migrant workers are misled and are forced into signing contracts that are unfavourable.

Although signing an employment contract is a positive step for the protection of migrant workers, officials should ensure that contracts are written in a language understood by the domestic worker. The Government should also consider developing a gender-sensitive model or standard contract that is in accordance with CEDAW, the Convention on Migrant Workers, and other labour treaties to which Indonesia is a party. Additionally, the CEDAW Committee has recommended that legal reviews be made available to ensure that work contracts are valid and protective of women's rights.<sup>48</sup> Any contractual provisions should be abolished that: restrict the movement of domestic workers; allow employers to keep identity papers, passports or personal documents of the worker; require compulsory medical examinations; or prohibit marriage or pregnancy.<sup>49</sup>

## MINIMUM WAGE AND AGE

### Minimum Wage

Law No. 39/2004 does not prescribe a minimum wage for Indonesian workers who emigrate for employment. Instead, it states that workers are entitled to receive wages "in accordance with the salary standards prevailing in counties of employment." Consequently, underpayment of wages is one of most serious problems encountered by most Indonesian migrant workers.<sup>50</sup> For example, according to an IOM study conducted in Singapore between 1999 and 2005, wages received by Indonesian domestic workers ranged from 230 to 250 Singapore dollars (164 to 179 US dollars) per month. For such a wage, more than half (54 percent) of Indonesian domestic workers worked more than 16 hours per day and more than one in 10 (11.5 percent) worked more than 19 hours per day.<sup>51</sup> Similar results were found in Hong Kong SAR, Malaysia, Kuwait and Bahrain. Some receiving countries however, such as Malaysia, have indicated plans to amend legislation in order to better protect the wages and working conditions of foreign domestic workers, and to control exploitative employment of labour migrants.<sup>52</sup> In negotiating agreements with receiving countries, Indonesia should ensure that occupations dominated by women, such as domestic help, are adequately compensated so as to comply with article 11 of the CEDAW which obligates governments to ensure women the "right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value."

47 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 76.

48 CEDAW Committee, *General recommendation No. 26*.

49 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p. 51.

50 *Ibid*, p. 76.

51 International Organization for Migration, *Labour Migration from Indonesia*, p. 56.

## Minimum Age

Law No. 39/2004 requires migrants working for individual employers to be at least 21 years of age. Individual employers include those hiring housekeepers, babysitters, nurses for the elderly, drivers, or gardeners. The higher age requirement for those working with individual employers is imposed “due to the intense personal relationship of the worker in vulnerable conditions with the employer, which may lead to abuse or sexual harassment. As such, the work requires maturity in terms of personality and emotion”.<sup>53</sup> Although this is a gender-neutral law, it may have a discriminatory impact on women if the majority of those migrants working for individual employers are women. Thus, the CEDAW Committee has urged governments to lift discriminatory restrictions on migration on the basis of age, and instead focus on measures that protect the rights of women to equal opportunity and treatment in the workplace.<sup>54</sup>

## REGULATION OF EMPLOYMENT AGENCIES

Recruitment or employment agencies are also regulated by Law No. 39/2004. According to the Law, firms are required to obtain a Placement Agency Permit as well as a Manpower Supply Permit before recruiting workers. To obtain these permits, firms must provide: a draft placement agreement; a draft employment contract, and a worker demand letter from employers. Firms are also obligated to have representatives in the countries where Indonesian workers are placed and must enroll overseas workers in an insurance programme; and bear all costs in the recruitment process (with the exception of identity document processing, health and psychological examinations, training and competence certificates).<sup>55</sup>

Articles 42 (1), 68 (1) and 69 (2) of Law No. 39/2004 also obligate recruitment firms to conduct pre-departure training for Indonesian labour migrants. In 2008, the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) developed training materials covering the following topics: “(i) terms of deployment and work contract (including rights and obligations of labour migrants and their employers); (ii) laws (including criminal laws), regulations and customs of destination countries; (iii) arrival and departure procedures; (iv) the role of Indonesian diplomatic missions vis-à-vis Indonesian labour migrants and how to access assistance; (v) insurance claims; (vi) safe banking and remittances channels; (vii) health tips; (viii) awareness-raising of certain issues, such as trafficking in persons and drugs; (ix) self-confidence coaching to deal with culture shock, stress, loneliness, and professional issues; and (x) procedures to return home.”<sup>56</sup>

The Ministry of Manpower is charged with overseeing and monitoring recruitment firms and imposing sanctions when necessary. Ministerial Regulation No. 5/2005 describes the grounds for sanctions, which may be in the form of: a written reprimand; temporary suspension of

52 Ibid, p. 49.

53 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p. 75.

54 CEDAW Committee, *General recommendation No. 26*.

55 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p. 78.

56 Maruja MB Asis and Dovelyn Rannveig Agunias, “Strengthening Pre-Departure Orientation programmes in Indonesia, Nepal and the Philippines”, in *Issue in Brief No. 5*, A joint series of the International Organization for Migration regional office for Asia and the Migration Policy Institute (Bangkok/Geneva, September 2012), p. 5. Available

placement activities; revocation of permits; cancellation of deployment of workers; or return of workers from abroad at the agency's cost.<sup>57</sup> Permits may be revoked for: recruiting without a permit; sending migrant workers abroad without a complete set of documents; placing excessive costs on labour migrants; and failing to provide pre-departure briefings.<sup>58</sup>

Despite these regulations, the government has limited power to take action when firms violate the law. According to an IOM study, the government does not initiate inspections, either on a regular or unscheduled basis, and this lack of oversight, combined with jurisdictional problems, "seriously impedes the control of recruitment agencies in the region".<sup>59</sup> The US State Department's 2012 TIP report noted that lack of oversight combined with endemic corruption allows recruitment firms to violate regulations with impunity and as a result, these firms are responsible for more than 50 percent of the Indonesian female workers who are trafficked into destination countries.<sup>60</sup> Failing to adequately monitor recruitment firms leaves women migrant workers vulnerable to exploitation and trafficking, and is in violation of article 6 of the CEDAW, which obligates States parties to "take all appropriate measures to suppress trafficking of women."

In its Concluding Observations the CEDAW Committee urged Indonesia to "address issues related to the severe risk of exploitation of unskilled migrant workers, the confiscation of their passports and their contracted debts with recruitment agencies." It also recommended that the government: "strengthen inspection of recruitment agencies and training centres to monitor human rights abuses; impose substantial penalties on companies that fail to respect the rights of employees they recruit; and prosecute and punish persons engaged in illegal recruitment processes".<sup>61</sup>

## BILATERAL AGREEMENTS

To date the government has entered into bi-lateral agreements MoUs with Malaysia, Taiwan Province of China, Republic of Korea, Japan, Kuwait, Jordan, United Arab Emirates, Syria, Libya and Qatar. These agreements stipulate the terms for placement of migrants, however, critics charge that they provide limited protection for workers human rights. For example, many do not provide clear standards on wages or working conditions such as a mandatory weekly day off, or annual leave. Additionally, because agreements tend to regulate only workers who migrate through official procedures, undocumented workers are left unprotected and vulnerable to exploitation.<sup>62</sup>

The Government has taken some steps to improve the situation by imposing moratoriums on Indonesians migrating to certain countries until agreements are in place to provide minimum standards for protection of their rights. For example, in 2009, after repeated reports of abuse,

---

from: <http://www.migrationpolicy.org/pubs/predepartureorientation.pdf>.

57 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p. 79.

58 International Organization for Migration, *Labour Migration from Indonesia*, p. 33.

59 Ibid.

60 US State Department, *Trafficking in Persons Report 2012*, p. 186.

61 CEDAW Committee, *Concluding Observations*, paras. 43(d) and (e).

62 CARAM Asia, *Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia*, (Kuala Lumpur, 2011), p. 19. Available from: [www.caramasia.org/reports/FDWlegislationAsia.pdf](http://www.caramasia.org/reports/FDWlegislationAsia.pdf)

unpaid wages and high suicide rates, the government temporarily banned domestic workers from migrating to Malaysia and Kuwait for employment. Subsequently Indonesia and Malaysia signed a MoU guaranteeing domestic workers a weekly day of rest, the ability to keep their passports and the right to communicate with their families.

However, according to Human Rights Watch, “although the MoU brings improvements for Indonesian domestic workers in Malaysia, they fall far short of the protections for other workers under Malaysian labour law. The very week the MoU was finalized, an Indonesian domestic worker died of alleged abuse in Malaysia.”<sup>63</sup> In recent Concluding Observations, the CEDAW Committee stressed the importance of developing bilateral agreements and MoUs that ensure the security of women migrant workers and establish oversight mechanisms in destination countries to address violations of their human rights.<sup>64</sup>

## REINTEGRATION

According to the IOM, “the results of a study by the Institute for Ecosoc Rights (2007) in three high-origin districts for women labour migrants, found that 71.4 percent of former labour migrants confirmed an urgent need for services after returning home. The study found that 37.1 percent of returnee women labour migrants experienced problems in managing money, generally complaining that the proceeds of their work were not evident, were used entirely for daily consumption or spent by their husbands. In addition to services related to the management of their money, returned labour migrants also required other services, including assistance with insurance claims and case management.”<sup>65</sup>

The Government has recognized that many returning labour migrants need help with transportation, medical assistance, legal aid, and in some cases financial or psychological assistance upon returning from work abroad. In response, the government has initiated several programmes to facilitate their reintegration into the community.

For example, the Ministry of Manpower and Transmigration, together with a number of other national and regional agencies, offers training on entrepreneurship and initiating business activities for returned labour migrants. Additionally, some assistance is provided by banks and other organizations to help former migrants with managing the money earned overseas. The Government has also encouraged banks to provide facilities for the development of cooperatives and credit for businesses run by returned migrant workers.<sup>66</sup> These efforts represent good practices in line with the CEDAW Committee’s General Recommendation 26, which states that governments should design or oversee comprehensive socio-economic services aimed at facilitating the reintegration of women who have returned.<sup>67</sup>

63 Mathew Rullo, “An Abhorrent Trail of Abuse”, Human Rights Watch, published in The Phnom Penh Post, 24 January 2014. Available from: [www.phnompenhpost.com/plans/form](http://www.phnompenhpost.com/plans/form)

64 CEDAW Committee, *Concluding Observations*, para. 43(b).

65 International Organization for Migration, *Labour Migration From Indonesia*, p. 36.

66 Ibid.

67 CEDAW Committee, *General recommendation No. 26*, para. 24(i).

## WOMEN'S ACCESS TO JUSTICE

Law No. 39/2004 establishes that legal assistance and advocacy on rights contained in the employment contract shall be provided to migrant workers in accordance with the laws and regulations in countries of employment. To that end, Indonesian embassies and consulates in receiving countries typically provide aid to migrant domestic workers who flee abusive situations and some have temporary shelters where workers can live while the embassy or consulate assists them in returning home or in pressing charges against their employers.

The Government has also taken steps to raise awareness among Indonesians living abroad about their rights through information campaigns such as radio programmemes. For example, in Batam, an independent radio station established a weekly programmeme for people to listen to complaints from domestic workers in Singapore and for the Indonesian authorities to respond to their queries.<sup>68</sup> Despite these efforts, many labour migrants who experience problems overseas are unable to solve them while abroad. There are many cases of labour migrants not reporting their cases until they return home.

Once back in Indonesia, returned workers still face obstacles in accessing justice as there is no case-handling system that provides clear administrative or criminal sanctions for those who commit crimes against labour migrants. "Instead, the handling of labour migrants' cases, particularly in the regions, is conducted haphazardly without a clear system and strategy," a UN Human Rights Council report has found. "There is also no legal aid service for labour migrants which severely restricts labour migrants in seeking justice."<sup>69</sup> Courts are also often distant and hard to reach, especially in rural areas. According to the IOM, only 30 percent of the cases reported to BNP2TKI are resolved. In addition, a large number of cases are never reported to the authorities, and thus stand no chance of being resolved.<sup>70</sup> The CEDAW Committee recognized this problem in its recent Concluding Observations on Indonesia and urged the Government to ensure assistance for migrant women seeking redress for violations of their rights.<sup>71</sup> In General Recommendation 26 the Committee noted the importance of ensuring access to justice for returning women migrant workers, stating that States parties should design or oversee comprehensive legal services "aimed at facilitating the reintegration of women who have returned," and that "there should be a complaints mechanism to protect women against reprisals by recruiters and employers."<sup>72</sup>

## F. ANALYSIS AND CONCLUSIONS

The Indonesian Government has demonstrated a strong commitment to protecting its citizens who migrate abroad for work. This was most recently shown in its ratification of the Migrant Workers Convention in April, 2012. Additionally, it created a Task Force to Handle

68 Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Mission to Indonesia* (Geneva, Fourth session, 2007), para. 46.

69 International Organization for Migration, *Labour Migration from Indonesia*, p. 38.

70 Ibid.

71 CEDAW Committee, *Concluding Observations*, para. 44(c).

72 CEDAW Committee, *General recommendation No. 26*, para. 24(i).

Indonesian Migrant Workers Facing Death Sentences that conducts legal reviews of cases, provides legal aid and advocacy, and provides specific recommendations to the president of Indonesia on appropriate steps to be taken.

The Government also recently presented a draft resolution on violence against women migrant workers which was approved by consensus at a meeting of the Third Committee of the UN General Assembly. This will allow the UN General Assembly to call on governments to “adopt and implement legislation and policies that protect all women migrant domestic workers ... and take action to prevent and punish any form of illegal deprivation of the liberty of women migrant workers by individuals or groups.”<sup>73</sup>

Other gender-sensitive good practices, which Indonesia has undertaken to better protect the rights of migrant women include:

- Ratification of eight of the nine core international human rights treaties, including the CEDAW and CMW.
- Enactment of affirmative action laws to increase women’s political representation
- A reproductive rights act which recognizes the right of female rape victims to decide on the fate of their pregnancies and guarantees women’s right to be free from violence.
- Mechanisms to improve government coordination on women’s empowerment.
- Integrated services for witnesses and victims of trafficking.
- Provisions within the Constitution and Law No. 39/1999 on human rights that prohibit direct and indirect discrimination on the basis of race, sex, religion, political opinion, national and social origin.
- A newly drafted Act Concerning Gender Equality and Equity – which places a positive duty on the State to achieve gender equality, makes discrimination by both public and private actors unlawful in politics, law, government, and education, and implies that substantive equality must be achieved in the area of public, political and international life.
- Regulation No. 4/2008 which requires: a review of regulations in migration destination countries that have not signed a MoU with Indonesia; the accreditation of private recruitment agencies; and assurance that employment contracts contain articles concerning the protection of labour migrants.
- A policy requiring that employment agencies specify in all contracts that domestic workers may not clean outside of windows or hang laundry from high-rise apartments.
- Repeal of a ban on sending Indonesian domestic workers to Malaysia and the signing of a MoU that ensures better protections for migrant workers.
- A new policy lowering placement fees for migrant domestic workers from an average of 3000 dollars to between 800 and 1,600 dollars.
- Giving migrant domestic workers the option of taking loans from a bank to pay fees rather than be indebted to their employer.
- Banking schemes to help migrant workers save money or make use of micro-loans to start small businesses when they return to Indonesia.

73 Ismira Lutfia, “Indonesia Scores in Fight for Women Migrant Workers’ Protection”, *Jakarta Globe*, 24 November 2011. Available from: <http://www.thejakartaglobe.com/home/indonesia-scores-in-fight-for-women-migrant-workers-protection/480714>.

- Collection of data from various provinces regarding the place of origin of trafficked women, motives for seeking employment which results in women being trafficked, jobs into which women are trafficked and the nature of the exploitation which they experienced.
- A 2011 immigration law providing punishments of up to two years' imprisonment for officials found guilty of aiding and abetting human trafficking or people smuggling.
- Guidelines for Law Enforcement regarding the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases.
- The operation of 172 shelters and trauma clinics at the provincial and district level, and 306 Women and Child Service Units in police stations across the country, which provide emergency protection and medical services to victims of violence and trafficking.
- Anti-trafficking in persons campaigns delivered via conferences, radio, newspapers, billboards, pamphlets, school programmes, and neighbourhood meetings.
- Improved capacity for monitoring outbound migrant workers and protecting them from fraudulent recruitment practices
- A new database and national workers' identity card system and distribution of biometric identity cards to migrant workers.
- Revocation of licences of recruitment firms found to violate the law.
- Issuance of Ministerial Decree No. 9/2011 on Early Warning TIP Indicators to branch offices and NGOs who provide support to trafficking victims.
- Publication of a training manual on "Recovery, Return and Reintegration" for care providers to trafficking victims.
- Training of anti-trafficking front-line workers from government agencies and non-governmental organizations on how to facilitate the role of trafficking victims as criminal witnesses.
- Creation of telephone and postal hotlines for reporting suspected trafficking cases.
- Efforts to simplify the migration process through the establishment of "one-roof service" at embarkation and disembarkation gates; decentralization and reorganization at the provincial level of the permit process; and issuance of passports in the regions - with a maximum three-day processing time.
- Exploration of a "live-out system" to house Indonesian migrant domestic workers in dormitories instead of having them live with their employers.
- A Domestic Worker Roadmap 2017 to encourage receiving countries to recognize domestic workers as formal workers and grant them necessary rights.
- Provisions of Law No. 39/2004 that require placement agencies to provide a draft placement agreement, a draft employment contract, and a worker demand letter from employers, before being issued a permit to operate.
- The requirement that placement firms have representatives in the countries where Indonesian workers are placed, enroll overseas workers in an insurance programmes, and bear all costs in the recruitment process (with the exception of identity document processing, health and psychological examination, training and competence certificates).
- Training materials developed by the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) for migrating workers which cover the following topics: "(i) terms of deployment and work contract (including rights and obligations of labour migrants and their employers); (ii) laws (including criminal laws), regulations and customs of destination countries; (iii) arrival and departure procedures;

(iv) the role of Indonesian diplomatic missions vis-à-vis Indonesian labour migrants and how to access assistance; (v) insurance claims; (vi) safe banking and remittances channels; (vii) health tips; (viii) awareness raising of certain issues, such as trafficking in persons and drugs; (ix) self-confidence coaching to deal with culture shock, stress, loneliness, and professional issues; and (x) procedures to return home.”

- Sanctions for recruitment firms found to be: recruiting without a permit; sending migrant workers abroad without a complete set of documents; placing excessive costs on labour migrants; and failing to provide pre-departure briefings.
- The conclusion of bilateral agreements with Malaysia, Taiwan Province of China, Republic of Korea, Japan, Kuwait, Jordan, United Arab Emirates, Syria, Libya and Qatar.
- Training by the Ministry of Manpower and Transmigration, together with a number of other national and regional agencies, on entrepreneurship and initiating business activities for returned labour migrants radio programmemes.
- National Action Plan on the Elimination of Trafficking in Persons (2009-2014).

Despite these many efforts, discrimination and the persistence of adverse cultural norms, practices, traditions, patriarchal attitudes and deep-rooted stereotypes about women remain major obstacles to women’s full enjoyment of their human rights. The decentralization process has allowed many regions of the country to implement laws and policies that discriminate against women, and widespread corruption and lack of awareness means that many laws designed to promote and protect women’s rights are not effectively implemented.

## G. RECOMMENDATIONS

- Revise the criminal code to better protect victims of sexual violence such as rape, sexual torture, sexual exploitation and sexual abuse.
- Revise family laws in order to prevent female child marriage, the practice of polygamy and gender-role stereotypes in the family.
- Amend citizenship laws to guarantee equal rights for men and women to keep or change their citizenship, particularly for migrating women who are trafficked for transnational marriage or sexual exploitation.
- Enact a law to better protect female domestic workers, including provisions related to hours of work, wages, dispute resolutions and other international human rights laws and standards.
- Repeal or amend all discriminatory laws against women, including those that have already been identified by the National Commission on violence against Women and the Ministry of Law and Human Rights.
- Raise the awareness of religious groups and leaders about the importance of amending legal provisions.
- Increase support for law reform through partnerships and collaboration with Islamic jurisprudence research organizations and community leaders supportive of the advancement of women’s rights.

- Obtain information on comparative legislation and jurisprudence in which more progressive interpretations of Islamic law have been codified.
- Collaborate with civil society to implement a strategy involving the school system, media, communities, and religious groups and leaders aimed at eliminating harmful traditions, stereotypes and practices.
- Ensure better coordination between government agencies and key stakeholders on migration, especially between the Ministry of Manpower and Transmigration, the National Authority for the Placement and Protection of Indonesian Overseas Workers and the Ministry of Foreign Affairs.
- Ensure that women migrant workers and relevant NGOs are involved in the policy making process.
- Continue to improve data collection efforts and establish better mechanisms for early identification of victims of trafficking and violence, and referral to services.
- Conduct awareness-raising campaigns on domestic workers' rights.
- Support unions working with domestic workers.
- Strengthen labour inspection mechanisms.
- Create a system for domestic workers to lodge complaints about employers.
- Collect data on domestic workers disaggregated by sex, age and place of origin.
- Address root causes of women's migration, by creating safe and protected jobs for women as a viable economic alternative to migration or unemployment.
- Continue negotiating bilateral agreements with destination countries that promote and protect migrant women's rights and establish mechanisms to address violations of their rights during employment.
- Ensure that employment contracts are written in a language understood by migrant workers.
- Develop a gender-sensitive model or standard contract that is in accordance with CEDAW, the Convention on Migrant Workers, and other labour treaties to which Indonesia is a party.
- Conduct legal reviews to ensure that work contracts are valid and protective of women's rights. Abolish any contractual provisions that: restrict the movement of domestic workers; allow employers to keep identity papers, passports or personal documents of the worker; require compulsory medical examinations; or prohibit marriage or pregnancy.
- In negotiating agreements with receiving countries ensure that occupations dominated by women, such as domestic help, are adequately compensated.
- Avoid enacting discriminatory restrictions on migration on the basis of age, and instead focus on measures that protect the rights of women to equal opportunity and treatment in the workplace.
- Strengthen inspection of recruitment agencies and training centres to monitor human rights abuses.
- Impose substantial penalties on companies that fail to respect the rights of employees they recruit.
- Prosecute and punish persons engaged in illegal recruitment processes.
- Establish oversight mechanisms in destination countries to address violations of women migrant workers' human rights

- Design or oversee comprehensive legal services aimed at facilitating the reintegration of women migrant workers who have returned home.
- Establish complaints mechanisms and protect women against reprisals by recruiters and employers.
- Create a standard of education curriculum for prospective migrant workers (in the pre-departure phase) based on human rights and gender justice, forms of discrimination based on sex and gender, forms of exploitation women are susceptible to, and the responsibility of placement agencies towards women.
- Include in legislation a comprehensive definition of irresponsible placement of migrant workers.
- Incorporate a definition of discrimination into the Constitution or national legislation that conforms to Article 1 of the CEDAW.
- Consider the impact of citizenship and nationality laws on women who migrate or are trafficked abroad, and take any potentially disadvantageous impacts fully into consideration when amending the laws.
- Train judges, police and prosecutors in anti-trafficking and other laws designed to promote and protect women's human rights.
- Convict and sentence government officials for corruption and collusion in trafficking-related offenses, in particular corrupt members of the security forces or Ministry of Manpower officials.

## REFERENCES

- Note of Woman's Solidarity on the Situation of Women Migrant Workers Protection 2010, Saturday, 05 February 2011, [http://dk-insufa.info/home/index.php?option=com\\_content&view=article&id=331:catatan-solidaritas-perempuan-sp-atas-situasi-perlindungan-buruh-migran-perempuan-2010&catid=43:opini&Itemid=105&lang=en](http://dk-insufa.info/home/index.php?option=com_content&view=article&id=331:catatan-solidaritas-perempuan-sp-atas-situasi-perlindungan-buruh-migran-perempuan-2010&catid=43:opini&Itemid=105&lang=en)
- Liza Noor Humaida. Comments on Indonesia. UN Women Expert Group Meeting, 18 October 2011, Grand Millennium Tower, Bangkok, Thailand.  
<http://www.asiapacificforum.net/members/full-members/indonesia>
- Sylvia Yazid. Activism of Indonesian NGOs on the Issue of Women Migrant Workers: Engaging in National and International Cooperation. School of Political and Social Inquiry, Monash University, [syaz2@student.monash.edu](mailto:syaz2@student.monash.edu)
- Ibid.
- New Bank Scheme for Indonesian Maids in Singapore  
Amanda Tan - Straits Times Indonesia | November 30, 2011.  
Reprinted courtesy of Straits Times Indonesia.
- Special Rapporteur on the human rights of migrants (2007), Report on Mission to Indonesia, A/HRC/4/24/Add.3.
- Special Rapporteur on the human rights of migrants (2007), Report on Mission to Indonesia, A/HRC/4/24/Add.3.
- UN Women Country Office for Indonesia.
- US Department of State (2011), *Trafficking in Persons Report: Indonesia*.
- Liza Noor. UN Women Expert Group Meeting, 18 Oct 2011, Grand Millennium Tower, Bangkok, Thailand.
- US Department of State (2011), *Trafficking in Persons Report: Indonesia*.
- CEDAW (2007), Concluding Observations: India, CEDAW/C/IDN/CO/5.
- UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.
- UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.
- UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.
- UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.
- Liza Noor Humaida. Follow up Comments. UN Women Expert Group Meeting, 18 Oct 2011, Bangkok, Thailand.
- CEDAW Committee, General Recommendation 26 on women migrant workers.
- 21 Special Rapporteur on the human rights of migrants (2007), *Report on Mission to Indonesia*, A/HRC/4/24/Add.3.
- Liza Noor Humaidah, UN Women Expert Group Meeting on Gender and Rights based Review of Laws, Policies, and Regulations Governing Labour Migration in Asian and Arab States. Grand Millennium Tower, Bangkok, Thailand, 18 October 2011.

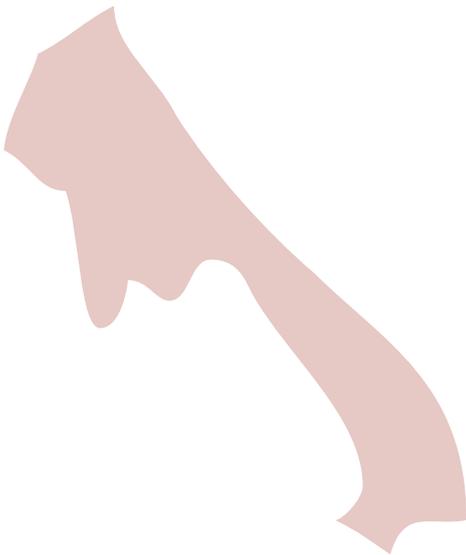


Photo credit: United Nations/Dy. Sherwin



## SENDING COUNTRIES: SOUTHEAST ASIA

# Lao PDR



## A. COUNTRY CONTEXT

The Lao People’s Democratic Republic (PDR) is a landlocked country in South-East Asia that shares its border with China, Myanmar, Thailand, Cambodia and Viet Nam. The country’s population of approximately 6.3 million includes 49 ethnic groups, however the largest three (Lao, Khmou and Hmong) comprise almost 75 percent of the population.<sup>1</sup> The Lao PDR is a lower middle-income country, with a Gross National Income per capita of 1,010 US dollars<sup>2</sup> and ranks “medium” in the UNDP’s latest human development index.<sup>3</sup>

The Lao PDR’s economy is driven mainly by manufacturing and service sectors, as well as hydropower, which provides electricity to neighbouring countries, including Thailand, China and Viet Nam. There has also been increased reliance on mining activities as demand for the Lao PDR’s minerals has intensified.<sup>4</sup> The Lao PDR is a member of the Asia Pacific Trade Agreement as well as the Association of Southeast Asian Nations (ASEAN) and the East Asia Summit.

1 UNDP, “In Laos, Community Radio Gives a Voice to Ethnic Groups”, Governance success story, 20 April 2010.

Available from: <http://web.undp.org/asia/SuccessStories/Governance/LAO-Apr2010.html>

2 Available from: <http://www.worldbank.org/en/country/lao/overview>

3 Available from: <http://hdrstats.undp.org/en/countries/profiles/LAO.html>

4 World Bank, “Lao PDR: Talking Economics”, Feature story (Vientiane, 5 April 2012). Available from: [www.worldbank.org/en/news/feature/2012/04/05/lao-pdr-talking-economics](http://www.worldbank.org/en/news/feature/2012/04/05/lao-pdr-talking-economics)

Human Development Index (2011)	Rank 138 out of 187 (medium human development) <sup>5</sup>
Stock of Immigrants 2010	18,900 <sup>6</sup>
Net migration rate (2012)	1.14/1000 population
Immigrants' share of population (2010)	0.3 % <sup>7</sup>
Proportion of female immigrants (2010)	48.1% <sup>8</sup>

The Lao PDR is primarily a migrant labour-sending country. Each year approximately 60,000 individuals at the age of entering the labour market are unsuccessful at finding work and thus emigrate in search of economic opportunity. Most migrate to Thailand, where they can earn higher wages working in the agriculture and construction sectors, or doing domestic work.<sup>9</sup> In 2004, Thailand initiated a registration process for migrant workers from the Lao PDR, Myanmar and Cambodia. In June, 2011 a new round of registration took place and between June 15 and July 14, 104,928 migrants from the Lao PDR registered with the Thai Ministry of the Interior in search of work permits.<sup>10</sup> A substantial number of workers from the Lao PDR have also migrated to more developed countries. The International Labour Organization (ILO) estimated that in 2009, 143,012 Lao migrants were working in member countries of the organization for Economic Co-operation and Development, and 108,100 were working in the United States.<sup>11</sup> In the past several years the Lao PDR has seen rapid feminization of migration, and recent estimates are that some 70 percent of the country's emigrants are women.<sup>12</sup>

While a significant number of people emigrate for employment, there are also increasing numbers of migrant workers entering the Lao PDR from Viet Nam, China, Thailand, and Myanmar. According to recent statistics, 250,000 migrant workers are officially in the country, mostly working in construction, casinos, plantations and the service sector.<sup>13</sup> The law sets limits on the percentage of foreign workers that companies may hire, and the government must approve foreign hires.<sup>14</sup>

5 Available from: <http://hdrstats.undp.org/en/countries/profiles/LAO.html>

6 World Bank, Migration and Remittances Unit, *Migration and Remittances Factbook 2011*, compiled by Dilip Ratha, Sanket Mohapatra, and Ani Silwal (Washington DC, 2011). Available from: [www.worldbank.org/prospects/migrationandremittances/](http://www.worldbank.org/prospects/migrationandremittances/)

7 World Bank, *Migration and Remittances Factbook 2011*.

8 Ibid.

9 ASEAN Secretariat, *Country Report of the ASEAN Assessment on the Social Impact of the Global Financial Crisis: Lao PDR*, (Jakarta, 2009), p. 5. Available from: [www.aseansec.org/publications/ARCR/LaoPDR.pdf](http://www.aseansec.org/publications/ARCR/LaoPDR.pdf)

10 International Organization for Migration, *Migrant Information Note Issue No. 12*, (Geneva, August 2011). Available from: [www.scribd.com/doc/61533801/Thailand-IOM-Migrant-Info-Note-No-12-August-en](http://www.scribd.com/doc/61533801/Thailand-IOM-Migrant-Info-Note-No-12-August-en)

11 ASEAN Secretariat, *Assessment on the Social Impact of the Global Financial Crisis*, p.5

12 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Lao PDR* (CEDAW/C/LAO/CO/7), (Forty-fourth session, 2009). Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

13 US State Department, *Human Rights Report 2011 - Laos (2011)*, p. 23. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

14 Ibid.

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

The Lao PDR has ratified six of the nine core international human rights treaties, including Conventions on: Elimination of Racial Discrimination (CERD), Civil and Political Rights (ICCPR), Economic, Social and Cultural Rights (ICESCR), Elimination of Discrimination against Women (CEDAW), Rights of the Child (CRC) and Rights of People with Disabilities (CRPD). It has also signed the Convention against Torture (CAT) and the Convention on Enforced Disappearance (CED). Despite this, significant human rights problems persist and the Government has been criticized for: its authoritarian rule; restrictions of freedom of expression, association and assembly; mistreatment of Hmong refugees; refusal to release political prisoners and prisoners of conscience; and a corrupt police force and judiciary.<sup>15,16</sup> To date the country has no national human rights institution, and while the Ministry of Foreign Affairs has responsibility for investigating alleged violations of human rights, in practice it rarely exercises this authority.<sup>17</sup>

Despite this, the Government has made achievements in improving the socio-economic well-being of its citizens. In its 2010 Universal Periodic Review (UPR), the Government reported that poverty had been reduced from 49 percent in 1990 to 25 percent in 2009; maternal mortality had decreased; the vast majority of children were attending school; and the overall literacy rate was 80 percent.<sup>18</sup> These are important gains, however, women and girls have not benefited equally from these initiatives. The World Bank reports that literacy rate among females is only 63 percent, and only 81 girls are enrolled in secondary schools for every 100 boys. It also notes that almost half of Lao women have been victims of domestic violence.<sup>19</sup>

Although the Lao PDR ratified the CEDAW in 1981, knowledge of its principles and the State's obligations remains limited.<sup>20,21</sup> In the CEDAW Committee's 2009 Concluding Observations it urged the Lao PDR to take "all appropriate measures to ensure that the Convention is sufficiently known and applied by all branches of Government as a framework for all laws, court verdicts and policies on gender equality and the advancement of women."<sup>22</sup> The Lao PDR's 1991 Constitution guarantees equal rights between men and women and equal treatment before the law. However, patriarchal attitudes and gender-role stereotyping keep women and girls in subordinate positions, and prevent their equal access to resources, services, education and business opportunities. This is a particular problem in rural areas and among indigenous communities, where illiteracy and school drop-out rates are much higher for women and girls. The Government has made minimal efforts to address these problems and ensure substantive equality for women.<sup>23</sup>

15 Ibid, p. 1.

16 Amnesty International, *Annual Report 2011 - Laos* (London, 2011). Available from: [www.amnesty.org/en/region/laos/report-2011](http://www.amnesty.org/en/region/laos/report-2011)

17 US State Department, *Human Rights Report 2011*, p.15.

18 Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Lao PDR* (Geneva, Fifteenth session, June 2010), para. 6.

19 World Bank, *Reproductive Health at a Glance - Lao PDR* (2011). Available from: <http://siteresources.worldbank.org/INTPRH/Resources/376374-1303736328719/LAOhealth41811web.pdf>

20 CEDAW Committee, *Concluding Observations*, para. 11.

21 CEDAW, *CEDAW in Action in Southeast Asia, Lao PDR CEDAW Implementation*, (webpage, n.d.). Available from: [http://cedaw-seasia.org/lao\\_cedaw\\_implementation.html](http://cedaw-seasia.org/lao_cedaw_implementation.html)

22 CEDAW Committee, *Concluding Observations*, para. 12.

23 CEDAW, *Lao PDR CEDAW Implementation*

## C. KEY STAKEHOLDERS

The National Commission for the Advancement of Women (NCAW), established in 2003, has sub-units in all government ministries throughout the country. The NCAW is the focal point for gender mainstreaming in government, directly participates in national policy making, and monitors implementation of CEDAW, the Beijing Platform for Action, as well as other government commitments to enhance gender equality.

The Lao Women's Union is a government organization that responds to women's development needs and promotes the status and role of women.<sup>24</sup> With the help of UN Women, the Lao Women's Union has focused on "safe migration" initiatives, such as providing financial literacy training and information to women migrant workers on their rights.<sup>25</sup>

The Ministry of Labour and Social Welfare (MLSW) plays a leading role in regional efforts to regulate migration and combat trafficking. The MLSW supports repatriation and victim protection programmes as well as alternative vocational training, and has negotiated cross-border Memoranda of Understanding (MoUs) with the Thai Government, in order to stop trafficking in persons.<sup>26</sup>

The National Steering Committee on Human Trafficking is mandated to strengthen the Lao PDR's capacity to effectively implement laws and programmes aimed at preventing, investigating and prosecuting human trafficking, and protecting and empowering victims.<sup>27</sup>

The Lao Federation of Trade Unions' Department of Labour Protection is tasked with protecting the rights of migrant workers by assisting in the resolution of conflicts between workers and recruitment agencies, and organizing workshops and education campaigns about the realities of migration.<sup>28</sup>

## D. RATIFICATION RECORD

The following table illustrates the Lao PDR's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	14 August 1981

24 Lao Women's Union, *Promotion and Protection of Lao Women's Rights*, (Vientiane, 2009). Available from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU\\_UPR\\_LAO\\_S08\\_2010\\_LaoWomensUnion.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU_UPR_LAO_S08_2010_LaoWomensUnion.pdf)

25 Available from: [www.unwomen-eseasia.org/docs/factsheets/04%20Lao%20PDR%20factsheet.pdf](http://www.unwomen-eseasia.org/docs/factsheets/04%20Lao%20PDR%20factsheet.pdf)

26 Available from: [www.humantrafficking.org/organizations/153](http://www.humantrafficking.org/organizations/153)

27 *Vientiane Times*, "Laos Looks to Toughen Response to Human Trafficking", 20 September 2011. Available from: [www.unodc.org/laopdr/en/stories/laos-looks-to-toughen-response-to-human-trafficking.html](http://www.unodc.org/laopdr/en/stories/laos-looks-to-toughen-response-to-human-trafficking.html)

28 Including the Task Force on ASEAN Migrant Workers Lao Federation of Trade Unions - Labour Protection Department, see: [www.workersconnection.org/articles.php?more=147](http://www.workersconnection.org/articles.php?more=147)

ICCPR	25 September 2009
ICESCR	13 February 2007
ICERD	22 February 1974 a
ILO C29 Forced or Compulsory Labour	23 January 1964
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	-
ILO C105 Abolition of Forced Labour	-
ILO C111 Discrimination in Employment	13 June 2008
ILO C138 Minimum Age for Admission to Employment	13 June 2005
ILO C143 Migrations in Abusive Conditions and The Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition on the Worst Forms of Child Labour	13 June 2005

## E. COMPLIANCE WITH CEDAW

### DISCRIMINATION

Articles 35 and 37 of the Lao Constitution state that all are equal before the law and both sexes enjoy equal rights. The Amended Penal Law of 2005 makes it an offence to discriminate against any woman and carries penalties of imprisonment and fines. The Family Code was amended to prohibit discrimination against women in matters of marriage and inheritance and the 2004 Law on the Development and Protection of Women was passed specifically to eliminate all forms of discrimination against women; prevent and combat trafficking; eliminate domestic violence; and ensure women equal opportunities to participate in development.

While the Constitution and most laws incorporate gender equality provisions, implementation and enforcement is weak. The lack of detailed operational plans for how to combat discrimination means that women and girls, particularly those in rural and remote areas, continue to be discriminated against in education, employment, access to

health and social services, and access to justice.<sup>29</sup> The CEDAW Committee has expressed its concern about this and criticized the Government for failing to include, in the Constitution or other legislation, a definition of discrimination that encompasses both direct and indirect discrimination, and discrimination in public and private spheres, in accordance with article 1 of the CEDAW.<sup>30</sup>

In its 2009 Concluding Observations, the CEDAW Committee urged the Government to “put in place without delay a comprehensive strategy, including review and formulation of legislation, to modify or eliminate traditional practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention”. The Committee made particular note of the need to promote positive, non-stereotypical and non-discriminatory portrayals of women in the media and to use formal and informal methods of education to eradicate negative stereotypes, attitudes and practices in communities and families.<sup>31</sup> The Government was also been criticized for racial discrimination due to its policy of cancelling visa-on-arrival services for citizens of certain countries, and excluding “undesirable” non-documented migrants from Vientiane.<sup>32</sup>

## POLICY MEASURES

The Ministry of Labour and Social Welfare and the NCAW are collaborating with UN Women to develop a gender-sensitive policy on migration. Currently the focus is on collection and analysis of sex-disaggregated data, which was a key recommendation of the CEDAW Committee to the Lao PDR in its 2009 Concluding Observations. This data will allow policy makers to better understand the specific situation of women migrant workers and will contribute to safe migration policies and initiatives.

Policies currently in place that address issues related to gender and migrant workers include:

- 1) The National Strategy for the Advancement of Women (NSAW) 2011-2015, which outlines strategies for integrating gender equality principles into national laws and policies, and for implementing programmes to meet international women’s human rights obligations.
- 2) Prime Minister Decree 68/2002 related to the Export of Lao Workers Abroad (2002), which describes the government’s reasons for sending Lao workers abroad, including expanding the quantity and variety of workplaces available to Lao workers, and upgrading the skills, knowledge, and expertise of Lao workers in both technical and professional fields. In order to be considered for recruitment through formal channels migrants must be a Lao citizen, at least 18 years of age, have completed primary school, in good health, and considered a good citizens.<sup>33</sup>

29 CEDAW, *Lao PDR CEDAW Implementation*

30 CEDAW Committee, *Concluding Observations*, paras. 9-10.

31 *Ibid.*

32 Office of the High Commissioner for Human Rights, *Compilation Prepared by OHCHR for Human Rights Council – Lao (A/HRC/WG.6/8/LAO/2)* (Geneva, 2010). Available from: [www.upr-info.org/IMG/pdf/A\\_HRC\\_WG-6\\_8\\_LAO\\_2.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_WG-6_8_LAO_2.pdf), para. 18.

33 International Labour Organization, *The Mekong Challenge: An Honest Broker – Improving Cross-border Recruitment Practices for the Benefit of Government, Workers and Employers*, (Geneva, 2008). pp. 15-6.

- 3) Guidelines No. 2417/MOLSW & 3011/MOLSW (2007) on Implementation of Decree on Export of Lao Workers Abroad (2002), which describe the contractual requirements for the formal migration of Lao workers to Thailand, including contracts between Lao workers and recruitment agencies (article 7.3), between Thai employers and the Lao recruitment agencies (article 9.3), and between Lao workers and Thai employers (article 9.4).<sup>34</sup>
- 4) Guideline No. 3824/MOLSW details restrictions and limitations for recruiting Lao workers abroad. Specifically it bans three categories of work from labour migration: unskilled workers such as cleaners, domestic workers, or porters; jobs that are incompatible with the Lao tradition, culture and law, including sex work, work with narcotics, or illegal political activities; and dangerous occupations such as open-sea fishing or exposure to radioactive radiation.<sup>35</sup>

Additionally, the Ministry of Labour and Social Welfare has launched a labour-market information system to collect data on domestic and overseas employment and adopted the Decree on Employment Services to regulate domestic employment services and overseas employment processes.<sup>36</sup>

These policies are limited to those migrating through formal channels. However, according to IOM estimates, approximately 85 percent of cross-border movements from the Lao PDR are irregular.<sup>37</sup> These policies are largely irrelevant to those using informal channels to seek employment outside of the Lao PDR. It is this group of migrant workers who are most at risk of trafficking, forced labour and contracting communicable diseases.

To limit irregular migration, more policies must be in place to address the root causes of migration such as poverty and lack of income-generating activities. To that end, the Lao PDR recently developed a strategic plan (2011–2020) for work force development that includes the protection of Lao migrant workers and foreign migrant workers in the Lao PDR, in order to prevent and reduce irregular migration.<sup>38</sup> This along with the country's poverty-alleviation programme, and its National Steering Committee on Rural Development and Poverty Eradication, are positive steps. The CEDAW Committee has noted, however, that these programmes are not always gender-sensitive and rural women are often left out of the decision-making process. For example, the Committee was concerned that state-run drug eradication programmes that banned opium growing offered no sustainable alternatives. This policy led to "large-scale food shortages and migration" and has had a "negative impact on the situation of rural women. The Committee thus called upon the Government to mainstream gender equality in all policies and implement programmes only after gender impact assessments involving rural women are conducted."<sup>39</sup>

34 Ibid.

35 Ibid.

36 International Labour Organization, *Promoting Decent Work for Foreign Migrants*, ILO/Japan Regional Project on Managing Cross-Border Movement of Labour in Southeast Asia (Bangkok, 2011), available from: [www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms\\_151565.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_151565.pdf)

37 Available from: <http://www.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific/lao-pdr.html>

38 International Labour Organization, *Promoting Decent Work for Foreign Migrants*

39 CEDAW Committee, *Concluding Observations*, paras. 42-44.

## TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Laos is a source country for women and girls trafficked into Thailand, Malaysia and China who are forced into working in the sex trade or in factories, agriculture, the fishing industry, or domestic work. Some Vietnamese and Chinese women are also forced into prostitution in the Lao PDR to work in the country's casinos or special economic zones. Lao women generally pay anywhere from 70 to 200 dollars to brokers to obtain work abroad but after their arrival they are often forced into servitude in order to pay off debts. Lao ethnic groups are particularly vulnerable to trafficking in Thailand, because they lack Thai language skills and are unfamiliar with Thai society<sup>40</sup>. Data collected from UN Women's Country programme in the Lao PDR indicates that from 2001 to 2011, more than 1,500 victims of human trafficking were recorded as having returned from Thailand. Data also shows that: the number of females trafficked overwhelmingly exceeds the number of males; the majority of victims are under 18; and most victims come from Champasak, Saravan and Savannakhet provinces, and the capital Vientiane. Anti-trafficking organizations have reported that in some villages, officials were paid to facilitate the immigration or transportation of girls to Thailand.<sup>41</sup>

The Lao PDR's National Plan of Action on Human Trafficking, drafted in 2007, is still waiting for approval from the Prime Minister's Office. Because of this and limited progress in other ways, the 2012 TIP Report assigned the Lao PDR a Tier-2 rating, indicating that the Government does not fully comply with the minimum standards of eliminating trafficking.

## PROSECUTION

Article 134 of the Penal Code, and article 49 of the Law on the Development and Protection of Women (2004), prohibit all forms of human trafficking and prescribe penalties ranging from five years to life in prison, and fines ranging from 1,250 to 12,500 dollars. To strengthen the legal framework on trafficking however, in 2011 the Government established a committee to identify and address potential gaps.<sup>42</sup> In all, 49 cases of suspected trafficking involving 69 offenders resulted in 37 convictions in 2011. However, according to the TIP report, "court proceedings lacked due process and transparency, and the Lao judicial sector remained weak and inefficient."<sup>43</sup>

## PROTECTION

The Lao PDR has taken some important measures to protect women victims of trafficking. In Vientiane there is a transit centre, run and operated by the government, where victims of trafficking can stay and access services while investigations are being conducted. The Lao

40 US State Department, *Trafficking in Persons Report 2012 – Lao (2012)*, p. 216. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

41 US State Department, *Trafficking in Persons Report 2012*, p. 217.

42 Ibid.

43 Ibid.

Women's Union also operates a hotline to report cases of domestic abuse and trafficking. Importantly, the Law on Development and Protection of Women ensures that women and children trafficking victims are not prosecuted for crimes committed as a result of being trafficked. However, in northern Lao PDR, where many trafficking victims originate, there is a severe lack of services and many women are unaware of their right to seek redress.<sup>44</sup>

## PREVENTION

Efforts by the Government to prevent trafficking include training for village chiefs and district officials on trafficking laws, victims' rights and conducting trafficking investigations. Additionally, workshops for tourism professionals on recognizing suspected trafficking cases were organized by the Lao Tourism Authority. A lack of resources however means that trafficking-prevention efforts in Lao are limited.

While acknowledging efforts to combat trafficking and protect victims, the CEDAW Committee expressed its concern at the persistence of trafficking and sexual exploitation of the country's women and girls. The Committee urged the Government to adopt and implement its national action plan to combating trafficking, and "improve implementation of the 2005 memorandum of understanding with Thailand on trafficking, especially along the border areas." Other recommendations urged the Government to: carry out country wide training for judges, police, public officials and social workers on anti-trafficking laws; conduct comparative studies on trafficking, covering both cross-border and rural to urban trafficking; and ensure systematic monitoring and evaluation of the trafficking situation.<sup>45</sup>

## EMPLOYMENT

The Lao PDR has been gradually reforming its economy and opening up to direct foreign investment. This has led to new industries and new opportunities for employment. Despite this, three quarters of the population still work in the agricultural sector, which is characterized by low pay and low productivity.<sup>46</sup> The majority of women still live and work in rural areas, and due to limited opportunities and low wages, many of them migrate to Thailand and other neighbouring countries in search of better employment prospects. In order to reverse this trend practical steps are needed to give women more choices in the formal labour market.

Improvements to the education system would lead to better job prospects both at home and abroad, which in turn would reduce women's vulnerability to exploitation and abuse. Currently many students who graduate from the Lao school system do not have the knowledge and skills necessary to compete in the job market. The low quality of the country's technical and vocational education training also means that few students are interested in attending these

44 Ibid.

45 CEDAW Committee, *Concluding Observations*, paras. 27-28.

46 International Labour Organization, *Decent Work Country programme (2011-2015) – Lao PDR* (Geneva, 2011), p. 9. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/laos.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/laos.pdf)

programmemes. The ILO reports that “in 2007/8, there were fewer than 16,000 students enrolled in technical and vocational schools (combined), only a third of which were girls. Few of these provide adequate preparation for advanced-level technical and managerial positions in the private sector.”<sup>47</sup>

The CEDAW Committee raised this issue stating it was concerned about the “inadequate educational infrastructure,” the “limited number of qualified teachers,” and the “marked difference in the quality of, and access to, education between urban and rural or remote communities.” The Committee noted that “education is key to the advancement of women and that the low level of education of women and girls remains one of the most serious obstacles to the full enjoyment of their human rights.”<sup>48</sup> In response to these concerns the Ministry of Labour and Social Welfare has been mandated to develop employer-recognized standards for testing and certification from educational and vocational training institutions. This is a first step to ensuring that education and training is high-quality, relevant and responsive to the needs of the labour market.<sup>49</sup>

The CEDAW Committee also expressed its concern that when women do find work in the formal sector, it is often in situations characterized by poor work conditions. It specifically noted the conditions of garment factories where 80 percent of the employees are women from rural areas. The Committee called on the government to “pay specific attention, and to adopt a comprehensive approach, to improving the conditions in garment factories.”<sup>50</sup>

Such limited options for employment and poor working conditions are largely what drive women to seek employment outside of the Lao PDR. However, conditions for women working abroad are not always better. In recognition of this, and to protect migrant workers, the Government issued regulation No. 3824 on “The Types of Jobs Prohibited for Sending Lao Workers to Work Abroad,” dated 19/12/2002. The regulations ban Lao migrants from: unskilled positions such as cleaners, domestic workers, or porters; vocations that are inappropriate and incompatible with the Lao tradition, culture and law, such as work in the sex sector, work with narcotics, or illegal political activities; and dangerous occupations such as open-sea fishing or exposure to radioactive radiation.<sup>51</sup>

Because several of the occupations banned are those where women predominate, this regulation indirectly discriminates against women. In General Recommendation 26, the CEDAW Committee urged parties to repeal outright bans and discriminatory restrictions on women’s immigration. Countries must ensure that visa regulations do not restrict women migrant workers from employment in certain job categories where men predominate, or exclude certain female-dominated occupations.<sup>52</sup> Thus the Lao PDR’s Regulation No 3824 does not comply with the CEDAW and should be repealed.

47 Ibid, p. 19.

48 CEDAW Committee, *Concluding Observations*, paras. 33.

49 International Labour Organization, *Decent Work Country programmeme*, p. 20.

50 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 35. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

51 International Labour Organization, *The Mekong Challenge: An Honest Broker*, pp. 15-16.

52 CEDAW Committee, *General recommendation No. 26*, para. 24a.

## EMPLOYMENT CONTRACT

With respect to Lao workers migrating to Thailand for employment, regulations require that a contract be in place either: between the worker and recruitment agency; the worker and the employer; or the employer and the recruitment agency. These contracts can be beneficial in that they enable the Lao Embassy to trace employers more easily, and to use the judicial system to bring abusive employers to justice.<sup>53</sup> However, the Lao PDR does not require the use of a “standard” migrant worker employment contract, thus the terms of these contracts are largely dictated by the employer, leaving the migrant workers with little control over the terms and conditions of their employment.

The Government should develop and promulgate a standard contract that is used by all employers and employment agencies wishing to hire migrant workers. The standard contract should comport with the national labour law and all applicable international standards, and be legally enforceable in a court of law.<sup>54</sup> The use of such contracts decreases the chances of exploitation and thus constitutes a good gender-sensitive rights-based practice.

## MINIMUM WAGE AND MINIMUM AGE FOR DEPLOYMENT OF WORKERS ABROAD

The Ministry of Labour and Social Welfare determines the minimum wage. In November 2011, the Government increased the minimum wage for the private sector to be approximately \$42-75 US dollars per month. The minimum wage for civil servants is 49 dollars per month. The Lao PDR sets no minimum wage for its citizens migrating abroad for work. According to Thai law, those who legally migrate to Thailand for work are entitled to receive the minimum wage of 300 Thai Baht (10 dollars) per day applied in seven provinces including Bangkok since April 2012. However in practice, many work for less.<sup>55</sup>

Article 3 of Decree of the Prime Minister on Sending Lao Workers to Work Abroad No. 68/PMO dated 28 May 2002 requires that Lao workers must be at least 18 years of age to migrate to work abroad.<sup>56</sup> However, in practice many Lao girls under the age of 18 volunteer or are coerced into illegally migrating to neighbouring countries for work. The CEDAW Committee noted that it was particularly concerned that 60 percent of victims of trafficking in the Lao PDR are reportedly girls between the ages of 12 and 18.<sup>57</sup>

53 International Labour Organization, *The Mekong Challenge: An Honest Broker*.

54 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment* (2005). Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

55 International Labour Organization, *The economic contribution of migrant workers to Thailand: Towards policy development* (2007), p.21. Available from: [http://www.ilo.org/asia/whatwedo/publications/WCMS\\_098230/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_098230/lang--en/index.htm)

56 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR: Migration Mapping Study- A Review of Trends, Policy and programme Initiatives*, for UNIFEM, Lao PDR (February 2007). Available from: <http://apmrn.anu.edu.au/conferences/8thAPMRNconference/17.Gender%20Concerns%20in%20Migration%20in%20Lao%20PDR.pdf>

57 CEDAW Committee, *Concluding Observations*, para. 27.

## REGULATION OF EMPLOYMENT AGENCIES

In 2002, the Lao PDR enacted Decree No. 68/PMO on Sending Lao Workers to Work Abroad. The Decree is meant to protect migrant workers by requiring pre-departure training as well as licensing and inspection of recruitment agencies. However, because the Decree has no provisions for redress there has been little incentive for recruitment agencies to abide by its rules.<sup>58</sup>

For example pre-departure training, generally held the day before departure, is often only a very basic orientation with little information shared about what to expect when working abroad.<sup>59</sup> It has also been reported that on the day of departure workers are required to hand over their passports to employment agencies, and are issued identity cards. The passports are then given to the employer who keeps them as a way of preventing the worker from running away. Migrant workers are not able to retrieve their passports and work permits until they have paid off their debts.<sup>60</sup> This practice contravenes international law which prohibits passport retention, and is an indication of forced labour.<sup>61</sup> The CEDAW Committee has urged the Lao Government to strengthen its information activities so that women are fully aware of their rights as well as the risks of migrating for work.

For a variety of reasons, many migrant women choose to bypass formal processes and instead use unofficial middlemen to facilitate finding work abroad. Middlemen often take advantage of migrant women's low level of education by charging them inordinate fees to process their documents and applications. Sometimes, the expenses charged are more than four times greater than the actual costs. The CEDAW Committee commented on this problem in General Recommendation 26, noting that women with restricted access to education, training and reliable information on migration are vulnerable to exploitation by unscrupulous employers, and recruitment agencies.<sup>62</sup> Exploitative fees charged by employment agents cause women, who generally have fewer assets than men, to suffer greater financial hardships and make them more dependent, for example, if they need to borrow from family, friends, or moneylenders at usurious rates.<sup>63</sup> The Committee stressed the importance of introducing gender-sensitive policies that protect women migrant workers, including those that use informal channels to go abroad, from all forms of violations of their rights.<sup>64</sup>

## BILATERAL AGREEMENTS

In 2002, the Lao PDR and Thailand signed a MoU on Employment Cooperation designed to address concerns over human trafficking, and improve the safety of Lao migrant

58 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

59 Ibid.

60 Ibid.

61 Stefanie Grant, *International Migration and Human Rights, Global Commission on International Migration (Geneva, September 2005)*, p. 11. Available from: [www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/tp/TP7.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP7.pdf)

62 CEDAW Committee, *General recommendation No. 26*.

63 Ibid.

64 CEDAW Committee, *Concluding Observations, para. 43*.

workers. The MoU states that the governments will: “introduce appropriate procedures for employment, and effective return of migrant workers who have completed the duration of their work permit; prevent and intervene in undocumented cross-border labour practices and employment; share information on the same; and introduce measures for appropriate labour protection.”<sup>65</sup> In the MoU Thailand has agreed to ensure that Lao migrants receive the same wages and benefits as national workers doing similar work. The MoU also stipulates that Labour disputes are to be governed by the national laws in the country of employment and by its authorities.<sup>66</sup> This type of agreement is an example of gender-sensitive rights-based good practice as it provides for effective government-to-government channels for communication on migration issues, sets out methods of migration management to be jointly implemented, and guarantees women migrant workers coverage under the labour law.

The CEDAW Committee commended the Lao PDR for concluding the MoU with Thailand. It also urged the government to develop bilateral agreements and MoUs with other countries where Lao women migrate for work, and ensure that such agreements fully reflect women’s human rights and are in conformity with CEDAW.<sup>67</sup>

## HEALTH

Migration for work can increase vulnerability to communicable diseases such as HIV and tuberculosis. The UN Country Team noted in the UPR Compilation Report for Laos that, while HIV/AIDS prevalence in the Lao PDR remained low, the rapid increase in internal and cross-border travel, as well as socio-economic changes, increase the country’s vulnerability to an AIDS epidemic.<sup>68</sup>

With the help of the International Organization for Migration (IOM) the Government has implemented several health projects targeting migrants and mobile populations. Projects have included one titled Human Influenza and Pandemic Preparedness as well as procedures for identifying tuberculosis cases among migrants. Currently, the HIV project team and the Environmental and Social Division of the Lao Ministry of Public Works and Transport are promoting the use of training tools with various stakeholders that focus on HIV prevention and safe migration in road construction and affected communities, including sex workers.<sup>69</sup> This constitutes a good gender-sensitive practice as women migrant workers, particularly those involved in prostitution, are at a high risk of being infected with HIV/AIDS.

Women migrant workers lack access to healthcare, including trauma counselling and pre- and post-test counselling for HIV/AIDS that would help them cope with these problems.<sup>70</sup> Violations of the right to health, including inadequate safety measures at work sites, which

65 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

66 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: [www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

67 CEDAW Committee, *Concluding Observations*, para. 43.

68 Office of the High Commissioner for Human Rights, *Compilation*.

69 Available from: [www.iom.int/jahia/Jahia/lao-pdr](http://www.iom.int/jahia/Jahia/lao-pdr)

70 Jean D’Cunha, *Claim and Celebrate Women Migrants’ Human Rights through CEDAW*.

may cause a host of health problems including HIV/AIDS, violate article 12 of CEDAW on equal rights to health and healthcare. The CEDAW Committee in its Concluding Observations therefore recommended that the Lao PDR sustain efforts to address the impact of HIV/AIDS on women and girls, and urged the Government to enhance its focus on women's empowerment and include a clear and visible gender perspective in its policies and programmes on HIV/AIDS.<sup>71</sup>

## WOMEN'S ACCESS TO JUSTICE

Women migrant workers can suffer from many different types of exploitation and abuse including: high recruitment costs; deception about wages, type of work and legal status; non-payment of wages; withheld passports or identity documents; physical confinement; substandard working conditions, and threats of denunciation to the authorities. While those who migrate for work are some of the most vulnerable, they are also the least likely to be able to access justice mechanisms. Many do not complain about exploitation by brokers or employers out of fear of losing their jobs or work permits. The problem is compounded by the fact that authorities have limited capacity to monitor recruitment practices or inspect conditions where migrants work.<sup>72</sup>

Some initiatives designed to increase access to justice for women include:

- The Lao Federation of Trade Unions' (LFTU) Department of Labour Protection is mandated to protect the rights of migrant workers and help them resolve conflicts with recruitment agencies such as distortion of information about jobs, wage issues and high service fees.<sup>73</sup> The Department has worked with the ILO to raise awareness in villages on the dangers and reality of irregular migration and as well as on legal recruitment procedures and conditions. It has also visited workplaces in Thailand where many Laotians work to collect information on their livelihoods and working conditions.<sup>74</sup>
- The Department of Employment and Skills Development and the Ministry of Labour and Social Welfare have also recently established Migrant Worker Resource Centres in Savannakhet, Xaiyaboury and Champasak provinces to provide potential migrants, return migrants and members of their families with information, counselling and legal advice related to safe and legal migration, rights at work, and support services, etc. The centres also serve as a focal point of coordination between migrant workers, local authorities, recruitment agencies, and other key stakeholders.<sup>75</sup>
- The exemption of women and children who have been identified as trafficking victims from criminal prosecution for unlawful acts committed as a direct result of trafficking is another

71 CEDAW Committee, *Concluding Observations*, para. 41.

72 International Labour Organization, *Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation* (TRIANGLE Project) (webpage, u.d.). Available from: [www.ilo.org/asia/whatwedo/projects/WCMS\\_145664/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm)

73 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*

74 Ibid.

75 International Labour Organization, *Opening of Migrant Worker Resource Centres in Xaiyaboury and Champasack Province, Lao PDR*. Available from: [www.ilo.org/asia/whatwedo/events/WCMS\\_176231/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/events/WCMS_176231/lang--en/index.htm)

important legal protection. In addition, several support shelters have been established for victims in the capital as well as in several provinces, which provide medical assistance, legal assistance and consultation, and vocational training.<sup>76</sup>

These are all good, gender-sensitive practices that increase women’s access to justice and are in line with CEDAW’s General Recommendation 26, which advises governments to design comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned.<sup>77</sup> Despite these positive measures, access to legal redress is often hampered in the Lao PDR by a lack of awareness and lack of resources on the part of victims and the legal community. For example, while trafficking victims are allowed to file civil suits against their traffickers, this has never been done in practice. Additionally, although the government encourages victims to cooperate with prosecutions, it does not often provide witness protection to victims.<sup>78</sup> The CEDAW Committee urges governments remedy to this problem by ensuring that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid.<sup>79</sup> The Committee specifically called on the Lao PDR to “strengthen its legal complaints system to ensure that women, especially women of ethnic groups, have effective access to justice”.<sup>80</sup>

## F. ANALYSIS AND CONCLUSIONS

The Lao PDR has instituted several policies and programmes to better protect women migrant workers from abuse and exploitation. The CEDAW Committee commented on some of these in its 2009 Concluding Observations, commending the Lao PDR for its:

- Ratification of international human rights instruments that protect women’s rights.
- National Strategy for the Advancement of Women 2006-2010.
- National Steering Committee on the Fight Against Human Trafficking.
- Regional Plan of Action II on trafficking.
- Memorandum of Understanding with Thailand on bilateral cooperation on trafficking.
- Establishment of temporary shelters for women and children victims of trafficking.
- Poverty alleviation programme.
- Ministry of Education’s curriculum for teaching gender equality in schools.
- Establishment of the National Steering Committee on Rural Development and Poverty Eradication.

Other examples of gender-sensitive and rights-based good practices to address root causes of migration and protect women migrant workers include:

76 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

77 CEDAW Committee, *General recommendation No. 26*, para. 24i.

78 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR*.

79 CEDAW Committee, *General recommendation No. 26*, para. 26Ciii.

80 CEDAW Committee, *Concluding Observations*, para. 14

- Article 134 of the Penal Code, which prescribes penalties ranging from five years to life imprisonment for human trafficking offences.
- Contracts required between Lao workers, recruitment agencies, and employees for legal migration.
- The requirement that Lao workers must be at least 18 years of age to migrate to work abroad.
- The Lao Women's Union's safe migration initiatives, including financial literacy training and rights awareness programmes.
- Shelters providing victims of trafficking and sexual exploitation with psychological care and other services.
- The Lao Federation of Trade Unions' Department of Labour Protection, which helps to resolve conflicts between workers and recruitment agencies and organizes workshops and education campaigns about the realities of migration.
- The 2004 Law on the Development and Protection of Women that prohibits all forms of discrimination against women and aims to ensure women equal opportunities to participate in development.
- The Ministry of Labour and Social Welfare's labour-market information system to collect data on domestic and overseas employment
- The Decree on Employment Services to regulate domestic employment services and overseas employment processes.
- The Strategic plan (2011–2020) for work force development that includes the protection of Lao migrant workers and foreign migrant workers in the Lao PDR.
- Efforts to train village chiefs and district officials on trafficking laws, victims rights and conducting trafficking investigations.
- Workshops for professionals in the tourism sector on recognizing suspected trafficking cases, organized by the Lao Tourism Authority.
- Health projects targeting migrants and mobile populations that focus on HIV prevention and other communicable diseases.
- Migrant Worker Resource Centres, which provide potential migrants, return migrants and members of their families with information, counselling and legal advice related to safe and legal migration, rights at work, and support services, etc.

Despite these positive developments, as noted by the CEDAW Committee and the Human Rights Council, the vast majority of Lao women migrant workers are still vulnerable to exploitation, and have little options for redress when their rights are violated. Notable areas of concern are:

- The feminization of migration.
- The lack of a definition of discrimination that encompasses both direct and indirect discrimination in the Constitution and other relevant legislation.
- Lao women's lack of knowledge about their rights under CEDAW.
- A lack of complaint mechanisms for rights violations.
- Entrenched stereotypes about the role of women in the society.
- The continued high prevalence of violence against women and girls.
- The persistence of trafficking and sexual exploitation of women and girls.
- Low quality of education and high illiteracy rates of women in rural areas.

- Persistent wage gaps between men and women and labour force segregation.
- Development projects do not include a gender perspective.

## G. RECOMMENDATIONS

### POLICY REFORMS

Include a definition of discrimination in the Constitution and other appropriate legislation that encompasses both direct and indirect discrimination and discrimination in the public and private spheres, in accordance with article 1 of CEDAW.

Since Lao women constitute approximately 70 percent of the country's migrant workers, adopt a comprehensive gender-sensitive migration policy, which includes regulation of recruitment agencies, standard contracts and other protection rights for women migrant workers.

### PROGRAMMES AND SERVICES

Adopt a comprehensive national action plan for combating trafficking, including the prevention of trafficking, timely prosecution and punishment of traffickers, both those who are directly or indirectly involved in trafficking and those who are negligent in dealing with or preventing trafficking cases, as well as the provision of protection from traffickers/agents and support to victims.

Improve the implementation of the 2005 MoU with Thailand on trafficking, especially along the border areas.

Train the judiciary, law enforcement professionals and other public officials on anti-trafficking measures.

Ensure that trafficked women and girls are able to access free legal assistance, counselling and quality medical care.

Amend the Decree of the Prime Minister on Sending Lao Workers to Work Abroad No. 68/PMO 2002 to include provisions for redress so that there is incentive for recruitment agencies to abide by its rules and ensure that the Decree is gender-sensitive and rights-based.

Repeal the Regulation of the Minister of Labour and Social Welfare on the Types of Jobs Prohibited for Sending Lao Workers to Work Abroad, No. 3824/MLSW to eliminate the outright bans and discriminatory restrictions on women's immigration. Ensure that visa schemes do not indirectly discriminate against women by restricting permission to women migrant

workers to be employed in certain job categories where men predominate, or by excluding certain female-dominated occupations from visa schemes.

Adopt regulations to ensure good practices among recruitment agencies and specify sanctions for breaches of regulations.

Continue to conclude bilateral agreements and MoUs that fully reflect women's human rights, with countries and regions to which Lao women migrate in search of work.

Improve educational and technical school standards to ensure graduates are prepared to enter the labour market.

Eliminate traditional practices and stereotypes that discriminate against women.

Develop a gender-sensitive policy on migration.

Give gender equality a central role in all policies and implement programmes only after gender impact assessments involving rural women, are conducted.

Improve collection of disaggregated data.

Improve rural women's literacy rates and increase their options in the job market.

Improve work conditions for women in garment factories

Require a standard labour contract that reflects women's human rights, to be used by all employment agencies and employers when hiring Lao migrant workers

Enact better monitoring mechanisms over recruitment agencies.

Increase migrant women's access to justice mechanisms by enacting witness protection programmes, ensuring free legal aid is available and distributing information about rights and means for redress.

## REFERENCES

- CARE (2009), Understanding Women's Legal Rights: An Analysis of the legal enabling environment for addressing violence against women in the Lao PDR.
- CEDAW (2009), Concluding Observations: Lao People's Democratic Republic, CEDAW/C/LAO/CO/7. CEDAW Committee, *General Recommendation 26 on women migrant workers*.
- ILO (2008), *The Mekong Challenge: An Honest Broker – Improving Cross Border Recruitment Practices for the benefit of government, workers and employers*.
- OHCHR (2010), Compilation prepared by the OHCHR for the Human Rights Council Working Group on the Universal Periodic Review for Lao People's Democratic Republic, A/HRC/WG.6/8/LAO/2.
- UNIAP (2010), Strategic Information Response Network (SIREN), *Mekong Region Country Datasheets, Human Trafficking 2010*.
- UNIFEM (2007), *Gender Concerns in Migration in Lao PDR, Migration Mapping Study: A Review of Trends, Policy and programme Initiatives*.
- UNIFEM (2005), *Good Practices to Protect Women Migrant Workers*.
- UNIFEM Lao PDR (2007), *Gender Concerns in Migration in Lao PDR: Migration Mapping Study – A Review of Trends, Policy and programme Initiatives*.
- US Department of State (2011), *Trafficking in Persons Report: Lao PDR*.
- UN Women Country Office for Lao PDR, 2011
- UN Women (2011), *Country Snapshots*.
- UNIFEM (2005), *Claim and Celebrate Women Migrants' Human Rights through CEDAW*.
- UNIFEM (2005), *Good Practices to Protect Women Migrant Workers*.
- UNIFEM (2007), *Gender Concerns in Migration in Lao PDR, Migration Mapping Study: A Review of Trends, Policy and programme Initiatives*.
- US Department of State (2011), *Trafficking in Persons Report: Lao PDR*.

## INTERNET

- <http://www.adb.org/Documents/PRF/knowledge-products/LAO-4339-Gender-Equality.pdf>
- <http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/lao>
- [http://www.indexmundi.com/laos/demographics\\_profile.html](http://www.indexmundi.com/laos/demographics_profile.html)
- <http://data.worldbank.org/country/lao-pdr>
- [http://en.wikipedia.org/wiki/Human\\_rights\\_in\\_Laos](http://en.wikipedia.org/wiki/Human_rights_in_Laos)
- [www.humantrafficking.org](http://www.humantrafficking.org)



Photo credit: United Nations/Asia Migrant centre



## SENDING COUNTRIES: SOUTHEAST ASIA

# Republic of the Philippines



## A. COUNTRY CONTEXT

The Philippines is an archipelago of about 7,100 islands located between the Philippine and South China Seas in South-East Asia. It has three major island groups: Luzon in the north (which contains the city of Manila, the nation's capital), Visayas in the centre, and Mindanao in the south. The 2012 population is estimated at 103,775,002 million, 83 percent of whom are Catholic, and another 5 percent who are Muslim.<sup>1</sup> Filipino and English are the two official languages. Major ethnic groups include: Tagalog (28.1 percent), Cebuano (13.1 percent), Ilocano (9 percent), Bisaya/Binisaya (7.6 percent), Hiligaynon Ilonggo (7.5 percent) Bikol (6 percent) and Waray (3.4 percent).<sup>2</sup> For decades the government has waged a struggle against ethnic Moro insurgencies in the South, however on 8 October 2012 a Framework Peace Agreement was reached aimed at granting limited political autonomy to the region and ending the fighting.

The Philippines is a lower middle-income country<sup>3</sup> with medium human development.<sup>4</sup> Gross national income was placed at 2,210 US dollars per capita in 2011.<sup>5</sup> The Philippine economy has grown at an average rate of 5 percent over the past 10 years.<sup>6</sup> It weathered the 2008-09 global recession better than its regional peers thanks to minimal exposure to troubled international securities, lower dependence on exports, relatively resilient domestic

---

1 US Central Intelligence Agency, *The World Factbook 2012 – Philippines* (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>  
 2 Ibid.  
 3 Available from: <http://data.worldbank.org/country/philippines>  
 4 Available from: <http://hdrstats.undp.org/en/countries/profiles/PHL.html>  
 5 Available from: <http://data.worldbank.org/country/philippines>  
 6 Available from: [www.worldbank.org/en/country/philippines/overview](http://www.worldbank.org/en/country/philippines/overview)

consumption, and large remittances, according to observers.<sup>7</sup> Despite this, more than 25 percent of the population still lives under the poverty line. High population growth rates and inequalities in income and asset distribution have hampered poverty reduction efforts.<sup>8</sup>

Human Development Index	Medium human development
Stock of migrants from the Philippines	8.6 million <sup>9</sup>
Annual growth rate	1.2% (1960-2005)
Share of population	8-9% (2012)
Proportion of female immigrants <sup>10</sup>	54.5% (2010)

The Philippines is primarily a labour-sending country and has one of the largest emigrant populations in the world. In the 1970s the government institutionalized labour migration as a development strategy, and since that time a culture of migration has emerged. A 2005 survey found that 33 percent of Philippine respondents expressed a desire to migrate, despite the risks and vulnerabilities they are likely to face. Various factors have contributed to the Philippines becoming a major labour exporter, including what one think tank has called “the absence of sustained economic development, political instability, a growing population, double-digit unemployment levels, and low wages”.<sup>11</sup> In recognition of this, and the fact that remittances account for a significant portion of gross domestic product, the government has aimed to facilitate migration for work. Despite domestic criticism, the government’s migration policy is considered a model in migration management in South-East Asia .

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

The Philippines has ratified eight of the nine core human rights treaties, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Protection of All Migrant Workers and Members of Their Families (CMW). The government has also adopted several laws which contribute to enhanced protection of women’s human rights. One of the most important is the Magna Carta for Women, adopted in 2009, which translates the CEDAW into national law.

7 US Central Intelligence Agency, *The World Factbook 2012*.

8 Jose Ramon G Albert and Andre Philippe E Ramos, “Examining recent trends in poverty, inequality, and vulnerability”, *Policy Notes No. 2010-03*, Philippine Institute for Development Studies (Makati City, July 2010). Available from: <http://dirp4.pids.gov.ph/ris/pn/pidspn1003.pdf>

9 The Philippines, Office of the President, Commission on Filipinos Overseas, *Frequently asked questions – statistics* (webpage, n.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858)

10 Maruja MB Asis and Dovelyn Rannveig Agunias, “Strengthening Pre-Departure Orientation programmemes in Indonesia, Nepal and the Philippines”, in *Issue in Brief No. 5*, A joint series of the International Organization for Migration regional office for Asia and the Migration Policy Institute (Bangkok/Geneva, September 2012), p.2. Available from: <http://www.migrationpolicy.org/pubs/predepartureorientation.pdf>

11 Migration Policy Institute (MPI), *Managing Temporary Migration: Lessons from the Philippine Model* (Singapore, October 2008), p.2. Available from: [www.migrationpolicy.org/pubs/Insight\\_POEA\\_Oct07.pdf](http://www.migrationpolicy.org/pubs/Insight_POEA_Oct07.pdf)

The Magna Carta for Women guarantees the civil, political and economic rights of all women including those in marginalized sectors, and also guarantees women: protection from all forms of violence; protection and security in times of disaster; political participation and representation; equal treatment before the law; equal access and elimination of discrimination against women in education, scholarships and training; equal participation in sports; non-discrimination in employment in the field of military, police, and other similar services; non-discriminatory and non-derogatory portrayal of women in media and film; comprehensive health services and health information and education; leave benefits; and equal rights in all matters related to marriage and family relations.<sup>12</sup> This law is a good gender-sensitive rights-based practice that complies with the CEDAW Committee's recommendation in its 2006 Concluding Observations for the Philippines urging the government to "give high priority to strengthening the legal framework for the promotion of gender equality and women's enjoyment of their human rights and, to that end, to expedite the adoption of pending bills in order to promptly bring the relevant national laws into line with the Convention."<sup>13</sup>

While the Magna Carta for Women and other gender-sensitive laws are meant to ensure that women have the same rights and protections accorded to men, in practice this is not always the case. For example, according to the US State Department's most recent human rights report on the Philippines, domestic violence against women remains a serious problem, as does sexual harassment, sexual exploitation through sex tourism, restrictions on birth control, and workplace discrimination.<sup>14</sup> Failure to adequately address these issues is in violation of several articles of the CEDAW, namely: article 6, obligating States parties to take all appropriate measures to suppress trafficking and exploitation of prostitution of women; article 11, requiring governments to eliminate discrimination against women in the field of employment; article 12, obligating government to ensure women access to health care services, including those related to family planning; and General Recommendation 19, which urges all States parties to take appropriate and effective measures to overcome all forms of gender-based violence .

However, the Government took an important step in promoting and protecting the human rights of women migrant workers when, in September 2012, it became the second country to ratify the Convention No. 189 of the International Labour Organization (ILO) concerning Decent Work for Domestic Workers.<sup>15</sup> The Convention will come into force in September 2013, and states that domestic workers must have the same basic labour rights as other workers, including "reasonable working hours, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, and respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining." Ratification of this Convention is a good rights-based practice in line with the CEDAW Committee's General Recommendation 26, which encourages all States Parties to "ratify all international instruments relevant to the protection of the human rights of migrant women."

12 Philippine Commission on Women, *Philippine Magna Carta of Women: the "Bill of Rights" of Filipino Women*, (Manila, n.d.), p.2. Available from: [www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf](http://www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf)

13 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Philippines* (Thirty-sixth session, 2006), para. 11. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

14 US State Department, *Human Rights Report 2011 – Philippines* (2011), pp. 26 and 27. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

15 International Labour Organization, *NORMLEX - Information System on International Labour Standards* (webpage, n.d.). Available from: [www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm)

## C. KEY STAKEHOLDERS

**Philippine Overseas Employment Authority (POEA)** is the government agency mandated to: promote and develop the overseas employment programme; protect the rights of migrant workers; regulate private sector participation in recruitment and overseas placement; and maintain a registry of skills and secure the best terms of employment for Overseas Foreign Workers (OFWs). It directly provides temporary labour to foreign employers or governments, performs inspections of labour-export agencies, and provides training and skills tests for workers before they leave the country.

**Overseas Workers Welfare Administration (OWWA)** under the Department of Labour and Employment (DOLE), is the lead government agency tasked to protect and promote the welfare and well-being of Overseas Filipino Workers (OFWs) and their dependents. OWWA administers a welfare fund to assist OFWs when problems arise at the workplace, which is pooled largely from membership contributions of foreign employers, land-based and sea-based workers, and investment and interest income. The OWWA is mandated to undertake the repatriation of workers in cases of emergency, and develop financing schemes for migrant workers including pre-departure and family assistance loans.

**Department of Foreign Affairs (DFA)** is responsible for the pursuit of the State's foreign policy and one of its main objectives is to protect the rights and promote the welfare of Filipinos overseas and to mobilize them as partners in national development.

**Commission on Filipinos Overseas (CFO)** primarily registers and provides pre-departure orientation seminars to emigrants. It also assists with the transfer of material and financial contributions from overseas to development activities in underserved communities all over the Philippines, and provides younger generations of Filipinos overseas with opportunities to learn Philippine history, culture and language.<sup>16</sup>

**Unlad Kabayan Migrant Services Foundation Inc.** is a non-governmental organization (NGO) based in the Philippines focused on migrant workers and social entrepreneurship. Activities include: directing migrants' savings into business and enterprise development in some of the poorest areas of the Philippines; providing business knowledge and skills training to migrant workers; and support for successful reintegration upon return to the Philippines. The programme also aims to provide would-be migrant workers with an alternative to migration.

**Visayan Forum Foundation, Inc.** is a Philippine-based NGO that provides specialized services to trafficking victims and their families, builds social movements, and advocates for lasting policy changes to combat human trafficking, domestic servitude and other forms of exploitation. Major activities include: 24-hour shelters to provide safety, security, and services to vulnerable migrants; partnerships with lawyers groups, prosecutors, and other legal professionals to secure justice for trafficking victims and abused domestic workers; work with legislators and political leaders on legal reform and improving mechanisms for implementation of anti-trafficking laws; psycho-social assistance; and empowerment programmes for victims.

<sup>16</sup> The Philippines, Office of the President, Commission on Filipinos Overseas, About Us (webpage, n.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=section&id=12&Itemid=789](http://www.cfo.gov.ph/index.php?option=com_content&view=section&id=12&Itemid=789)

**Kanlungan Centre Foundation Inc.** is an NGO engaged in direct service, advocacy work, research, and policy interventions for Philippine migrant workers who are survivors of human trafficking, illegal recruitment, workplace abuse and non-payment of wages, as well as their families and their communities. Through its integrative case management approach, Philippine migrants and human trafficking survivors, and their families, are provided with free legal assistance, psycho-social counselling, rescue and repatriation assistance from their destination countries, and welfare and shelter assistance. Kanlungan also engages in advocacy actions for the enactment of laws and policies to protect migrant workers and prevent human trafficking; research and publications to increase public awareness of these issues; and grassroots organizing so that communities will be able to prevent the commodification of Philippine labour.

**BATIS centre for Women** is an NGO working to address the needs and concerns of returned distressed Philippine women migrant workers (including victims of trafficking, illegal recruitment, unjust working conditions, domestic violence and family abandonment and other forms of violence against women migrant workers) and their families through direct and other welfare services, organizing, education and training, social enterprise development, scholarship and educational assistance, legal and medical assistance, counselling, networking and advocacy at the national and local levels.

**Scalabrini Migration centre (SMC)** is dedicated to the promotion of the interdisciplinary study of international migration, with a specific focus on migration questions in the Asia-Pacific region. Aside from research, SMC maintains a resource centre specializing in migration literature, publishes the academic quarterly, "Asian and Pacific Migration Journal", organizes training programmes, advocates for the promotion of the rights of migrants, and builds networks with academic institutions, civil society, international organizations and governments.

## D. RATIFICATION RECORD

The following table illustrates the Philippines' ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	5 July 1995
CEDAW	5 August 1981
ICESCR	7 June 1974
ICCPR	23 October 1986
ICERD	15 September 1967
ILO C29 Forced or Compulsory Labour	15 July 2005

ILO C87 Freedom of Association	29 December 1953
ILO C97 Migration for Employment	21 March 2009
ILO C98 Right to Organize and Collective Bargaining	29 December 1953
ILO C100 Equal Remuneration	29 December 1953
ILO C105 Abolition of Forced Labour	17 November 1960
ILO C111 Discrimination in Employment	17 November 1960
ILO C138 Minimum Age for Admission to Employment <sup>4</sup> June 1998	13 June 2005
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	14 September 2006
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	28 November 2000

## E. COMPLIANCE WITH CEDAW

### DISCRIMINATION

The principle of gender equality is enshrined in the Philippine Constitution, which stipulates that the State shall ensure fundamental equality before the law of women and men.<sup>17</sup> Additionally, the Magna Carta of Women affirms the State's obligation to "pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome". It also recognizes that "equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality."<sup>18</sup>

However, according to the Government, discriminatory practices are prevalent, and "women [in the Philippines] continue to be treated as objects instead of contributors to [the] economy and active participants in nation building."<sup>19</sup> The Committee on the Protection of the Rights of All Migrant Workers also has noted with concern that migrant women "are most often employed in gender specific industries such as care-givers, entertainers and domestic workers

17 The Philippines: *The 1987 Constitution of Republic of the Philippines*, Art. II, Sect. 14.

18 The Philippines, Republic Act No. 1790 "An Act Providing for the Magna Carta of Women", Section 2, 2008, available at: [http://www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html).

19 The Philippines, *House Bill No. 4683, Republic of the Philippines, House of Representatives, Fifteenth Congress, First Regular Session, 2011*, available at: [www.congress.gov.ph/download/basic\\_15/HB04683.pdf](http://www.congress.gov.ph/download/basic_15/HB04683.pdf).

where they are vulnerable to physical, sexual and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions”.<sup>20</sup>

Attitudes regarding traditional gender roles contribute to discrimination. In its Concluding Observations for the Philippines, the CEDAW Committee noted its concern regarding “the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society”. The Committee emphasized that “these stereotypes present a significant impediment to the implementation of the Convention and are a root cause of violence against women, as well as of the disadvantaged position of women in a number of areas, including in all sectors of the labour market and in political and public life.”<sup>21</sup>

To combat these problems the Committee recommended measures to bring about changes in attitudes and gender-role stereotyping, including “awareness-raising and public education campaigns addressing women and girls, as well as, in particular, men and boys, and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2(f) and 5(a) of the Convention”.<sup>22</sup>

The latest US State Department Human Rights Report on the Philippines noted that the Country has no law prohibiting discrimination in hiring, and that women in the labour force reportedly earn 37-47 percent less than men.<sup>23</sup> Discrimination, stereotyping, and a lack of employment opportunities are contributing factors to the feminization of migration for work. The Committee on the Protection of the Rights of All Migrant Workers stressed the need for the Government of the Philippines to “conduct a thorough assessment of the situation and take concrete measures to address the feminization of migration comprehensively in labour migration policies, including income of women in the informal sector, and minimal social protection for women”.<sup>24</sup>

To its credit the government has enacted several measures to eliminate discrimination against domestic workers, an occupation heavily dominated by women. For example, domestic workers in the Philippines are explicitly included in the Labour Code, Presidential Decree No. 442 (as amended in 1998) and thus are covered by provisions related to minimum wage and health care.<sup>25</sup> This is an example of a gender-sensitive rights-based practice in line with article 11 of the CEDAW ensuring women the right to equal remuneration and to equal treatment in respect of work of equal value.

## POLICY MEASURES

In its 2009 Concluding Observations, the Committee on the Protection of the Rights of All Migrant Workers commended the Government of the Philippines for prioritizing migration in domestic and foreign policy agendas, and supporting a multitude of labour migration

20 CMW Committee, *Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families – Philippines* (Tenth session, 2009). Available from: <http://www2.ohchr.org/english/bodies/cmw/docs/co/CMW.C.PHL.CO.1.doc>

21 CEDAW Committee, *Concluding Observations*, para. 17.

22 *Ibid*, para. 18.

23 US State Department, *Human Rights Report 2011*.

24 CMW Committee, *Concluding Observations*, para. 28(a).

25 CARAM Asia, *Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia*, (Kuala Lumpur, 2011), p. 47. Available from: [www.caramasia.org/reports/FDWlegislationAsia.pdf](http://www.caramasia.org/reports/FDWlegislationAsia.pdf)

initiatives and programmes to improve the situation of migrant women. However, the Committee stated its concern that some of the government's policies appear to be aimed more at promoting foreign employment of migrant workers rather than protecting migrant workers, and thus recommended a review of migration policies to ensure they promote and respect human rights.<sup>26</sup>

Some policy initiatives have been successful at protecting women migrant workers' rights. For example, the POEA has drafted guidelines regarding the deployment of household domestic workers. These guidelines include policies aimed at improving working conditions such as: upgrading workers skills; providing country-specific culture and language orientation courses; enacting protective mechanisms at the job sites; obliging employers to pay deployment costs; and increasing the minimum salary to a level commensurate with workers' acquired competencies.<sup>27</sup> These are good gender-sensitive rights-based practices in line with General Recommendation 26, which urges governments to "facilitate access for women migrant workers to opportunities abroad, promote safe migration, ensure the protection of rights of women migrant workers" and "develop appropriate education and awareness raising programmes."<sup>28</sup>

A Study by the Global Commission in International Migration also indicated that the Philippines' policies regarding migration to the Middle East are beneficial to migrant workers. Specific good practices noted by the study included: both workers and recruiters enter into contracts that are enforceable under Philippine law; the POEA regularly inspects labour recruitment agencies; skills tests are given to workers prior to deployment to assess qualifications; and Foreign Service officials are trained and actively involved in searching for housing, and repatriating Philippine victims of trafficking.<sup>29</sup>

The POEA also has a policy of periodically issuing bans on Filipinos migrating to certain countries for employment until adequate steps are taken to ensure workers' rights are protected. For example, in July 2012 the government announced a ban on the deployment of overseas Philippine workers to 15 countries for failing to meet the safety requirements of the amended Migrant Workers and Overseas Filipino Act.<sup>30</sup> Once legal protections are in place however, bans have been lifted, as was the case recently when the Government agreed to lift the temporary suspension of domestic workers to Lebanon and Jordan.<sup>31</sup> These temporary bans are further to 2009 amendments to the Migrant Workers and Overseas Filipino Act law, which states that the government "shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers: (a) It has existing labour and social laws protecting the rights of workers, including migrant workers; (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers,

26 CMW Committee, *Concluding Observations*, paras. 13, 15 and 16.

27 CARAM Asia, *Reality Check!*

27 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), paras. 23(a) and 24(b). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

29 Global Commission on International Migration, *Migration in the Middle East and Mediterranean*, (Manila, 2005).

30 Philip C. Tubeza, "PH to Ban OFW Deployment to 15 Countries", *Philippine Daily Inquirer*, Manila, 3 July 2012. Available from: <http://globalnation.inquirer.net/42739/ph-to-ban-ofw-deployment-to-15-countries>

31 Overseas Foreign Workers' Guide (OFWG), "OFWs Can Work in Lebanon and Jordan, Deployment Ban Lifted", Manila, 23 October 2012. Available from: [www.ofwguide.com/article\\_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html](http://www.ofwguide.com/article_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html)

including migrant workers; and (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers.”<sup>32</sup>

Policies such as these that require receiving countries to respect migrant workers rights are in compliance with the CEDAW Committee’s General Recommendation 26, which urges governments to promote safe migration by: ensuring that occupations dominated by women migrant workers are protected by labour laws; entering into bilateral agreements that protect the rights of women migrant workers; and ensuring that governments carry out their obligations under international law.<sup>33</sup> However, some critics charge that rigid regulations and bans on migration have the unintended effect of forcing women migrant workers and recruitment agencies out of the legal system and into irregular channels. For instance, the Migration Policy Institute found that more stringent requirements introduced by the POEA in 2006 meant that 40,000 individuals were not able to take domestic work abroad. Consequently, the agency witnessed an increase of domestic workers attempting to migrate illegally for work and signing contracts that provided less protection and lower salaries than normally prescribed by the POEA.<sup>34</sup> In its 2006 Concluding Observations the CEDAW Committee commented on this problem requesting that the Government “develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights.”<sup>35</sup>

## TRAFFICKING

According to the US State Department’s 2012 Trafficking in Persons (TIP) Report, the Philippines is a source country for women subjected to sex trafficking and forced labour. Many Philippine women who migrate abroad for work are subjected to conditions of involuntary servitude, violence, threats, inhumane living conditions, nonpayment of salaries, and withholding of travel and identity documents. A significant number of migrant domestic workers also become victims of rape, and sexual abuse. Often these problems are the result of fraudulent recruitment practices whereby illicit recruiters circumvent laws and regulatory frameworks. In 2011, the Inter-Agency Council against Trafficking (IACAT) was allocated 1.5 million dollars to address these issues.<sup>36</sup>

## PROSECUTION

The Philippines criminally prohibits both sex and labour trafficking through its 2003 Anti-Trafficking in Persons Act. The Government has conducted anti-trafficking training sessions with thousands of law enforcement officials and increased the number of designated

32 The Philippines, *Republic Act No. 10022, An Act Amending Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995*, (Manila, Third regular session, 27 July 2009). available at: [http://www.lawphil.net/statutes/repacts/ra2010/ra\\_10022\\_2010.html](http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html)

33 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, paras. 24(j), 26(b) and 27(a).

34 MPI, *Managing Temporary Migration*, p. 25.

35 CEDAW Committee, *Concluding Observations*, para. 22.

36 US State Department, *Trafficking in Persons Report 2012 – Philippines* (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/), pp. 284-285.

trafficking prosecutors from 36 to 58 individuals. However, inefficiencies in the judicial system continue to pose serious challenges to the successful prosecution of some trafficking cases. Additionally, corruption and official complicity in human trafficking remains a pervasive problem. According to the TIP Report, “officials in government units and agencies assigned to enforce laws against human trafficking reportedly permitted trafficking offenders to conduct illegal activities, allowed traffickers to escape during raids, extorted bribes, and accepted payments or sexual services from establishments known for trafficking women and children.” Despite this, in 2011 no public officials were convicted for trafficking or trafficking-related corruption and no efforts were made to criminally prosecute labour recruitment companies involved in the trafficking of migrant workers abroad.<sup>37</sup> The government does provide some support for a witness protection programme in order to encourage victims to assist in the investigation and prosecution of their traffickers. However, a lack of funding, lengthy trial processes, and a fear of retaliation by traffickers, causes many victims to refuse cooperation.

Article 6 of the CEDAW obligates States Parties to take all appropriate measures to suppress all forms of trafficking in women. General Recommendation 26 also states that “States Parties should take active measures to prevent, prosecute and punish all migration-related human rights violations that occur under their jurisdiction whether perpetrated by public authorities or private actors.” Thus in order to comply with its obligations under the CEDAW, the government must do more to prosecute both public officials and private recruitment firms engaged or complicit in trafficking, and must provide better witness protection and encouragement for women to participate in the prosecution of traffickers.

## PROTECTION

Significant efforts aimed at protecting victims of trafficking include the operation of 42 temporary shelters, an anti-trafficking hotline, and a Recovery and Reintegration programme for Trafficked Persons which has provided skills training, shelter, legal advice, and financial assistance to thousands of trafficking victims.<sup>38</sup> These efforts represent good rights-based practices in line with General Recommendation 26, which states that governments should “provide temporary shelters for women migrant workers who wish to leave abusive employers” and “design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned.”<sup>39</sup>

In another gender-sensitive rights-based good practice, the government repatriated 514 Philippine domestic workers from Syria in early 2012. It is estimated that over 90 percent of those rescued were trafficking victims who had suffered physical, psychological, and verbal abuse from employers in Syria.<sup>40</sup> This is in compliance with the CEDAW Committee’s General Recommendation 26 that encourages States Parties to ensure that women who wish to return to their countries of origin are able to do so.<sup>41</sup>

37 Ibid, p. 286.

38 Ibid.

39 CEDAW Committee, *General recommendation No. 26*, paras. 26(c)(iv) and 24(i)

40 US State Department, *Trafficking in Persons Report 2012*, p. 285.

41 CEDAW Committee, *General recommendation No. 26*, para. 24(h).

## PREVENTION

According to the TIP Report, the government has made notable efforts to prevent trafficking, by training public officials, improving screening mechanisms for signs of trafficking before migrant workers depart overseas, and negotiating bilateral agreements with receiving countries. Additionally, the government has supported media programmes to educate the public about the dangers of trafficking. Anti-trafficking information has also been made a part of pre-employment orientations for migrant workers. Additionally, The Philippine Overseas Employment Agency (POEA) conducted 1,539 pre-deployment orientation seminars and 583 pre-employment seminars for over 100,000 prospective and outbound Filipino overseas workers. The POEA and the Department of Labour and Employment (DOLE) also conducted seminars on recruitment and trafficking in the country, attended by local prosecutors, law enforcement personnel, local government units, NGOs, recruitment agencies, and community members. The POEA distributed nearly 100,000 pieces of printed material about trafficking and illegal recruitment and the community education programmes of the Commission on Filipinos Overseas (CFO) reached over 50,000 people.<sup>42</sup> All of these efforts reduce the likelihood of women migrant workers being subjected to trafficking and are in compliance with General Recommendation 26, which states that governments should develop appropriate education programmes that raise awareness of potential exploitation during migration, and encourage the media, information and communication sectors to contribute to awareness raising efforts.<sup>43</sup>

## EMPLOYMENT

In the World Economic Forum's 2012 Global Gender Gap Report, the Philippines ranked among the top 20 with respect to closing the gender gap in economic participation.<sup>44</sup> Despite this progress, women in the Philippines continue to be paid less than men for similar work, earning only 76 cents for every dollar that men earn. Additionally, only about 30 percent of medium-sized enterprises in the Philippines have female managers, while about 20 percent of large enterprises have female managers. Philippine women are also more likely to work in small firms and in the informal sector, and in lower-paid occupations.<sup>45</sup> According to the Government "the inadequacy of employment opportunities in the country for Philippine women leads to female labour migration as more and more women leave the borders of the land to seek greener pastures but end up being maltreated or exploited."<sup>46</sup> In its Concluding Observations on the Philippines the CEDAW Committee noted with concern gender wage gaps as well as the over-representation of women in the informal economy. It urged the

42 US State Department, *Trafficking in Persons Report 2012 – Philippines* (2012). Pg 287

43 CEDAW Committee, *General recommendation No. 26*, paras. 24(b)(i) and (vi).

44 World Economic Forum, *The Global Gender Gap Report 2012* (Geneva, 2012), p. 22. Available from: [www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2012.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf)

45 World Bank, *Towards Gender Equality in East Asia and the Pacific – A Companion to the World Development Report*, (Washington DC, 2012), p. 72. Available from: <http://siteresources.worldbank.org/EASTASIAPACIFICEXT/Resources/226300-1339798342386/eap-gender-full-conference.pdf>

46 The Philippines, "Lawmaker pushes for passage of women legislations", press release, June 2011. Available from: [www.congress.gov.ph/press/details.php?pressid=5143](http://www.congress.gov.ph/press/details.php?pressid=5143)

Government to address the root causes of women seeking employment abroad and create viable economic alternatives to migration.

The Government has made efforts to address these problems by undertaking initiatives aimed at decreasing discrimination against women in employment and increasing their participation in the national workforce. However, migration for work still remains a prominent feature of the Government's employment and development strategy. Each year since 2006, the government has reached its target of sending one million workers overseas as stated in the 2004-2010 Medium Term Philippine Development Plan. While the target number has been dropped from the 2011-2016 plan, "the deployment of workers continues to be the centrepiece of the country's labour migration strategy."<sup>47</sup>

Labour migration is governed by the Migrant Workers and Overseas Filipinos Act of 1995 which includes provisions relating to promotion and development of foreign employment; regulation and management of recruitment, placement and labour migration flows; and welfare and protection of migrant workers and their families.<sup>48</sup> The Act also penalizes illegal recruitment and provides a list of services available to Philippine migrant workers including issuance of travel advisories, information dissemination, repatriation of workers, counselling and legal services, welfare assistance including medical and hospitalization services, and orientation for returning workers. The Act specifically states that the government "shall apply gender sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers." This Act is an example of a good rights-based practice recognizing the particular vulnerabilities of women who migrate for work. It complies with the CEDAW in that it recognizes the differences between men and women and promotes the substantive model of equality, which a central principle of the Convention.

The POEA is charged with implementing the Migrant Workers Act. It controls overseas employment by: limiting participation to qualified employers, workers, and recruitment and manning agencies; creating rules and regulations that govern the recruitment process and set minimum employment standards; and maintaining a system of adjudication to ensure that all involved comply with rules and regulations.<sup>49</sup> Foreign employers must meet certain qualifications in order to receive approval to hire Philippine workers, which includes undergoing a registration or accreditation procedure. Those hiring low-skilled workers must meet additional requirements. For example, employers hiring domestic workers must be interviewed by an official at the Philippine Overseas labour Office (POLO) or embassy in the country of hire, and must attend a pre-employment orientation. They are also required to provide a photo of themselves and spouse, the address and size of the residence, proof of income, and a clean criminal record with police clearance.<sup>50</sup> The CEDAW Committee has noted that "domestic workers are particularly vulnerable to physical and sexual assault, food and

47 Maruja MB Asis and Dovelyn Rannveig Agunias, "Strengthening Pre-Departure Orientation programmemes", p.2.

48 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: [http://www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

49 MPI, *Managing Temporary Migration*, p. 5.

50 *Ibid.*, p. 9.

sleep deprivations and cruelty by their employers.”<sup>51</sup> Thus, the extra requirements put in place for those hiring domestic workers represent gender-sensitive rights-based good practice in line with article 11 (1)(f) of the CEDAW, which obligates States Parties to ensure women the right to protection of health and safety in working conditions.

## EMPLOYMENT CONTRACT

All prospective migrant workers are required to sign an Overseas Employment Contract with their employer, which must be approved by the POEA before they can be deployed for work abroad. At a minimum, contracts must provide for: guaranteed wages for regular working hours; free transportation to and from the work site or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; and fair or authorized causes for termination of employment. Additional terms and conditions or benefits can be included as long as they are beneficial to the employee.<sup>52</sup>

The POEA often requires that additional terms and conditions included in employment contracts for Philippine domestic workers deployed abroad. These include requiring that domestic workers: have custody of their passport at all times; be treated humanely by the employer and others in the house; be given a separate sleeping room and a daily rest of at least eight continuous hours; be made to work only in the residence of the employer; be allowed to freely communicate with her family in the Philippines or with the Philippine Embassy; be taken to the Philippine embassy when so required; be provided with free emergency medical and dental services; be given one day of rest per week; and be informed about procedures for settling disputes.<sup>53,54</sup>

Contractual requirements protecting the rights of women migrant workers represent a good rights-based practice in line with General Recommendation 26, which urges States Parties to recommend the contents of labour contracts for women migrant workers and ensure that contracts are legally valid.<sup>55</sup> However, because the Philippine Government does not have a monitoring authority in the countries of employment, nor does it have the jurisdiction to penalize the employers, it is often difficult to enforce these contracts.<sup>56</sup>

## MINIMUM WAGE AND AGE

### Minimum Age

The 2006 Household Service Workers Reform Package specifies 23 as the minimum age for deployment abroad to work in domestic service. The minimum age was increased from the original age of 18 years in order to ensure a higher level of maturity and sense

51 CEDAW Committee, *General recommendation No. 26*, para. 20.

52 MPI, *Managing Temporary Migration*, p. 14.

53 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 119.

54 MPI, *Managing Temporary Migration*.

55 CEDAW Committee, *General recommendation No. 26*, para. 24(b)(i) and 26(b).

56 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p.118.

of responsibility of the worker in dealings with her employer and towards her work and to effectively reduce incidents of homesickness and psychological un-preparedness of the worker, which are often the causes of runaways and early contract termination.<sup>57,58</sup> The minimum age regulation is meant to strengthen the protection of Philippine domestic workers. However, because the vast majority of Philippine women who migrate for employment do so as domestic workers, the regulation has a discriminatory impact. Some critics have also argued that such limitations force women to alter identity documents and fake their age in order to work abroad, or, worse, use irregular methods of migrating, which increases their risk of being trafficked and exploited.<sup>59</sup> Thus, in its General Recommendation 26 the CEDAW Committee urged States Parties to repeal discriminatory restrictions on women's migration on the basis of age.

In recognition of these issues, in 2011 the POEA Governing Board issued Resolution No. 4 which allows for exceptions to the minimum age requirement as long as "the employment terms and conditions of the household worker are compliant with the HSW [Household Service Workers] Policy Reform Package, protection of the worker is assured by legislation, and adequate protective mechanisms are in place as may be determined by the Secretary of labour and Employment or her duly authorized Representative."

### Minimum Wage

POEA regulations dictate that there be "guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if applicable, or not lower than the minimum wage in the Philippines, whichever is highest."<sup>60</sup> Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, Oman, and Malaysia do not have minimum wage laws. However, the Philippine Government negotiates bilateral agreements with each destination country, which in some cases set a minimum wage.<sup>61</sup>

On 24 October 2006, the POEA increased the entry-level minimum monthly salary of domestic workers deployed overseas from 200 to 400 dollars per month. However, not all countries accept the Philippine-mandated minimum. For example, Bahrain has announced that it does not consider it legally binding.<sup>62</sup> In a survey of migrant domestic workers published in 2011, almost half reported being paid less than 400.<sup>63</sup>

57 POEA, *Household Service Worker Protection and Welfare Enhancement Reform Package*, (2007);

58 UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*

59 POEA Governing Board Resolution No. 14 (2007);

60 Available from: [www.poea.gov.ph/rules/POEA%20Rules.pdf](http://www.poea.gov.ph/rules/POEA%20Rules.pdf)

61 David McKenzie, *Distortions in the International Migrant Labour Market: Evidence from Filipino Migration and Wage Responses to Destination Country Economic Shocks*, World Bank, Development Research Group (WPS6041) (Washington DC, February 2012), p. 8.

62 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

63 Graziano Battistella and Maruja MB Asis, "Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes", *Discussion paper series No. 2011-12*, Philippine Institute for Development Studies (Makati City, July 2011), p. 25. Available from: <http://dirp4.pids.gov.ph/ris/dps/pidsdps1112.pdf>

## REGULATION OF EMPLOYMENT AGENCIES

Article 18 of the Labour Code prohibits the direct hiring of Filipino workers for placement overseas. This rule is intended to protect applicants by regulating recruitment through licensed employment agencies. Before being allowed to participate in the recruitment process, agencies must meet a set of standards set by the POEA. For example, “only a Filipino citizen, or a partnership or corporation created under Philippine law in which 75 percent of capital is Filipino owned or controlled, can operate an agency. This requirement ensures that the recruiter or recruitment agency owner is within the Philippine government’s jurisdiction should litigation be necessary.”<sup>64</sup> In order to receive a licence, agencies must prove they have sufficient operating capital, pay a registration fee, and post bonds. Owners must also pass a criminal background check, and any found to have previously violated recruitment or placement laws are ineligible to receive a licence. Once these requirements are satisfied, agencies are interviewed by a POEA panel and if they pass, receive a licence to operate which must be renewed every four years. Applicants for renewal have to meet the same requirements as when they first applied.<sup>65</sup>

According to the Migration Policy Institute, “Agencies represent foreign employers in selecting, registering, and transporting workers, but they also serve as ‘co-employers’ and must ensure the employment contract’s proper implementation. If the employer fails to comply with the contract or violates any of its provisions, the worker can apply for legal assistance from the recruitment agency. In such cases, the agencies are liable jointly with and separately from the foreign employer. Through the agencies, the government can exercise pressure on employers who are beyond the jurisdiction of the Philippines’ justice system – which can benefit workers who would otherwise be left without recourse for unfair treatment.”<sup>66</sup>

The POEA’s Rules and Regulations on Recruitment and Employment provide that, “the Administration shall exercise original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations including refund of fees collected from workers and violations of the conditions for issuance of license to recruit workers.”<sup>67</sup> Grounds for imposing sanctions against recruitment firms include: charging excessive recruitment and placement fees; engaging in acts of misrepresentation in connection with recruitment and placement of workers, obstructing or attempting to obstruct inspection; failing to submit required reports; withholding or denying travel or other pertinent documents from workers; falsifying or altering travel documents of applicants; deploying workers to employers not accredited by the Administration; coercing workers to accept prejudicial arrangements; withholding salaries; and deploying underage workers.<sup>68</sup>

64 MPI, *Managing Temporary Migration*, p.7.

65 *Ibid*, p. 7.

66 *Ibid*, p. 6.

67 Overseas Foreign Workers’ Guide (OFWG), *POEA Rules and Regulations on Recruitment and Employment* (webpage, n.d.), part VI. Available from: [www.ofwguide.com/poea\\_rules\\_recruitment\\_employment.php#gotohear](http://www.ofwguide.com/poea_rules_recruitment_employment.php#gotohear)

68 *Ibid*.

In order to ensure compliance with these rules, the POEA is tasked with regularly inspecting the offices and records of licensed agencies and conducting spot inspections upon receipt of complaints against agencies. Critics have charged, however, that the POEA does not have adequate resources to carry out this function. A 2007 study showed only one inspector for every 317 agencies, and POEA records indicated that not all agencies were inspected each year.<sup>69</sup> The Committee on the Protection on the Rights of All Migrant Workers noted the Government's efforts at ensuring recruitment agencies respect the rights of migrant workers, and in particular, increased penalties for agencies charging exorbitant placement fees. However, it expressed concern at "claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants." Thus it urged the government to strengthen the licensing system and control mechanisms.<sup>70</sup>

## BILATERAL AGREEMENTS

The Philippines has entered into bilateral agreements and signed memorandums of understanding (MoUs) with many labour-receiving countries in order to ensure respect for the rights of its citizens who migrate abroad for employment. As of 2011, the Government had entered into bilateral agreements with Norway, the United Kingdom, Papua New Guinea, the Republic of Korea, Taiwan Province of China, Switzerland, Libya, Jordan, Qatar, Kuwait, Iraq, the Northern Mariana Island, and Indonesia. Additionally, it has signed MoUs with, the Republic of Korea, Canada, the UAE, Bahrain, the UK, Switzerland, Norway and Taiwan province of China on various issues ranging from health services for migrant workers to recruitment for specific occupational categories.<sup>71</sup>

Bilateral agreements between labour-sending and receiving countries aimed at protecting migrant workers are a good rights-based practice in line with the CEDAW Committee's General Recommendation 26, and its 2006 Concluding Observations commending the Philippines on the conclusion of bilateral agreements and memorandums of understanding on migrant workers' rights.<sup>72</sup> While negotiation of bilateral agreements is considered a good practice, the government must ensure that the agreements contain strong provisions for promoting and protecting workers rights. For example, a MoU between the Philippines and UAE specifies that the terms and conditions of employment shall be defined by a contract between the worker and the employer, specifying the rights and obligations of both parties. Upon arrival in the UAE however, workers often find that the terms and conditions in the contract offer fewer rights and less protection than the one signed with the recruitment agency.<sup>73</sup> Because of such problems the Committee on the Protection of Migrant Workers expressed concern that the provisions of bilateral agreements so far concluded

69 MPI, *Managing Temporary Migration*, p. 16.

70 CMW Committee, *Concluding Observations*, paras. 41-42.

71 CARAM Asia, *Reality Check!*, p.44.

72 CEDAW Committee, *General recommendation No. 26*, para. 27(a).

73 CARAM Asia, *Reality Check!*, p.45.

do not sufficiently promote and protect the fundamental human rights of migrants, and recommended that the Philippines, to the extent possible, progressively integrate relevant and appropriate provisions of the Migrant Workers' Convention into its bilateral agreements with labour-receiving countries.<sup>74</sup>

## REINTEGRATION

Reintegration into family and society is often difficult for returning migrant workers, and those with little support often feel that they have no choice but to re-emigrate for work. The government has recognized this problem and established programmes to provide reintegration services to returning migrant workers. However, it acknowledges that a lack of coordination and cooperation among the various initiatives has often resulted in uneven delivery of services. To remedy this the Government established the Return and Reintegration programme to act as a "clearing house and consolidator of information and programme packages aimed at facilitating the reintegration of returning migrant Filipinos into mainstream Philippine social and economic life".<sup>75</sup> Services aimed at returning migrant workers will include those related to: health, recreation, business and investment, real estate, retirement, legal assistance and education.<sup>76</sup>

This focus on ensuring migrant workers are able to successfully reintegrate is a good practice in line with the CEDAW Committee's General Recommendation 26, which states that governments "should design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned."<sup>77</sup> Additionally, it responds to the 2009 Concluding Observations of the Migrant Workers Committee, which encouraged the Philippines to work in partnership with all relevant partners to strengthen the existing reintegration programme and facilitate durable social and cultural reintegration.<sup>78</sup>

## WOMEN'S ACCESS TO JUSTICE

The Magna Carta for Women mandates the designation of a gender focal point in the consular section of Philippine embassies and consulates who are charged with assisting Filipino women living abroad, including women migrant workers.<sup>79</sup> The Government also operates temporary shelters for victims fleeing abusive employers in 20 Philippine Embassies or consulates, where women can stay temporarily while their case is being

74 CMW Committee, *Concluding Observations*, paras. 37-38.

75 The Philippines, Office of the President, Commission on Filipinos Overseas, *Return and Reintegration programme* (webpage, u.d.). Available from: [http://www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1361%3Areturn-and-reintegrate&catid=145%3Aintegration-and-reintegration&Itemid=833](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1361%3Areturn-and-reintegrate&catid=145%3Aintegration-and-reintegration&Itemid=833)

76 The Philippines, Office of the President, Commission on Filipinos Overseas, *Return and Reintegration programme* (webpage, u.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1361:return-and-reintegrate&catid=145&Itemid=866](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1361:return-and-reintegrate&catid=145&Itemid=866)

77 CEDAW Committee, *General recommendation No. 26*, para. 24(i).

78 CMW Committee, *Concluding Observations*, para. 44.

79 The Philippines, *Republic Act No. 1790* "An Act Providing for the Magna Carta of Women", Section 2, (Manila, 2008), sect. 37. Available from: [www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html)

investigated and until they are able to be repatriated. Additionally, Republic Act No. 8042 (as amended by No. 10022), provides for a legal assistance fund to enable migrant workers and overseas Filipinos to access legal services including foreign lawyers, bail bonds to secure temporary releases and other litigation expenses.<sup>80</sup> These are good gender-sensitive rights-based practices in line with General Recommendation 26, which urges States Parties to “properly train and supervise their diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protection should include quality support services available to women migrants including timely provision of interpreters, medical care and counselling, legal aid and shelter when needed.”<sup>81</sup>

The Committee on the Convention for the Protection of All Migrant Workers recognized these efforts but also noted documented cases where embassy or consulate personnel abroad did not properly assist their nationals because the staff was not adequately informed of procedures for doing so. Additionally, the Committee expressed concern that too often migrant workers’ unfamiliarity with and lack of trust in the justice system made them unwilling to file cases of abuse by their employers abroad. To remedy this, the Committee recommended that the government: (a) ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families; (b) take measures to ensure that embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE, and; (c) undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored”.<sup>82</sup>

In cases where recruitment agencies have violated the law, aggrieved individuals may file complaints with the POEA, and the Agency may also take action on its own initiative. Upon the filing of complaints, hearings are held and adjudicators must issue findings within 90 days. Where it is determined that the recruitment agency has violated the regulations, depending upon the nature of the offense, fines may be imposed and licences may be suspended or revoked.<sup>83</sup>

POEA lawyers also help victims of illegal recruitment and trafficking during criminal investigations and in making claims for actual, moral and other forms of damages with the Labour Arbiters of the National Labour Relations Commission.<sup>84</sup> This represents a good rights-based practice in line with the recommendation by the Committee on Migrant Workers that the Government continue efforts to inform migrant workers of the administrative and judicial remedies available to them continue to provide them with legal assistance in seeking remedies.<sup>85</sup>

80 CARAM Asia, *Reality Check!*, pp. 38-39.

81 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

82 CMW Committee, *Concluding Observations*, paras. 29-30.

83 OFWF, *POEA Rules and Regulations*, part VI

84 Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants - Mission to the Philippines* (Geneva, 2002).

85 CMW Committee, *Concluding Observations*, para. 26.

## F. ANALYSIS AND CONCLUSIONS

Over the past several decades the Philippine Government has managed the deployment of millions of migrant workers and continues to explore how migration can be an instrument for development. The Government understands that protecting migrant workers requires effective policies and institutional mechanisms, responsible private recruitment agencies, supportive NGOs, and educated citizens. Government systems for managing migrant labour face many constraints, not least limited resources for handling the huge volume of citizens migrating for work.

Despite this, many governmental initiatives have been successful in promoting and protecting the rights of women migrant workers, including anti-illegal recruitment campaigns, bilateral agreements, assignment of overseas labour and welfare officers, and education and information campaigns. Examples of some of the government's gender-sensitive and rights-based good practices include:

- Ratification of eight of the nine core human rights treaties, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Protection of All Migrant Workers and Members of Their Families (CMW).
- Adoption of the Magna Carta for Women, which translates the CEDAW into national law.
- The principle of gender equality is enshrined in the Philippine Constitution, which stipulates that the State shall ensure fundamental equality of women and men.
- Domestic workers in the Philippines are explicitly included in the Labour Code, and thus are covered by provisions related to minimum wage and health care.
- Government guidelines regarding the deployment of household domestic workers include policies aimed at improving working conditions such as: upgrading workers skills; providing country-specific culture and language orientation courses; enacting protective mechanisms at the job sites; obliging employers to pay deployment costs; and increasing the minimum salary to a level commensurate with workers' acquired competencies.
- Regular inspection by the POEA of labour recruitment agencies.
- Skills tests are given to workers prior to deployment to assess qualifications.
- Amendments to the Migrant Workers and Overseas Filipino Act law state that the Government "shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected."
- 2003 Anti-Trafficking in Persons Act prohibits sex and labour trafficking.
- Anti-trafficking training sessions have been conducted with thousands of law enforcement officials.
- The number of designated trafficking prosecutors has been increased from 36 to 58 individuals.
- The Government operates 42 temporary shelters in the Philippines, an anti-trafficking hotline, and a Recovery and Reintegration programme for Trafficked Persons which has provided skills training, shelter, legal advice, and financial assistance to thousands of trafficking victims.
- The government repatriated 514 Filipino domestic workers from Syria in early 2012, 90 percent of whom were trafficking victims.
- Screening mechanisms for signs of trafficking before migrant workers depart overseas

have been improved.

- Bilateral agreements with receiving countries have been negotiated to improve protection of migrant workers rights.
- Government-supported media programmes educate the public about the dangers of trafficking. Anti-trafficking information has also been made a part of pre-employment orientations for migrant workers. Additionally, "the POEA distributed nearly 100,000 pieces of printed material about trafficking and illegal recruitment and the community education programmes of the Commission on Filipinos Overseas (CFO) reached over 50,000 people.
- The Philippines has been ranked among the top 20 countries or territories with respect to closing the gender gap in economic participation.
- The Migrant Workers and Overseas Filipinos Act of 1995 includes provisions relating to the promotion and development of foreign employment; regulation and management of recruitment, placement and labour migration flows; and welfare and protection of migrant workers and their families. The Act also penalizes illegal recruitment and provides a list of services available to Filipino migrant workers including: issuance of travel advisories; information dissemination; repatriation of workers; counselling and legal services; welfare assistance including medical and hospitalization services; and orientation for returning workers.
- The POEA controls overseas employment by: limiting participation to qualified employers, workers, and recruitment and manning agencies; creating rules and regulations that govern the recruitment process and set minimum employment standards; and maintaining a system of adjudication to ensure that all involved comply with rules and regulations.
- All prospective migrant workers and recruiters must enter into contracts that are enforceable under Philippines law. Additionally, once hired, all workers are required to sign an Overseas Employment Contract with their employer, which must be approved by the POEA before they can be deployed for work abroad. At a minimum, contracts must provide for: guaranteed wages for regular working hours; free transportation to and from the work-site or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; and fair or authorized causes for termination of employment.
- Additional terms and conditions must be included in employment contracts for domestic workers deployed abroad. These include requiring that domestic workers: have custody of their passport at all times; be treated humanely by the employer and others in the house; be given a separate sleeping room and a daily rest of at least eight continuous hours; be made to work only in the residence of the employer; be allowed to freely communicate with her family in the Philippines or with the Philippine Embassy; be taken to the Philippine embassy when so required, be provided with free emergency medical and dental services, be given one day of rest per week and be informed about procedures for settling disputes.
- Entry-level minimum monthly salary of domestic workers deployed overseas increased from 200 to 400 dollars per month.
- If the employer violates any provisions of the employment contract, the worker can apply for legal assistance from the recruitment agency. In such cases, the agencies are liable jointly with and separately from the foreign employer.
- Return and Reintegration programme acts as a clearinghouse and consolidator of information and programme packages aimed at facilitating the reintegration of returning migrant Filipinos into mainstream Philippine social and economic life.
- Gender focal point in the consular section of Philippine embassies and consulates are charged with assisting Filipino women living abroad, including women migrant workers.

- Temporary shelters for victims fleeing abusive employers are in operation in 20 Philippine Embassies or consulates, where women can stay temporarily while their case is being investigated and until they can be repatriated.
- Additionally, Republic Act No. 8042 (as amended by No. 10022), provides for a legal assistance fund to enable migrant workers and overseas Filipinos to access legal services including foreign lawyers, bail bonds to secure temporary releases and other litigation expenses.

Despite these good practices, discrimination, stereotyping, and a lack of employment opportunities for women in the Philippines are contributing factors to the feminization of migration for work. When women migrate however, they are often employed in gender-specific industries such as care-givers, entertainers and domestic workers where they are vulnerable to physical, sexual and verbal abuse, unpaid/delayed/underpaid wages, and many face inequitable working conditions. To address these issues, a gender-sensitive and human-rights based approach must be used when enacting migration laws and policies, to ensure the promotion and protections for women migrant workers.

## G. RECOMMENDATIONS

- Enhance awareness-raising and public education campaigns addressing women and girls, as well as men and boys and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society.
- Take concrete measures to address the feminization of migration comprehensively in labour migration policies, including income of women in the informal sector, and minimal social protection for women.
- Increase efforts to create viable economic alternatives to migration for women.
- Develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights.
- Enhance efforts to prosecute both public officials and private recruitment firms engaged or complicit in trafficking, and provide better witness protection and encouragement for women to participate in the prosecution of traffickers.
- Enhance measures to monitor the employment situation of women migrant workers in countries of employment, particularly those working in domestic service.
- Repeal discriminatory restrictions on women's migration on the basis of age.
- Increase human and financial resources to ensure regular inspection of the offices and records of licensed agencies and spot inspections upon receipt of complaints against agencies.
- Strengthen the licensing system and control mechanisms of recruitment agencies.
- Continue conducting bilateral agreements and MoUs with countries and regions to which Filipino women migrate in search of work, and ensure that bilateral agreements contain strong provisions for promoting and protecting workers rights and include relevant and appropriate provisions of the Migrant Workers' Convention.
- Increase migrant workers' familiarity with and trust in the justice system so that they are more unwilling to file cases of abuse by their employers abroad.

- Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families.
- Take measures to ensure that embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino foreign workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE.
- Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.
- Institutionalize interagency coordination on migration
- Encourage a consultative processes to ensure participation of civil society.
- Use a human rights lens over numerical targets when reviewing labour migration deployment policies.
- Provide financial support to NGOs, including religious NGOs, which run shelters and drop-in centres for the rehabilitation of women and girls in prostitution.
- Ensure the prosecution and punishment of traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.
- Ensure sufficient implementation, follow-up and evaluation of the labour migration programmes and enhance mechanisms for tracking their implementation.
- Allocate sufficient resources, human and financial, for migration officials to carry out their work efficiently.

## REFERENCES

- CEDAW Committee, General Recommendation No. 26 on women migrant workers. Committee on the Elimination of Discrimination against Women (2006). *Concluding Observations: The Philippines*.
- Commission on Human Rights (2002), Report of the Special Rapporteur: Mission to the Philippines. Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (2009), *Concluding Observations: The Philippines*.
- Global Commission on International Migration (2005), *Migration in the Middle East and Mediterranean*.
- Good practice: ILO International Migration programme. [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=55](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=55)
- Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, paragraph 25, E/CN.4/2003/75 (2003); UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.
- 1st Migration & Development Plan launched in PHL Returning migrant workers to benefit from ILO partnership with local governments, multi-stakeholders. [http://www.ilo.org/manila/whatwedo/projects/WCMS\\_168123/lang--en/index.htm](http://www.ilo.org/manila/whatwedo/projects/WCMS_168123/lang--en/index.htm)
- JABOLA, KHARA. <http://www.migrant-rights.org/2011/11/09/the-philippines-withdraws-ban-on-the-deployment-of-filipino-workers-to-41-countries-with-poor-working-standards/November-9th-2011>.
- Mission for Migrant Workers (HK) Society and Asia Pacific Mission for Migrants (2007), *Critique of the pre-qualification of Filipino Household Service Workers Scheme*.
- PHILIPPINES: Aquino prioritizes trafficking. <http://www.irinnews.org/report.aspx?ReportId=92399>
- POEA, Memorandum Circular No. 14 (2006).
- POEA Governing Board Resolution No. 14 (2007).
- POEA, Household Service Worker Protection and Welfare Enhancement Reform Package. (2007); POEA Governing Board Resolution No. 4 (2006).

POEA Governing Board Resolution No. 14 (2007); UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.  
 POEA Governing Board Resolution No. 5 (2006).  
 POEA Governing Board Resolution No. 7 (2006).  
 RA No. 8042, Section 15.  
 Secretary General of the United Nations (2003), *Violence Against Women Migrant Workers*, A/58/161.  
 UN Division for the Advancement of Women (2006), 2004 World Survey on the Role of Women in *Development: Women and International Migration*. Migrant Workers and Overseas Filipinos Act 1995;  
 Universal Periodic Review Compilation Report, the Philippines.  
 UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*.  
 UNIFEM (2005), *Claim & Celebrate: Women Migrants' Human Rights through CEDAW*.  
 1987 Constitution of the Republic of the Philippines, article 13, Section 3.  
 UN Division for the Advancement of Women (2006), 2004 World Survey on the Role of Women in *Development: Women and International Migration*.  
 UN Women (2011), *Country Snapshots*.  
 Universal Periodic Review Compilation Report, the Philippines.  
 US Department of State Trafficking in Persons Report, 2011.  
 US State Department Human Rights Report 2010, Philippines.

## INTERNET

[http://www.cfo.gov.ph/index.php?option=com\\_content&view=section&id=12&Itemid=789](http://www.cfo.gov.ph/index.php?option=com_content&view=section&id=12&Itemid=789)  
<http://dfa.gov.ph/main/index.php/about-the-dfa/history-of-the-department>  
<http://www.migrationinformation.org/USFocus/display.cfm?ID=364>  
<http://www.state.gov/r/pa/ei/bgn/2794.htm>  
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154399.htm>  
<http://www.poea.gov.ph/html/aboutus.html>  
<http://www.owwa.gov.ph/wcmqs/about/>  
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154399.htm>  
<http://www.poea.gov.ph/rules/ra8042.html>  
<http://www.nenepimentel.org/bills/SBN-1678.asp>;  
<http://www.philstar.com/Article.aspx?articleId=746403&publicationSubCategoryId=92>



Photo credit: United Nations/Hansa Tangmanpoowadol



## SENDING COUNTRIES: SOUTHEAST ASIA

# Kingdom of Thailand



## A. COUNTRY CONTEXT

Thailand is located on the South-East Asian peninsula between the Andaman Sea and the Gulf of Thailand, and shares its borders with Myanmar, the Lao People's Democratic Republic (PDR), Cambodia and Malaysia. The population is 64 million, 94 per cent of whom are Thai-speaking Buddhists. Various other ethnic groups, including the Hmong, Mein, and Karen, live in the northern highland region and speak distinct languages. Approximately 5 percent of the population is comprised of Muslims speaking a dialect of Malay known as Pattani, after one of the three southern borders near the Malaysian border where they mainly live. Since January 2004, armed conflict between the Thai Government and Malay separatist groups has claimed the lives of almost 5,000 people in the southern provinces.<sup>1</sup>

Thailand is an upper middle-income country<sup>2</sup> with medium human development.<sup>3</sup> Gross national income was placed at 4,420 US dollars per capita in 2011.<sup>4</sup> The country's solid economic growth over the past decade is due to its "well developed infrastructure, free-enterprise economy, generally pro-investment policies, and strong export industries," according to a report by the US Central Intelligence Agency. Exports of machinery, electrical components, agricultural products and jewellery are main drivers of the economy and account for more than half of gross domestic product.<sup>5</sup>

- 
- 1 Human Rights Watch, "Thailand: Southern Insurgents Bomb Nightspots", New York, 2011.  
Available from: [www.hrw.org/news/2011/09/20/thailand-southern-insurgents-bomb-nightspots](http://www.hrw.org/news/2011/09/20/thailand-southern-insurgents-bomb-nightspots)
  - 2 Available from: <http://data.worldbank.org/country/thailand>
  - 3 Available from: <http://hdrstats.undp.org/en/countries/profiles/THA.html>
  - 4 Available from: <http://data.worldbank.org/country/thailand>
  - 5 US Central Intelligence Agency, *The World Factbook 2011 – Thailand*, (2011).  
Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>

Human Development Index (2011)	Medium human development <sup>6</sup>
Stock of immigrants (2010)	1 157 300 <sup>7</sup>
Annual growth rate of immigrants	1.6% (1960-2005)
Immigrants' share of population (2010)	1.7 % <sup>8</sup>
Proportion of female immigrants (2010)	48.4 % <sup>9</sup>

Thailand is a hub for outgoing, incoming and transiting migrant workers. It is also a major source, destination and transit country for trafficking of men, women and children. In this paper, the discussions centre on Thailand as a receiving country for migrant labour. However, it also discusses the role of the Government in safeguarding the rights of Thai workers who leave the country.

The majority of low-skilled, low-wage migrant workers in Thailand originate from Myanmar, the Lao PDR and Cambodia, and are mainly employed in sectors related to fishing and seafood processing, construction, agriculture, textiles and garment making, and household help.<sup>10</sup> The Government has indicated that illegal immigration is one of its biggest challenges, estimating that in Thailand there are more than one million illegal migrants from Myanmar, over 110,000 from the Lao PDR and over 120,000 from Cambodia.<sup>11</sup>

In order to better regulate the flow of migrant labour into the country, the Government enacted a registration process requiring workers from Myanmar, the Lao PDR and Cambodia to have their nationality verified by their country of origin before being issued a work permit. Those who register may work and live temporarily in Thailand for two years and access social security and healthcare benefits.<sup>12</sup> However, according to International Organization for Migration, the national verification system "has been beset by operational problems, and by the end of February 2011, only 550,000 migrant workers had completed the nationality verification process."<sup>13</sup> Despite the risks, many migrant workers still prefer to use informal processes for securing work, as they find the formal registration process complicated and time consuming, and many cannot afford the 3,800-baht (115-dollar) registration.<sup>14</sup>

6 UNDP, *International Human Development Indicators – Thailand* (webpage, n.d.). Available from: <http://hdrstats.undp.org/en/countries/profiles/THA.html>

7 World Bank, *Factsheet - Thailand* (webpage, n.d.). Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Thailand.pdf>

8 Ibid.

9 Ibid.

10 International Organization for Migration, *Thailand Migration Report 2011*, (Bangkok, 2011), p. 12. Available from: [www.un.or.th/documents/TMR-2011.pdf](http://www.un.or.th/documents/TMR-2011.pdf)

11 Dr Chanvit Tharathep, Senior advisor to the Ministry of Public Health, *Migrants Health in Thailand*, (n.p., n.d.). Available from: [www.gfmd.org/documents/switzerland/moldova/gfmd\\_swiss11\\_moldova\\_presentation\\_s3-03b-Thailand-Tharathep.pdf](http://www.gfmd.org/documents/switzerland/moldova/gfmd_swiss11_moldova_presentation_s3-03b-Thailand-Tharathep.pdf)

12 US State Department, *Human Rights Report 2011 – Thailand* (2011), p. 54. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

13 International Organization for Migration, *Thailand Migration Report 2011*, p. xii.

14 Committee For Asian Women (CAW), *Thailand: the Tribulation of Migrant Workers*, (Bangkok, 13 December 2011). Available from: [www.cawinfo.org/wordpress/?page\\_id=16#intro](http://www.cawinfo.org/wordpress/?page_id=16#intro)

The Government has attempted to improve this situation and facilitate legal status for migrants by: establishing one-stop service centres in Bangkok and 16 provinces; operating a migrant worker hotline; distributing pamphlets on migrants' rights, and providing information through a website in Thai and other languages.<sup>15</sup> The Government also held new rounds of registration in 2011 and 2012 to give irregular migrant workers renewed opportunities to regularize their status.<sup>16</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Thailand has ratified or acceded to eight of the nine core international human rights treaties. It has yet to accede to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). Thailand acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985 and its Optional Protocol in 2000. In 2006, the CEDAW Committee urged Thailand to withdraw its reservation to article 16 of the CEDAW, as it was contrary to the object and purpose of the Convention. In response, on 18 July 2012, the Government withdrew the reservation.

In its 2006 Concluding Observations the CEDAW Committee expressed appreciation for Thailand's commitment to gender equality. It noted in particular (1) the assignment of a high-ranking official as Chief Gender Equality Officer and the appointment of a Gender Focal Point to promote gender equality in every ministry and department, and (2) temporary special measures taken to achieve gender balance in the National Human Rights Commission and the Village and Urban Fund Committee. Greater respect for the protection and promotion of women's human rights in Thailand can also be seen in recent legal frameworks for gender equality. For example: the 2007 Constitution of Thailand guarantees equal rights and protection between women and men; the Name Act was amended to allow women the right to choose a family name; the Penal Code has been amended to criminalize marital rape; the Civil Code now provides women and men equal grounds for divorce; the 2007 Protection of Victims of Domestic Violence Act provides for protection and rehabilitation of victims; the Prevention and Suppression of Human trafficking Act was passed in 2008; and drafts of the Promotion of Opportunity and Equality Act are being reviewed and pending submission for review by the Parliament. Despite this progress, gender inequalities remain, particularly among certain groups of women including Muslim women in the deep South, the hill tribe women in the North, HIV positive women, women with disabilities and migrant women workers.<sup>17</sup>

Human Rights Watch has documented the abuses suffered by migrants, including migrant women, in the workplace. According to its 2010 report *From the Crocodile to the Tiger: Abuse of Migrant Workers in Thailand*, "workers who sought to organize and collectively assert their rights were subject to intimidation and threats by their employers, and retaliation if they filed grievances with Thai authorities. Both registered and unregistered migrant workers complained

15 US State Department, *Human Rights Report 2011*, p. 54.

16 International Organization for Migration, *Thailand Migration Report 2011*, p. xii.

17 Available from: [www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf](http://www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf)

of physical and verbal abuse, forced overtime and lack of holiday time off, poor wages and dangerous working conditions, and unexplained and illegal deductions from their salary. When migrant workers miss a day or more of work, they often forfeit whatever outstanding wages are owed them. And migrant workers who might complain of mistreatment must always be on guard against employers who would take advantage of their lack of citizenship by calling immigration officials, police, and even well connected thugs who act with impunity.”<sup>18</sup>

## C. KEY STAKEHOLDERS

**The Ministry of Labour (MoL)** is responsible for the oversight of labour administration and protection, skill development, and the promotion of employment. Under the MoL is the Department of Employment whose Office of Foreign Workers Administration oversees and monitors foreign workers in Thailand.<sup>19</sup> The Overseas Employment Administration Office is part of the Department of Employment and is responsible for providing overseas employment opportunities for Thai workers free of charge and assists overseas employers with hiring workers from Thailand.

**The National Human Rights Commission (NHRC) of Thailand** is mandated with: examining allegations of human rights violations and proposing remedial measures; submitting annual reports on the human rights situation to the government; proposing revisions of laws, rules or regulations to promote and protect human rights; disseminating information and promoting education and research in human rights; cooperating and coordinating with government agencies, non-governmental organizations (NGOs) and other human rights organizations; and submitting cases to court regarding human rights violations.<sup>20</sup>

**Migrant Assistance programme (MAP)** works to empower migrant communities from Myanmar living and working in Thailand. MAP’s programmes include initiatives focused on community health and empowerment and labour rights. MAP also provides information to migrant parents on how to register the birth of their children and assists in contacting relevant authorities and providing translation and facilitation for the parents.<sup>21</sup>

**December 18** is a Thai-based NGO that functions as an international resource centre on the human rights of migrant workers. In 2006, it launched Radio 1812, a global radio marathon that takes place in the context of International Migrants Day and brings the stories and experiences from migrants to radio audiences across the world. In 2008, 175 radio stations from 48 countries in all world regions took part in the event.<sup>22</sup>

18 Human Rights Watch, *From the Crocodile to the Tiger: Abuse of Migrant Workers in Thailand*, (n.p, February 2010), p. 3. Available from: [www.hrw.org/reports/2010/02/23/tiger-crocodile](http://www.hrw.org/reports/2010/02/23/tiger-crocodile)

19 Thailand, Ministry of Labour, Department of Employment, Office of Foreign Workers Administration, *Working of Alien Act*, (BE 2551/2008). Available from: <http://wp.doe.go.th/sites/eng/index.html>

20 Available from: [www.nhrc.or.th/2012/wb/en/contentpage.php?id=2&menu\\_id=1&groupID=1&subID=2](http://www.nhrc.or.th/2012/wb/en/contentpage.php?id=2&menu_id=1&groupID=1&subID=2)

21 Available from: [www.mapfoundationcm.org/eng/index.php?option=com\\_content&view=article&id=22&Itemid=5](http://www.mapfoundationcm.org/eng/index.php?option=com_content&view=article&id=22&Itemid=5)

22 Available from: [www.december18.net/history-and-achievements](http://www.december18.net/history-and-achievements)

**CARAM Asia** is a regional network concentrating on migration and health issues, with members spread across South-East Asia, North-East Asia, the Gulf and Middle East. Its main focuses are Participatory Action Research (PAR), national and regional advocacy, coalition building, and capacity building for CBOs and NGOs working with migrant communities. CARAM Asia has Special Consultative Status with the Economic and Social Council of the United Nations.

**The Mekong Migration Network**, with offices in Hong Kong and Chiang Mai, Thailand, monitors policies, issues and responses concerning migration in the Mekong region, and serves as a venue where migrant advocates can effectively exchange information and analysis.

**Action Network for Migrants (ANM)** is a network of non-governmental organizations in Thailand that work with Burmese, Lao and Cambodian migrants. ANM serves as a watchdog and advocacy organization to improve the rights, working conditions, and health of documented and undocumented migrants. ANM organizations have partnered in contributing to legal victories for migrant factory labourers as well as representing migrant interests at conferences and policy discussions.

**The Labour Rights Promotion Network (LPN)** is a grassroots organization founded in 2006 to promote the integration of migrant workers and their families into Thai society. LPN works to develop mechanisms for protection of rights and redress for victims of violations, build capacity among migrant worker networks, and promote education among migrant workers and their families, including the right to health, safe work, education and social services.

**The State Enterprise Workers' Relation Confederation** is a confederation of 43 state enterprise unions in Thailand representing over 170,000 members and affiliated with the International Trade Union Confederation (ITUC). It has been a strong advocate of migrant workers' rights and has filed a petition before the International Labour Organization's (ILO) Committee on Experts in the Application of Standards regarding discriminatory treatment of migrant workers in Thailand, particularly in respect of denial of access to the Workers Compensation Fund.

## D. RATIFICATION RECORD

The following table illustrates Thailand's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	9 August 1985 a
ICCPR	29 October 1996 a
ICESCR	5 September 1999 a

ICERD	28 January 2003 a
ILO C29 Forced or Compulsory Labour	26 February 1969
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	8 February 1999
ILO C105 Abolition of Forced Labour	2 February 1969
ILO C111 Discrimination in Employment	-
ILO C138 Minimum Age for Admission to Employment	11 May 2004
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour	16 February 2001

## E. COMPLIANCE WITH CEDAW

In its 2006 Concluding Observations, the CEDAW Committee commended Thailand for its efforts to implement the CEDAW and the Beijing Platform for Action. The Committee specifically expressed its appreciation of Thailand's efforts to integrate the standards of the Convention into domestic laws and policies in areas related to trafficking, prostitution, nationality, employment, and education. The Committee also noted, however, that while these efforts have increased gender equality in the country, more work still must be done to counteract the prevalence of traditional, discriminatory attitudes toward women and the under-representation of women in politics and decision-making structures, including the judiciary. The Committee recommended that sensitization programmes should be implemented, and school curricula revised, in order to promote gender-progressive views and actions. The Committee also urged the Government to enact specific anti-discrimination legislation to allow women to vindicate the right to equality as guaranteed in both the Thai Constitution and CEDAW.

## DISCRIMINATION

The 2007 Constitution (article 30) provides that all persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability,

physical or health condition, personal status, economic or social standing, religious belief, education or political view, shall not be permitted. While article 30 guarantees equal rights between men and women and prohibits discrimination, it does not explicitly define discrimination against women in accordance with article 1 of the CEDAW, which prohibits both direct and indirect discrimination and guarantees substantive equality for women.<sup>23</sup>

The CEDAW Committee has criticized Thailand for the lack of an adequate definition of discrimination in legislation. To address this, Thailand has drafted a gender equality law, titled the Promotion of Opportunity and Gender Equality Act, which is meant to elaborate upon the Thai Constitution's provisions on gender equality. The draft law establishes a legal framework for advancing equal opportunities and eradicating gender discrimination in the public and private sectors. The law is an example of a good practice in that it explicitly extends the meaning of discrimination to indirect as well as direct discrimination. However, the law does not explicitly define the breadth of the anti-discrimination provision, and does not expressly guarantee "substantive equality," or equality of results – one of the core principles of the CEDAW. As the CEDAW Committee has noted, "[a] guarantee of substantive equality is critical in order to address the structural discrimination embedded in institutions as a result of past discrimination."<sup>24</sup>

In its Concluding Observations the CEDAW Committee also expressed concern at the prevalence of stereotypical attitudes about the role and responsibilities of women and men in family life and in Thai society. The Committee noted that, "such stereotypes undermine women's social status, present a significant impediment to the implementation of the Convention, and are a root cause of the disadvantaged position of women in a number of areas, including the labour market and in political and public life."<sup>25</sup> The CEDAW Committee has encouraged States Parties to ensure that the media promotes gender equality and projects positive images of women. However, Thailand's draft gender equality law does not incorporate any provisions regarding the role of the media.<sup>26</sup>

Thailand's labour laws and policies discriminate against women migrant workers in a number of ways. Specifically, while the Thai Labour Protection Act 1998 and amendment of 2007 require equal treatment of all employees, including migrant workers irrespective of their legal status, domestic workers are excluded from many provisions of the act, including provisions on: the maximum number of hours worked each day; maternity leave; prohibitions on termination due to pregnancy; and minimum wages. This has a discriminatory impact because the vast majority of domestic workers in Thailand are women.<sup>27</sup> In a recent positive move however, the Labour Ministry did enact new regulations ensuring that domestic workers receive at least one day off each week, and overtime pay for work on days off or national holidays. Employers must now also pay domestic workers' wages during sick leave.<sup>28</sup> This is an example of a good

23 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Thailand* (CEDAW/C/THA/CO/5) (Thirty-fourth session, 2006). Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

24 UNIFEM, *Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries*, (March 2010), pp. 3-4. Available from: [http://cedaw-seasia.org/docs/Aw\\_GEL\\_incover050609Feb10.pdf](http://cedaw-seasia.org/docs/Aw_GEL_incover050609Feb10.pdf)

25 CEDAW Committee, *Concluding Observations*, para. 25.

26 UNIFEM, *Gender Equality Laws*, p. 5.

27 International Labour Organization, *Domestic Workers in Thailand: their situation, challenges, and the way forward* (n.p., January 2010), pp. 22-26. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_120274.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_120274.pdf)

28 Opinion piece, "Domestics get a break", *Bangkok Post*, 14 November 2012. Available from: <http://bangkokpost.com/opinion/opinion/320278/domestic-help-given-a-break>

gender-sensitive rights-based practice in line with article 11 of the CEDAW, which ensures women equal remuneration, including benefits, and the right to equal treatment with respect to work of equal value.

Additionally, proposed Ministry of Labour regulations require all migrant women who become pregnant to leave their job and return to their country of origin to give birth. This regulation is discriminatory as it deprives migrant women of equal work opportunities and income. Because migrant women often are not able to access adequate reproductive health services, the rule may also cause women to undertake unsafe abortions in order to keep their job, which can cause serious injury, disability or death. In recognition of the discriminatory effect this type of regulation has on women, the CEDAW Committee has called upon States Parties to lift bans that prohibit women migrant workers from getting pregnant.<sup>29</sup> In response to harsh criticism, the Department of Employment recently proposed amending this regulation to allow pregnant migrant workers to remain in their jobs and give birth in Thailand. However, it is unclear when the change will be put into practice.<sup>30</sup>

CEDAW article 11 guarantees women the right to all the same employment benefits and conditions as men, and requires States Parties to take all appropriate measures to ensure women job security on an equal basis with men. Thus, domestic workers must be afforded the same protections under the labour laws as other occupations, and migrant women cannot be dismissed from jobs due to pregnancy.

## POLICY MEASURES

Thailand has enacted several policies related to migrant labour, including a registration process and amnesties to “regularize” workers from Cambodia, Myanmar and the Lao PDR. The Government has also made efforts to better facilitate the legal import of migrant workers from neighbouring countries in order to respond to the low-skilled labour needs of employers in Thailand. One think tank has described the efforts to register migrants with “irregular” status in Thailand as commendable “as one potential means to address systematic exploitation of migrant workers in Thailand. The Government’s moves forward in terms of prioritising legal worker import and nationality verification can likewise be praised as potential ways to ensure regularised migration and provide migrants with a stronger status that can empower them to demand rights and better treatment at the hands of their employers”.<sup>31</sup>

Other policies and programmes designed to protect migrant workers have included:

- Providing interpreters in the areas of the country that hire large numbers of migrant workers;

29 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), para. 26(a). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

30 *The Nation*, “Government to Allow Pregnant Migrant Workers to Give Birth Here”, Bangkok, 24 July 2012. Available from: [www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html](http://www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html)

31 Andy Hall, Mahidol Migration centre, *Low Skilled Migration and Thailand: Prospects for 2011*, (Bangkok, 1 July 2011), p. 5. Available from: [www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC\\_3\\_DGD2011.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC_3_DGD2011.pdf)

- Coordinating with embassies to help migrant workers file cases against abusive employers;
- Producing and distributing pamphlets for migrant workers about their basic rights under the Labour Protection Act in origin-country languages;
- Using various media to provide information to employers and migrant workers about legal issues and places for assistance when their rights have been violated;
- Organizing special labour inspections at businesses to protect migrant workers in Bangkok and nearby provinces;
- Providing legal services and receiving complaints through the 24-hour telephone hotline; and
- Providing assistance and welfare to migrant workers who have been deceived with cooperation from the Ministry of Social Development and Human Security.<sup>32</sup>

These are good rights-based policies as they aim to protect migrant workers' rights to information, safe workplaces, access to justice and redress. However despite these efforts, women migrant workers in Thailand continue to be vulnerable to discrimination, exploitation, abuse and trafficking.<sup>33</sup> To remedy these problems and better comply with obligations under the CEDAW, the Government must enact a long-term migration policy that promotes and protects the human rights of women migrant workers, and better recognizes their contribution to Thai society. Specifically, policies must increase migrant women's awareness of their rights and better enable them to avail themselves of redress mechanisms in the event of abuse. Additionally, gender-sensitive policies should aim to improve the social status of women and combat gender biases that result in migrant women working in mainly stereotypical female jobs such as domestic work, which is largely exempt from legal protection.

## TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Thailand is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. Most Thai victims abroad are sex-trafficking victims who migrated for legitimate employment but were deceived into paying high recruitment fees and incurring large debts, which made them susceptible to exploitation at their destination. As a result, the CEDAW Committee has called upon Thailand to address the root cause of trafficking by increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as measures for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking.<sup>34</sup>

There are also tens of thousands of foreign victims from neighbouring countries who have been trafficked into Thailand and forced, coerced, or defrauded into labour or commercial sexual exploitation. As a result, Thailand has been placed on the US State Department's Tier-2 Watch List for a third consecutive year. However, "it was granted a waiver from an otherwise

32 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment (2005)*, p. 47. Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

33 International Organization for Migration, *Thailand Migration Report 2011*, pp. 114-5.

34 CEDAW Committee, *Concluding Observations*, para. 28.

required downgrade to Tier 3 because the Government has a written plan, that, if implemented, would constitute making significant efforts to meet minimum standards for the elimination of trafficking and is devoting significant resources to that plan.”<sup>35</sup>

The TIP Report notes that foreign migrants in Thailand, most of whom work in fishing-related industries, low-end garment production, factories, and domestic work, are particularly at risk of being trafficked because unscrupulous employers withhold their travel documents, migrant registration cards, and work permits. Undocumented migrants are even more at risk “due to their economic status, education level, language barriers, and lack of knowledge of Thai law.” According to the Report, Thailand’s migrant labour policies increase migrants vulnerability to trafficking and create disincentives for victims to communicate with authorities, particularly undocumented workers. Additionally, “direct involvement in and facilitation of human trafficking by law enforcement officials reportedly remain a significant problem.”<sup>36</sup>

The UN Special Rapporteur on Trafficking in Persons visited Thailand in August, 2011 and also noted Thailand’s “weak enforcement of its anti-trafficking framework, inadequate efforts to address trafficking of men, endemic corruption among law enforcement officials, and a systemic failure to properly identify victims and protect their rights and safety.”<sup>37</sup>

## PROSECUTION

In its 2006 Concluding Observations, the CEDAW Committee remained concerned about the persistence of trafficking and exploitation of women and girls in Thailand and the continuing phenomenon of sex tourism in the country. Subsequently, in 2008, Thailand enacted the Anti-Trafficking in Persons Act, which prohibits all forms of trafficking and prescribes penalties ranging from four to 10 years’ imprisonment. With the passage of the Act Thailand brought its law into compliance with international standards including Article 6 of the CEDAW, which obligates States parties to “take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”

Weak enforcement of the law, however, remains a major problem. For example, in cases of labour exploitation of migrants, the Government often facilitates informal dispute resolution rather than criminally prosecuting employers who have violated the law.<sup>38</sup> Additionally, corruption among Thai law-enforcement personnel allows human trafficking to prosper. Women and girls from the Lao PDR, Myanmar, Cambodia, China, Central Asia and eastern Europe who have been trafficked into Thailand to work in commercial sex venues report having their earnings withheld, being forced to provide sexual services to local police and authorities without payment and being subjected to physical abuse.<sup>39</sup> According to the TIP

35 US State Department, *Trafficking in Persons Report 2012 – Thailand* (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/), p. 338.

36 *Ibid.*, p. 339.

37 *Ibid.*

38 *Ibid.*, p. 339.

39 Asia Regional Trafficking in Persons Project (ARTIP), *Trafficking in Persons and the Criminal Justice Sector: Country profiles*, (webpage, n.d.). Available from: [www.artipproject.org/artip-tip-cjs/tip-country-profiles.html](http://www.artipproject.org/artip-tip-cjs/tip-country-profiles.html)

Report, there are “credible reports that officials protected brothels, other commercial sex venues, and seafood and sweatshop facilities from raids and inspections, and that some officials engaged in commercial sex acts with child trafficking victims.”<sup>40</sup>

## PROTECTION

Thai law protects trafficking victims from being prosecuted for acts committed as a result of being trafficked, and the Government has developed screening procedures to help officials identify victims among vulnerable populations, including undocumented migrants in detention. However, according to the TIP report “serious deficiencies in the government’s victim identification efforts” lead to trafficking victims being unidentified. For example, only 56 victims of trafficking were identified among the thousands of undocumented migrants deported in 2011. The Report surmises that front-line officials are not adequately trained to identify victims, and distrust of officials and a fear of negative legal consequences stop many victims from coming forward.<sup>41</sup> When victims are properly identified they are referred to one of nine regional shelters run by the Ministry of Social Development and Human Security (MSDHS), where they are meant to receive counselling, legal assistance, and medical care. However, according to the TIP Report, the shelters do not always have the human resource capacity to provide adequate assistance.<sup>42</sup>

On a positive note, the Ministries of Labour and Interior issued regulations in 2011 that allow some foreign victims who initiate legal proceeding against their traffickers the right to a six-month work permit and visa, which is renewable for the duration of their court case. This is a good rights-based practice that will provide incentives for more victims to cooperate with officials in prosecuting traffickers. Unfortunately however, as the TIP Report noted, “high legal costs, language, bureaucratic, and immigration barriers, fear of retribution by traffickers, distrust of Thai officials, slow legal processes, and the financial needs of victims effectively prevented most victims from participating in the Thai legal process.”<sup>43</sup>

## PREVENTION

The Government has made efforts to prevent human trafficking, including: awareness raising, particularly among targeted high risk industries; regular meeting of the Anti-Trafficking in Persons Committee; distribution in 2011 of 150,000 leaflets in migrant workers’ languages that educate workers on their rights and their employers’ obligations to them; training of 49 translators to help respond to foreign-language queries to the anti-trafficking hotline; and adoption in March 2012 of a two-year national action plan to guide future actions.<sup>44</sup> These are

40 US State Department, *Trafficking in Persons Report 2012*, p. 339.

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

good practices that ensure women migrant workers have access to information about their rights, and mechanisms for seeking assistance when rights are violated.

Migrant worker advocates, however, have expressed concern that the government's process for registering and legalizing migrant workers may hinder efforts to prevent trafficking. Specifically, fees associated with the Nationality Verification programme, as well as costs imposed by poorly regulated and unlicensed labour brokers, may increase the vulnerability of migrant workers to trafficking and debt bondage.<sup>45</sup> Pursuant to General Recommendation 26, "States Parties must adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. They must also closely monitor recruiting agencies, and prosecute them for acts of violence, coercion, deception, or exploitation."<sup>46</sup>

## EMPLOYMENT

Thailand's strong economy, high levels of education and low levels of unemployment have made it increasingly difficult for employers to recruit Thai nationals into low-wage, labour-intensive work. This combined with the fact that wages in neighbouring countries are significantly lower, has encouraged millions of people from Myanmar, Cambodia and the Lao PDR to migrate to Thailand for work. According to a Human Rights Watch report, "many Thai industries such as fishing and seafood processing, construction, agriculture and animal husbandry, and manufacturing (garment, textiles and footwear) have essentially become dependent on documented and undocumented migrant as the core of their workforce."<sup>47</sup> Despite the fact that these low-cost workers help support Thailand's growing economy, migrant workers are often viewed as a threat to Thai communities, the interests of Thai workers and national sovereignty. This view has shaped government policies on migration, which many argue violate migrant workers human rights.<sup>48</sup>

Employment of foreign workers is governed by the Alien Employment Act of 2008 which limits the occupations in which foreigners can work, giving priority to Thai nationals. Foreigners wishing to work in Thailand must obtain a valid visa and a work permit from the Ministry of Labour's Department of Employment. Acknowledging that many migrants enter the country through informal channels, the Government periodically opens registration for irregular migrants from Myanmar, the Lao PDR and Cambodia, which provide migrant workers with one year of legal status in Thailand. Following registration, migrant workers and employers who wish to hire them, may seek a work permit from the Ministry of Labour. Registration opportunities for irregular migrant workers to legalize their status constitutes a good rights-based practice. However, Thailand's registration process has been criticized for being too complicated and expensive for many irregular migrants to take advantage of, who therefore remain vulnerable to the abuse and exploitation that often results from illegal

45 Ibid.

46 CEDAW Committee, *General recommendation No. 26*, para. 26(h).

47 Human Rights Watch, *From the Crocodile to the Tiger*, p. 19-20.

48 Ibid.

status.<sup>49</sup> Additionally, because those migrants who do register are compelled to remain with the employer who legally registered them, or face immediate arrest and deportation if they cannot secure new employment within seven days, many fear complaining to authorities about the abuse they endure.<sup>50</sup> In recognition of this problem, the CEDAW Committee has urged States parties to the Convention to “introduce flexibility in the process of changing employers or sponsors without deportation in cases of workers complaining of abuse.”<sup>51</sup>

All employees in Thailand, including migrant workers are covered under the 1998 Act on Labour Protection (amended in 2007). However some occupations, such as domestic workers, are excluded from certain provisions of the Act. The Labour Protection Act requires employers to ensure that all employees, including domestic workers, are provided with: advance notice of termination of contracts; transportation costs for migrant workers to return to their country of origin; protection from sexual harassment; equal pay for equal work; and payments of salaries at least once a month.

However, domestic workers are excluded from a number of protections and entitlements specified under the Labour Act, including:

- Arrangements for basic welfare services such as drinking water and toilets, as well as basic medical care for employees. It is left up to the employer whether or not to provide these services to their domestic help.
- Entitlement to minimum wage and overtime pay, and protections from wage deductions.
- Entitlements to: a maximum number of work hours per day; mandatory one day off per week; national holidays; sick leave; personal leave; maternity leave; or leave for personal development/training – all of which are provided to other employees covered under the Labour Act. Instead, work hours and leave arrangements must be agreed upon between domestic workers and their employers.
- Social security benefits.

Domestic workers make up a large percentage of women migrant workers in Thailand. According to migrant worker advocates, many of these women incur large debts to come to Thailand to work, and once they arrive are often subjected to exploitative conditions, including “having their wages withheld, being housed in unacceptable accommodation, having their freedom of movement and association restricted, being expected to fulfil unrealistic work demands and regular exposure to domestic (and often sexual) violence.”<sup>52</sup>

Thus excluding domestic workers from provisions of the Labour Law leaves women vulnerable to exploitation and abuse in the workplace and violates article 11 of the CEDAW which obligates States Parties to take all appropriate measures to eliminate discrimination in employment. In General Recommendation 26, the CEDAW Committee explicitly calls upon States Parties to the CEDAW to “ensure that constitutional and civil law, as well as labour codes provide to women migrant workers, the same rights and protection that is extended

49 Ibid.

50 Ibid.

51 CEDAW Committee, *General recommendation No. 26*, para. 26(c)(ii).

52 ARTIP, *Trafficking in Persons*.

to all workers in the country. In particular they should ensure that occupations dominated by women migrant worker such as domestic work are protected by labour laws including wage and hour regulations, health and safety codes, holiday and leave regulations.”<sup>53</sup>

## BILATERAL AGREEMENTS

In 2003, Thailand signed Memoranda of Understanding (MoUs) on Cooperation in the Employment of Workers with the Lao PDR, Cambodia and Myanmar. These were signed to better promote formal procedures for employment, improve protection of migrant workers in Thailand and undermine irregular migration.<sup>54</sup> Under the MoUs, Thailand “shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country” and that workers are “entitled to wages and other benefits due for local workers based on principles of non-discrimination and equality of sex, race and religion.”<sup>55</sup>

The creation of bilateral MoUs between countries of origin and countries of employment provides effective government-to-government channels of communication on migration, sets out methods of migration management to be jointly implemented, and guarantees migrant workers coverage under the Labour Law.<sup>56</sup> In General Recommendation 26 the CEDAW Committee encourages “States Parties who are sending, receiving and transit countries to enter into bilateral or regional agreements or memoranda of understanding protecting the rights of women migrant workers.”<sup>57</sup>

However, despite the potential benefits these MoUs have for migrants and employers, they have not been effectively implemented and regulated, which has resulted in the continuing exploitation of migrant workers in Thailand.<sup>58</sup> The Mahidol Migration centre think tank, in a 2012 report, argued that significant changes are needed, including:

- “Individuals/agents involved in the MoU process should be regulated through a transparent system of accountability, registration and supervision;
- Costs of the MoU process should be significantly reduced and Thai employers should bear financial responsibility rather than shifting the burden to workers, as required by the model employment contract;
- Effective recruitment of workers should be undertaken using public awareness raising in Myanmar and amongst existing Myanmar migrants and their communities in Thailand;
- Information campaigns for the general public and pre departure training for departing migrants should be implemented to ensure workers understand employment contract, costs and the general situation in Thailand;
- Workers’ temporary passports, Thai work permits, Myanmar national ID cards and Myanmar

53 CEDAW Committee, *General recommendation No. 26*, para. 26(b).

54 Mahidol Migration centre, *Experiences of Myanmar Migrant Workers in Thailand with the MOU Import Process*, (Bangkok, 6 May 2012), p. 3. Available from <http://oppenheimer.mcgill.ca/Experiences-of-Myanmar-Migrant>

55 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 140.

56 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

57 CEDAW Committee, *General recommendation No. 26*, para. 27(a).

58 Mahidol Migration centre, *Experiences of Myanmar Migrant Workers in Thailand*, p. 3.

labour cards should not be confiscated by anyone as these are the personal property of the worker;

- Migrants entering Thailand legally should not have their residence status tied only to one employer and they should be allowed to change employers to prevent forced labour conditions arising;
- No restrictions should be placed on the freedom of movement of migrants legally coming into Thailand;
- The MoU process should be made simpler and quicker to avoid long waiting time for migrants at borders and alternatives to using border areas only should be considered to reduce cost and distance travelled;
- All workers should be given their employment contract in a language they understand and its contents should be properly explained to them before signing;
- Myanmar should provide effective consular services to migrants in Thailand and advertise this assistance;
- Arrangements should be made between both countries to avoid multiple health checks.”<sup>59</sup>

## MINIMUM WAGE AND MINIMUM AGE

### Minimum Age

Section 44 of the Labour Protection Act prohibits employers from hiring children under the age of 15 for work, and allows only certain types of jobs for ages 15-18 years. However, poor monitoring has led to instances of both employers and employees lying about the age of migrant workers. Specifically, there have been reports of girls below the age of 15 being employed as domestic workers, and underage children working on fishing boats and in seafood processing.<sup>60</sup> Thailand is a Party to the Convention on the Rights of the Child (CRC), which recognizes the rights of children to be “protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” The CRC also obligates States Parties to “provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”<sup>61</sup> Thus, Thailand must effectively enforce minimum age laws in order to better protect migrant children, and meet its obligations under the CRC.

### Minimum Wage

The minimum wage in Thailand is determined by the National Wage Committee. In April, 2012 the Government increased the daily minimum wage to 300 baht in seven provinces including Bangkok. However, while the Thai Labour Protection Act states that all labourers,

59 Ibid.

60 Raks Thai Foundation and others, *A Joint Submission on Migrant Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review* (Bangkok, October 2011), para. 24. Available from: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS4-JointSubmission4-eng.pdf>

61 UNICEF, *Convention on the Rights of the Child*, art. 32. Available from: [www.unicef.org/crc/](http://www.unicef.org/crc/)

including migrant workers, are protected equally under the law, there are regular reports of migrants receiving considerably less than minimum wage and no overtime payment.<sup>62,63</sup> For example, in 2011, women from Myanmar working in garment factories in Mae Sot in northern Thailand reported receiving only 69 baht (2.30 dollars) for a 10- or 11-hour working day. Yet the legal minimum wage in Mae Sot at the time was 153 baht (5.10 dollars) a day.<sup>64</sup> Lack of enforcement of laws protecting migrant women workers is in violation of the CEDAW and contradicts the CEDAW Committee's General Recommendation that States Parties design monitoring systems to ensure that employers respect the rights of all migrant women workers.<sup>65</sup>

As stated earlier, domestic workers are not covered by the Labour Law and thus are not legally entitled to a minimum wage. Excluding occupations that are filled predominantly by women, such as domestic help, from minimum wage laws is discriminatory and conflicts with article 11 of the CEDAW, which requires States parties to uphold women's rights to equal remuneration in employment. In its General Recommendation 26 the CEDAW Committee notes that women migrant workers who are not protected by labour laws are even more vulnerable than local women because they have fewer options for obtaining other work, and may even become undocumented if they leave their job. Additionally, the Committee observes that "non-migrant local women workers may have some economic protection by way of family support if they are unemployed, but women migrant workers are less likely to have such protection. Women migrant workers thus face hazards on the basis of sex and gender, as well as on the basis of their migrant status."<sup>66</sup>

## REGULATION OF RECRUITMENT AGENCIES

Since 2006, recruitment agents have played an important role in the formal system of matching migrant workers from neighbouring countries with employers in Thailand. MoUs between Thailand and Myanmar, the Lao PDR, and Cambodia regulate the process of recruiting workers into Thailand and detail the various obligations of recruitment agents and employers. In March 2007 the Ministry of Labour also published and disseminated Guidelines on Procedures of Formal Recruitment 2007 to set standards of conduct for government officials with regard to the new regulations and to assist employers who want to hire formal migrants.

These efforts at formalizing the recruitment process were meant to promote the legality, safety and protection of migrant workers. However, research shows that the high cost of formal recruitment and long procedure times were major disincentives to migrating through formal channels. Additionally, limited oversight of recruitment agents allows unscrupulous actors who knowingly providing false information to migrants and charge exorbitant fees to

62 US State Department, *Human Rights Report 2011*, p. 53.

63 Raks Thai Foundation and others, *A Joint Submission*

64 War on Want, *Restricted Rights, Migrant Women Workers in Cambodia, Thailand and Malaysia*, (London, May 2012), p. 7. Available from: <http://www.waronwant.org/attachments/WOW%20Migration%20Report%20low%20res.pdf>

65 CEDAW Committee, *General recommendation No. 26*, para. 26(h).

66 *Ibid.*, para. 15.

often go unpunished.<sup>67</sup> To address this problem, in May 2011 the Ministry of Labour signed a two-year agreement to draw on ILO technical support to improve the recruitment of workers.<sup>68</sup> Enhanced regulation of recruitment agencies is in compliance with the CEDAW Committee's recommendation that States Parties "closely monitor recruiting agencies, and prosecute them for acts of violence, coercion, deception or exploitation."<sup>69</sup>

## HEALTH CARE

Government regulations require that all migrant workers applying for a work permit must undergo a physical examination including a chest x-ray, blood tests for syphilis, microfilariasis, malaria, leprosy, and other diseases, and urine tests for amphetamine use and pregnancy. Migrants are then categorized into three groups, according to test results: - (1) healthy, (2) curable, and (3) prohibited. Those who are deemed healthy or have a curable disease are granted a work permit, however all those in the prohibited category are deported. Pregnant migrants may be tested for HIV and those who test positive can receive anti-viral drugs to prevent the infection from spreading to the foetus. Those who are found to have tuberculosis or syphilis (the two most common diseases identified) are treated and followed up until the completion of their treatment. Migrants are issued a health insurance card that entitles them to benefits under the same scheme as Thai citizens, where a consultation only costs 30 baht, including outpatient and inpatient services, emergency treatment, health promotion and disease prevention, all of which is provided by contracted hospitals.<sup>70</sup>

Thailand is considered a leading country in the region in recognizing the importance of migrant workers' access to health.<sup>71</sup> The fact that Thailand does not mandate HIV testing for migrant workers is a good human rights-based practice that is respectful of migrant workers rights to privacy. Additionally, Government policies providing migrants with the same access to health care as Thai nationals complies with the CEDAW Committee's General Recommendation 26 which obligates governments to ensure health care services for women migrant workers.<sup>72</sup>

For those tests that migrant workers are required to undergo, the CEDAW Committee obligates governments to ensure confidentiality of results, provide referrals to health services, and provide linguistically and culturally appropriate pre- and post-test counselling, taking into account gender sensitivities.<sup>73</sup> The Government must also re-evaluate its policy denying migrant workers who suffer work-related injuries or illness access to the Workmen's Compensation Fund. The ILO has ruled that Thailand's denial of work-accident compensation to migrants under the fund breaches its obligations under ILO Convention 19, but registered migrants have still not been given access to the fund.<sup>74</sup>

67 International Labour Organization, *The Mekong Challenge: An Honest Broker – Improving Cross-border Recruitment Practices for the Benefit of Government, Workers and Employers*, (Geneva, 2008), p. 45.

68 US State Department, *Human Rights Report 2011*, p. 55.

69 Ibid.

70 Dr Chanvit Tharathep, *Migrants Health in Thailand*.

71 Joint United Nations Initiative on Mobility and HIV in Southeast Asia (JUNIMA), *Homepage*. Available from: [www.junima.org/?q=node/12](http://www.junima.org/?q=node/12)

72 CEDAW Committee, *General recommendation No. 26*, para. 26(i).

73 Ibid.

74 Andy Hall, Mahidol Migration centre, "Thai Health Care Leaves Migrant Workers in Cold", *Mizzima*, 30 May 2012. Available from: [www.mizzima.com/edop/commentary/7221-thai-health-care-leaves-foreign-workers-in-cold.html](http://www.mizzima.com/edop/commentary/7221-thai-health-care-leaves-foreign-workers-in-cold.html)

## EQUALITY BEFORE THE LAW

### Freedom of Association and the Right to Collective Bargaining

The 1975 Labour Relations Act and the 1998 Labour Protection Act provide for the right to organize for private sector workers. At least 10 workers in the same factory or industry are needed to form a trade union, and trade unions must be registered with the Ministry of Labour. However, article 88 of the Labour Relations Act limits the right to establish a trade union to Thai nationals. Similarly, article 100 provides that only persons with Thai nationality can be members of the union executive committee and sub-committees set out as the legal leadership of the union. As a result, migrant workers may be regular members of a trade union, but the union must be founded and led by Thais. While some registered migrants do join unions run by Thai nationals, because of language barriers and the segregation of Thai and migrant workers by industry, their numbers are low.<sup>75</sup>

In 2008, the Labour Rights Subcommittee of the National Human Rights Commission reported that, although all migrant workers are covered by Thailand's labour laws, in practice, migrant workers do not benefit from the laws' protections. Subcommittee investigations revealed that "when migrant workers appointed a representative to bargain about wages or welfare, the employers harassed them, discretely arranged for physical attacks against them, had them arrested and charged with criminal offences, and when there was bargaining taking place or a dispute within the factory, they called in the police to inspect the workplace. Those workers with migrant worker IDs would be quickly terminated, making them equivalent to persons who entered the country illegally, and the police quickly arrested and deported them — even though they have filed complaints that were in the process of being investigated or were in the courts."<sup>76</sup>

The CEDAW Committee's General Recommendation 26 urges States Parties to ensure that "constitutional and civil law, as well as labour codes provide to women migrant workers, the same rights and protection that is extended to all workers in the country including the right to organize and freely associate."<sup>77</sup> Thus, laws prohibiting migrant workers from establishing trade unions or serving as leaders within unions is discriminatory and in violation of the CEDAW.

### Freedom of Expression and Freedom of Movement

In 2006, several provinces in Thailand passed local decrees restricting migrant workers' use of mobile phones, imposing curfews, and prohibiting them from driving vehicles. These restrictions made purchasing food and accessing essential services such as health care difficult and expensive, and made migrant workers more vulnerable to violence and exploitation because they are unable to easily access assistance when needed.<sup>78</sup> As a result, in 2008 the NHRC ruled that the decrees violated the Thai Constitution of 2007 which provides that: "All persons shall be equal before the law and shall enjoy equal protection under it....

75 US State Department, *Human Rights Report 2011*, p.47.

76 Human Rights Watch, *From the Crocodile to the Tiger*, p. 81.

77 CEDAW Committee, *General recommendation No. 26*, para. 26(b).

78 Human Rights Watch, *From the Crocodile to the Tiger*, p. 31-35.

Unjust discrimination against a person on grounds of difference in origin, race, language, sex, age, physical conditions or health, economic or social status...shall not be permitted” (article 30); “A person shall enjoy the liberty to communicate with one another by lawful means” (article 36); and “A person shall enjoy the liberty of peaceful and unarmed assembly” (article 63). However, because the NHRC has no enforcement authority, provincial governors and the Ministry of Interior have ignored its ruling.<sup>79</sup> The Government must evaluate provincial decrees in areas where migrants work to ensure they comply with Thailand’s obligations to the CEDAW as well as to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which holds that no restrictions to freedom of movement may be placed on individuals on the basis of race, colour, or national origin.

To counteract the negative effect of some of the provincial policies, the Department of Land Transport issued a decision on 13 December, 2009 allowing registered migrant workers to apply for and receive ownership documents for a motorcycle.<sup>80</sup> Additionally, in March 2010, migrant workers were granted the right to obtain drivers licences.<sup>81</sup> These are positive steps that enhance the protection of migrant workers’ rights to freedom of movement and comply with the CEDAW Committees General Recommendation 26 which obligates States Parties to adopt policies and programmes with the aim of enabling women migrant workers to integrate into their new society.<sup>82</sup>

## WOMEN’S ACCESS TO JUSTICE

### Redress For Violations Of Workers’ Rights

According to sections 123 and 125 of the Labour Protection Act employees may submit complaints to labour inspection officials regarding violations of workplace laws. Employers and employees both have the right to appeal any decision made to the Labour Court. The government also operates a 24-hour telephone hotline for migrant workers who seek legal assistance and who wish to file complaints.<sup>83</sup> All migrant workers, including those who are undocumented, may file complaints under the labour, criminal and civil laws. However, undocumented workers are subject to immediate deportation once discovered, and thus they are far less likely to access formal justice mechanisms.

Both documented and undocumented migrant workers complain of impunity for employer abuses against migrants. Many migrant workers are also unaware of their rights, reflecting weaknesses in human rights education in their countries of origin, as well as a lack of information provided by the Government in the migrants’ languages about their rights under Thai law. In 2009, Human Rights Watch documented arbitrary arrests, killings, beatings, torture

79 Ibid, p. 35.

80 Human Rights and Development Foundation, UPR Submission, *Summary on Human Rights Situation of Migrant Workers in Thailand* (Bangkok, 2010), p. 3. Available from: <http://hrdfoundation.org/?p=506&lang=en>

81 Naw Noreen, “Thais Protest Burma Migrant Driving Licenses”, *Democratic Voice of Burma*, Yangon, 22 July 2010. Available from [www.dvb.no/news/thais-protest-burma-migrant-driving-licenses/10872](http://www.dvb.no/news/thais-protest-burma-migrant-driving-licenses/10872)

82 CEDAW Committee, *General recommendation No. 26*, para. 26(k).

83 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 144-145.

and systematic extortion inflicted on migrants by police and local officials with impunity. Thus, fear of retribution, unresponsive Thai justice institutions, and language barriers often leave migrants without access to redress.<sup>84</sup>

By failing to ensure that women migrant workers, both documented and undocumented, are truly able to access justice mechanisms, Thailand is not complying with the CEDAW Committee's General Recommendation 26, which obligates States Parties to ensure access to remedies when rights are violated. Additionally, with respect to undocumented workers, the CEDAW Committee counsels governments to "repeal or amend laws or practices that prevent undocumented workers from using the courts and other systems of redress. If deportation cannot be avoided, States Parties need to treat each case individually with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin".<sup>85</sup>

## F. ANALYSIS AND CONCLUSIONS

Every year tens of thousands of migrants, mostly from Cambodia, Myanmar and the Lao PDR, enter Thailand seeking work. Policies related to migration have therefore become a regular part of the Thai Government's agenda. Reports have shown that illegal migrants vastly outnumber registered migrants, a statistic which many policy-makers view as a threat to national security. Many Thais also fear that migrants are taking jobs and opportunities from local people. Therefore, much attention has been focused on implementing policies that address the issue of undocumented migrant workers. However, the Government also acknowledges that migrants are a major contributor to the country's economic growth, and has taken steps to increase their numbers in order to fill demands in various sectors and industries. This has been beneficial for Thai industries and families with two working parents who need extra help at home. Both the recognition of migrant workers' contributions, combined with significant advocacy efforts by migrant worker advocates, have pushed the Government to take a more human rights-driven approach to migrant worker protection.

The CEDAW Committee has taken note of some of these efforts particularly in relation to trafficking, noting its appreciation for the Government's formulation of a National Policy and Plan on the Prevention and Suppression of Domestic and International Trafficking and the establishment of an operation centre to prevent trafficking. Other gender-sensitive good practices that better protect the rights of migrant women that have been undertaken by the Government include:

- Ratification of 8 of the 9 core international human rights treaties, including the CEDAW, and withdrawal of reservations to article 16 of the CEDAW.
- Assignment of a high-ranking official as Chief Gender Equality Officer and the appointment of a Gender Focal Point to promote gender equality in every ministry and department.

<sup>84</sup> Human Rights Watch, *From the Crocodile to the Tiger*.

<sup>85</sup> CEDAW Committee, *General recommendation No. 26*, paras. 26(c) and (l).

- Temporary special measures taken to achieve gender balance in the the National Human Rights Commission and the Village and Urban Fund Committee.
- A drafts Promotion of Opportunity and Equality Act to promote gender equality.
- Criminalization of marital rape.
- The 2007 Protection of Victims of Domestic Violence Act, which provides for protection and rehabilitation of victims.
- Periodic registration opportunities for illegal/irregular migrant workers to apply for legal status, obtain a work permit and access social security and healthcare benefits.
- One-stop service centres in Bangkok and 16 provinces providing detailed information to migrant workers on the registration process and fees.
- Requirements that employers seeking to hire migrant domestic workers must register and ensure hiring is fully in accordance with law.
- Bilateral MoUs with several countries of origin, providing effective government-to-government channels for communication on migration issues, setting out methods of migration management to be jointly implemented, and guaranteeing women migrant workers coverage under the labour law.
- A Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong, signed by Thailand, Cambodia, China, the Lao PDR, Myanmar, and Viet Nam.
- Formulation of the National Policy and Plan on the Prevention and Suppression of Domestic and International Trafficking in Children and Women, and the establishment of the Operation Centre on Human Trafficking under the Ministry of Social Development and Human Security and the National Committee to Prevent and Suppress Human Trafficking.
- The Prevention and Suppression of Human trafficking Act, passed in 2008.
- Laws that protect trafficking victims from being prosecuted for acts committed as a result of being trafficked.
- Screening procedures to help officials identify victims among vulnerable populations, including undocumented migrants in detention.
- Regional shelters run by the MSDHS to provide counselling, legal assistance, and medical care to trafficking victims.
- Regulations issued by the Ministries of Labour and Interior in 2011 that allow some foreign victims who initiate legal proceeding against their traffickers the right to a six-month work permit and visa, renewable for the duration of their court case.
- Distribution in 2011 of 150,000 leaflets in migrant workers' languages that educate workers on their rights and their employers' obligations to them.
- Training of translators to help respond to foreign-language queries to the anti-trafficking hotline.
- Coverage of most migrant workers under the 1998 Act on Labour Protection.
- Migrants are issued a health insurance card that entitles them to the same benefits under the 30-baht health scheme as Thai citizens, including outpatient and inpatient services, emergency treatment, health promotion and disease prevention, all of which is provided by contracted hospitals.
- Pregnant HIV-positive women can get access to anti-retroviral drugs.
- The law allows migrant workers to join legally registered trade unions.
- Community radio programmemeing aimed at migrant workers, providing information in their languages about their rights, laws, regulations, and other matters.
- A 24-hour telephone hotline for migrant workers who seek legal assistance and who wish

to file complaints.

- Interpreters in the areas of the country that hire a lot of migrant workers.
- Coordination with embassies to help migrant workers file cases against abusive employers.
- The use of various media to provide information to employers and migrant workers about legal issues and places for assistance when their rights have been violated.
- The organizing of special labour inspections at businesses to protect migrant workers in Bangkok and nearby provinces.
- Decision by the Department of Land Transport to allow registered migrant workers to apply for and receive ownership documents for a motorcycle; and granting migrants the right to obtain driver's licences.

Despite these positive developments, women migrant workers in Thailand continue to suffer from discrimination based on their gender as well as their migrant status. As a result many still work long hours for poor wages, have little or no time off, are subjected to dangerous working conditions and have little access to justice mechanisms to seek redress for violations. Domestic workers receive almost no protection under the labour laws and are at the mercy of their employers for decent working conditions. Those migrant women who seek to organize and collectively assert their rights are subject to intimidation, threats and retaliation for filing grievances. Therefore, further changes must be made in the law as well as in enforcement mechanisms in order to ensure migrant women achieve substantive equality.

## G. RECOMMENDATIONS

- Accede to Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and ratify the ILO Convention on the Protection of Domestic Workers.
- Gender-sensitive policies should aim to improve the social status of women and combat gender biases that result in migrant women working in mainly stereotypical female jobs, such as domestic work, which are largely exempt from legal protections.
- Address the root cause of trafficking by increasing efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as measures for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking.
- Aggressively prosecute law enforcement officials found to be involved in human trafficking.
- Provide better oversight of employers to ensure against withholding migrant workers travel documents and work permits.
- Train front-line officials to identify trafficking victims.
- Incorporate in the Constitution or the Gender Equality Bill the full definition of discrimination, encompassing both direct and indirect discrimination in line with article 1 of CEDAW.
- Provide training for lawyers, judges and law-enforcement officers on CEDAW and the procedures under its Optional Protocol and develop the capacity of women to claim their rights.
- Ensure that occupations dominated by women migrant workers, such as domestic work, are protected by labour laws, including wage and hour regulations, health and safety

codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate.

- Amend articles 88 and 100 of the Labour Relations Act of 1975 to allow for persons of all nationalities to apply to establish a trade union and to serve as a legally recognized trade union officer, and ensure that the revised Labour Relations Act is fully in compliance with the standards set out in ILO Convention No. 87 (Freedom of Association).
- Adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers. Implement accreditation programmes to ensure good practices among recruitment agencies.
- Put in place easily accessible dispute-resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse.
- Reform the registration process to make it less complicated and less expensive for migrants.
- Ensure that workers can change employers without losing legal status and without having to obtain their first employer's permission.
- Ensure no restrictions are placed on the freedom of movement of migrants who are legally in Thailand.
- Effectively enforce minimum age laws in order to better protect migrant children.
- Effectively enforce minimum wage laws.
- Amend regulations so that migrant workers receive coverage under the Workman's Compensation Fund.
- Do not deport migrant women who become pregnant.

## REFERENCES

- Asia Pacific Forum on Women, Law and Development (2010), *The Right to Unite*, Ford Foundation/SIDA.
- Committee on the Elimination of Discrimination Against Women (2006), Concluding Comments: Thailand, CEDAW/C/THA/CO/5.
- Hall, Andy. Low Skilled Migration and Thailand: Prospects for 2011. Mahidol Migration centre, 2nd Ed., 1 July 2011. [www.migrationcenter.mahidol.ac.th](http://www.migrationcenter.mahidol.ac.th). (This section is mainly based on this article.)
- Hall, Andy. A changing migration landscape for Thailand by Andy Hall, is a foreign expert at the Mahidol Migration Centre and a Consultant to the Human Rights and Development Foundation (Source: Bangkok Post, FOREIGN LABOUR, A changing migration landscape for Thailand, 16/08/2011, Andy Hall, link)
- Human Rights Watch. From the Tiger to the Crocodile. Abuse of Migrant Workers in Thailand. 2010. [www.reliefweb.org](http://www.reliefweb.org).
- Joint Report Highlights Development Potential of Migration in Thailand, Warns of Policy Shortfall. Kritaya Aravanitkul. Towards Effective Management of Stateless Persons in Thailand. Mahidol Migration centre, 2nd Ed., 1 July 2011. [www.migrationcenter.mahidol.ac.th](http://www.migrationcenter.mahidol.ac.th).
- MAP Foundation. Migrants Movements Updated 2007-2010: 62.
- Pollock, Jackie, MAP, via email, 12/9/2011.
- Statement of Network of Migrant and Refugee Women from Burma, 8 March 2005, in MAP Update Report 2007-2010: 28.
- Supang Chantavanich and Pairin Makcharoen, Chulalongkorn University, Data on Thai Migration, Asia Pacific Migration Journal)
- Thai Government Should Revoke Policies that Discriminate Against and Violate Rights of Migrant Workers – ASEAN States Should Join Migrant Convention, 21 December 2010. [www.wordpress.com/.../thai-government](http://www.wordpress.com/.../thai-government)
- Thailand: Tribulations of Migrant Workers. [Cawinfo.org/.../Thailand-tribulation-of-migrant-workers](http://Cawinfo.org/.../Thailand-tribulation-of-migrant-workers), 13 Dec 2011.
- Thailand's Policy on private insurance scheme for migrants has no legal binding effect and evidence systematic abuse and discrimination against migrant workers in Thailand, September 22, 2011. [www.humanrights.asia/news/forwarded/AHRC-FST-048-2011](http://www.humanrights.asia/news/forwarded/AHRC-FST-048-2011).
- US Department of State, *Trafficking in Persons Report, 2011*.
- Statement of Network of Migrant and Refugee Women from Burma, 8 March 2005, in MAP Update Report 2007-2010: 28.
- Thai labour Leader Petitions ILO in Geneva, Systematic Abuse of Myanmar Migrant Workers in Thailand Breaches International Law. SERC, 13 June 2011. [Burmpartnership.org](http://Burmpartnership.org)
- The Struggle for Workers' Rights in Thailand. A Report by the Solidarity centre. [http://www.solidaritycenter.org/files/pubs\\_thailand\\_wr\\_report.pdf](http://www.solidaritycenter.org/files/pubs_thailand_wr_report.pdf)
- UNIFEM. Claim and Celebrate Women Migrants' Human Rights Through CEDAW, 2005.
- UNIFEM (2008), Legal Protection for Migrant Domestic Workers in Asia and the Arab States.
- US Department of State, Human Rights Report: Thailand, 2010; Human Rights Watch, Thailand: From the Tiger to the Crocodile – Abuse of Migrant Workers in Thailand, 2010.

## INTERNET

[http://en.wikipedia.org/wiki/Demographics\\_of\\_Thailand](http://en.wikipedia.org/wiki/Demographics_of_Thailand)  
[http://en.wikipedia.org/wiki/Human\\_rights\\_in\\_Thailand](http://en.wikipedia.org/wiki/Human_rights_in_Thailand)  
[http://en.wikipedia.org/wiki/Ministry\\_of\\_Labor\\_\(Thailand\)](http://en.wikipedia.org/wiki/Ministry_of_Labor_(Thailand))  
[http://en.wikipedia.org/wiki/Thailand#Politics\\_and\\_government](http://en.wikipedia.org/wiki/Thailand#Politics_and_government)  
<file:///E:/UN%20Women/Thailand/TIP%20Country%20Profiles.htm>  
<http://www.unhcr.org/pages/49e489646.html>. 2011 UNHCR country operations profile - Thailand  
[http://en.wikisource.org/wiki/Constitution\\_of\\_Thailand\\_\(2007\)/Chapter\\_3#](http://en.wikisource.org/wiki/Constitution_of_Thailand_(2007)/Chapter_3#)  
<http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/thailand>  
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154403.htm>  
[http://injury-work.net/Injury\\_At\\_Work/workmen-compensation-statement-state-enterprise-workers-relations-confederation/](http://injury-work.net/Injury_At_Work/workmen-compensation-statement-state-enterprise-workers-relations-confederation/)  
Workers – ASEAN States Should Join Migrant Convention. 21 Dec 2010. [www.wordpress.com](http://www.wordpress.com).  
<http://www.nationmultimedia.com/2011/05/04/opinion/Migration-management-in-Thailand-reaches-a-crossro-30154495.html>; <http://www.unhcr.org/pages/49e489646.html>

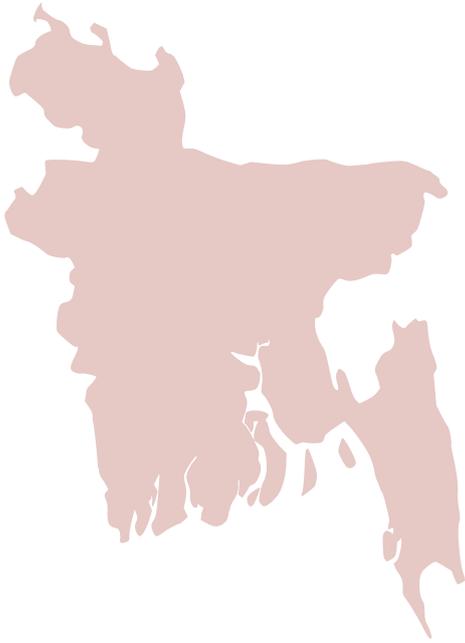


Photo credit: UN Women



SENDING COUNTRIES: SOUTH ASIA

# People's Republic of Bangladesh



## A. COUNTRY CONTEXT

Bangladesh is located in South Asia on the Bay of Bengal, and is bordered by India and Myanmar. It is one of the world's most densely populated countries, with approximately 150 million inhabitants.<sup>1</sup> 89.7 percent of Bangladeshis are Muslim, Hindus constitute 9.2 percent, Buddhists 0.7 percent and Christians 0.3 percent.<sup>2</sup> Bangladesh is a low-income country<sup>3</sup> and ranks "low" on UNDP's latest human development index.<sup>4</sup> Gross national income was placed at 770 US dollars per capita in 2010,<sup>5</sup> and approximately 40 percent of the population lives below the national poverty line.<sup>6</sup>

Bangladesh has made progress in eradicating poverty and hunger through sustained growth in its economy in recent years. This has resulted in increased life expectancy and a decrease in the fertility rate, and has put the country on track for meeting the Millennium Development Goal of halving the population under the poverty line by 2015. Despite this, unemployment and underemployment remains a serious problem, particularly among people between 15 and 25 years of age, who represent 19 percent of the population. The Government has also

- 
- 1 World Bank, *Data page – Bangladesh*. Available from: [www.worldbank.org/en/country/bangladesh/overview](http://www.worldbank.org/en/country/bangladesh/overview)
  - 2 Human Rights Watch, *Will I Get My Dues ... Before I Die?, Harm to Women from Bangladesh's Discriminatory Law on Marriage, Separation and Divorce*, (New York, 2012), p.4 .
  - 3 Available from: <http://data.worldbank.org/country/bangladesh>
  - 4 Available from: <http://hdrstats.undp.org/en/countries/profiles/BGD.html>
  - 5 Available from: <http://data.worldbank.org/country/bangladesh>
  - 6 United Nations Development programme, *A Situation Analysis Report on Poverty and Hunger (Millennium Development Goal 1), Needs Assessment and Costing 2010-2015 - Bangladesh*. Available from: [www.undp.org.bd/projects/prodocs/PRS\\_MDG/Situation%20analysis\\_poverty%20and%20Hunger.pdf](http://www.undp.org.bd/projects/prodocs/PRS_MDG/Situation%20analysis_poverty%20and%20Hunger.pdf)

acknowledged that “the challenges with regard to reducing income inequality and the low economic participation of women remain a major concern.”<sup>7</sup> The latest data, based on a 2010 labour force survey, show that total labour-force participation for women is only 36 percent.<sup>8</sup>

Bangladesh is primarily a labour-sending country. According to government estimates, the current stock of migrants from Bangladesh exceeds six million, or about 4 percent of the population. In recent years, the annual outflow of migrants has fluctuated between 200,000 and 300,000.<sup>9</sup> Overseas employment is the country’s second-largest source of income with 2009 total remittances estimated at 10 billion US dollars.<sup>10</sup> The majority of migrants (75 percent) travel to Gulf countries for work.<sup>11</sup> Because of social stigmatization and government policies that have discouraged female labour migration, women make up only a small percentage of Bangladesh’s overseas work force.<sup>12</sup> However, in 2002 and 2006, policy changes made it easier for low-skilled women to migrate, and recent figures show that currently 5.4 percent of Bangladeshis leaving the country for work are women.<sup>13</sup>

Human Development Index (2011)	Rank 146, Low human development <sup>14</sup>
Stock of migrants from Bangladesh 2010	6 million <sup>15</sup>
Share of population migrating for work	4% (2010) <sup>16</sup>
Proportion of females among immigrants	13.9% (2010) <sup>17</sup>

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Bangladesh has ratified or acceded to all nine of the core international human rights treaties, including the Convention on the protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), which it ratified in August, 2011. Bangladesh acceded to the CEDAW on 6 November 1984 but made reservations to articles 2, 13(a), and 16(1) (c) and (f), stating that these provisions conflict with Sharia law. In 1997, the Government

7 Bangladesh, Planning Commission, General Economics Division, *The Millennium Development Goals Progress Report 2011*, (Dhaka, February 2012), p.1.

8 Ibid, p. 20.

9 Maxwell Stamp Ltd, *Study on the International Demand for Semi-skilled and Skilled Bangladeshi Workers*, prepared for IOM’s TVET Reform Project, (April 2010), p. IV-V. Available from: [www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-dhaka/documents/publication/wcms\\_140660.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-dhaka/documents/publication/wcms_140660.pdf)

10 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, UN Women South Asia and the VV Giri National Labour Institute, (New Delhi, 2012). Available from: [www.unwomensouthasia.org/assets/migration\\_women\\_southasia\\_gulf.pdf](http://www.unwomensouthasia.org/assets/migration_women_southasia_gulf.pdf)

11 Ibid.

12 Bangladesh, Planning Commission, General Economics Division, *The Millennium Development Goals Progress Report 2011*, (Dhaka, February 2012), p. 42.

13 UN Women South Asia, *Empowering Women Migrant Workers in Bangladesh*.

14 Available from: <http://hdrstats.undp.org/en/countries/profiles/BGD.html>

15 Maxwell Stamp: Study, p. IV-V.

16 Ibid.

17 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, UN Women South Asia and the VV Giri National Labour Institute, (New Delhi, 2012). Available from: [www.unwomensouthasia.org/assets/migration\\_women\\_southasia\\_gulf.pdf](http://www.unwomensouthasia.org/assets/migration_women_southasia_gulf.pdf)

partially withdrew the reservations, specifically those relating to articles 13(a) and 16(1)(f).<sup>18</sup> However, Bangladesh maintains reservations to article 2, which requires governments to effectively adopt laws and policies to provide equal rights for women and men. In the CEDAW Committee's 2011 Concluding Observations, it urged Bangladesh to withdraw its remaining reservations as they are "impermissible and fundamental to implementation of all the other provisions in the Convention".<sup>19</sup>

The government has taken steps to promote respect for women's and girls' human rights. Increased government stipends to girls in rural areas, along with exemptions from tuition fees, recently helped the country to achieve gender parity in primary and secondary education at the national level. There has also been a marked increase in the number of women parliamentarians, with women being elected to 19 percent of the seats in the 2008 national election. Additionally, in 2011, Bangladesh adopted the National Policy for Women's Advancement and a series of programmes designed to empower women.<sup>20</sup>

Despite this progress, much more needs to be done to better protect and promote the rights of women. Violence against women and girls persists at an alarming rate with, Human Rights Watch repeating new cases in 2011 of "beatings, isolation, and other public humiliation of girls, all imposed following religious leaders' issuance of fatwas on issues such as talking to a man, pre-marital relations, having a child outside wedlock, and adultery."<sup>21</sup> Enforcement of the newly enacted laws against domestic violence will help to address these problems. However, there remain a significant number of discriminatory laws related to marriage, divorce, nationality, guardianship and custodial rights that must be amended or repealed before domestic legislation fully complies with obligations under the CEDAW.<sup>22</sup>

With respect to women migrants, more opportunities have opened up for Bangladeshis, as other labour-sending countries have recently tightened regulations or banned their citizens from working as domestic helpers in countries where exploitation and abuse is rife. This has resulted in an increased number of Bangladeshi women migrating for work. However, few protections are currently in place to ensure that they understand their rights as well as the risks of work abroad.<sup>23</sup>

## C. KEY STAKEHOLDERS

### **The Bangladesh Ministry of Expatriates Welfare and Overseas Employment (BMET)**

is the government agency mandated to manage the migration process, and ensure the welfare of migrant workers. Some of its duties include: undertaking initiatives to increase overseas

18 Available from: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#5](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#5)

19 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Bangladesh*, (CEDAW/C/BGD/CO/7) (Forty-eighth session, 2011) para. 11. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

20 Bangladesh, Planning Commission, General Economics Division, *The Millennium Development Goals Progress Report 2011*, (Dhaka, February 2012).

21 Human Rights Watch, *World Report 2012 – Bangladesh*, (New York, 2012). Available from: [www.hrw.org/world-report-2012/world-report-2012-bangladesh](http://www.hrw.org/world-report-2012/world-report-2012-bangladesh)

22 CEDAW: *Concluding Observations*, para. 15.

23 Human Rights Watch, *World Report 2012*.

employment; addressing complaints of Bangladeshi expats and ensuring redress; registration of recruitment agencies; enhancing the flow of remittances from overseas; and providing equal opportunity for people from all areas of the country to engage in overseas employment.<sup>24</sup>

**The Bangladesh Association of International Recruiting Agencies (BAIRA)** is an association of over 800 member agencies. Some of its main activities include: coordinating the activities of licensed recruiting agents that have been approved by the Bangladesh Government; helping agents understand Government rules and regulations regarding overseas employment; establishing liaisons with foreign missions in Bangladesh and Bangladesh embassies in other countries for the purpose of creating job opportunities for Bangladeshi citizens; establishing a training centre to assist candidates selected for employment abroad; addressing problems raised by employers about employees; and disseminating information about labour laws in receiving countries to Bangladeshi workers.<sup>25</sup> In the past, BAIRA has also been very active in lobbying the government to rescind bans on women migrating for work.<sup>26</sup>

**The Bangladeshi Ovivashi Mohila Sramik Association (BOMSA)** is a non-profit organization established in 1998 to support female migrant workers. One of its founding principles is to raise awareness among communities with high numbers of potential women migrant workers in order to decrease their risk of being exploited. BOMSA also conducts skills training for migrant workers, helps to streamline the remittance process, provides counselling to traumatized migrant women, and helps returnees to reintegrate into economic activities that ensure self-reliance.<sup>27</sup>

**The Bangladesh Women Migrants' Association (BWMA)** was established in 2002 to assist both returnee and outgoing female migrant workers. Its main aims are to: organize migrant women to achieve their targets; provide information to aspiring female migrants about the process for migrating, risks associated with migrant work, and work conditions in destination countries; provide skills training to outgoing workers and provide information regarding work possibilities upon return.<sup>28</sup>

**The Welfare Association of Repatriated Bangladeshi Employees (WARBE)** was founded in 1997 by a group of returned migrant workers – with the goal of promoting the welfare and rights of migrant workers. It has organized migrant centres in communities across the country to raise awareness about migrants' rights and provide support to returned migrants and the families of current migrants. It has also lobbied for more transparency and accountability in the wage earner welfare fund.<sup>29</sup>

24 Available from: [www.bgdportal.com/Government-Politics/Government-Ministry/Ministry-of-Expatriates-Welfare-and-Overseas-Employment/](http://www.bgdportal.com/Government-Politics/Government-Ministry/Ministry-of-Expatriates-Welfare-and-Overseas-Employment/)

25 Available from: [www.hrexport-baira.org/index.php/aims-objectives](http://www.hrexport-baira.org/index.php/aims-objectives)

26 Migrant Forum in Asia, *CEDAW and the Female Labour Migrants of Bangladesh*, (Quezon City, Philippines, 2010)

27 UNIFEM, *Good Practices from Bangladesh: NGO partnership BOMSA*. Available from: [www.migration-unifem-apas.org/docs/Good\\_practice\\_BOMSA.pdf](http://www.migration-unifem-apas.org/docs/Good_practice_BOMSA.pdf).

28 Available from: [www.samren.net/Civil\\_Society\\_Initiatives/bangladesh/Bangladesh-8.htm](http://www.samren.net/Civil_Society_Initiatives/bangladesh/Bangladesh-8.htm)

29 Nazli Kibria, *Returning International Labour Migrants from Bangladesh, The Experience and Effects of Deportation*, The Inter-University Committee on International Migration, The Rosemarie Rogers Working Paper Series, no. 28, (July 2004), pp. 8 and 9. Available from: <http://web.mit.edu/cis/www/migration/publications.html#rrwps>

**The Refugee and Migratory Movements Research Unit (RMMRU)** at Dhaka University was established as a forum for conducting research and advocacy work on behalf of migrants.<sup>30</sup> It has produced research showing that, through migration, many women are able to make positive economic and social advancements in their lives.<sup>31</sup>

## D. RATIFICATION RECORD

The following table illustrates Bangladesh's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	7 October 1998 s
CEDAW	6 November 1984 a
ICCPR	6 September 2000 a
ICESCR	5 October 1998 a
ICERD	11 June 1979 a
ILO C29 Forced or Compulsory Labour	22 June 1972
ILO C87 Freedom of Association	22 June 1972
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	22 June 1972
ILO C100 Equal Remuneration	28 January 1998
ILO C105 Abolition of Forced Labour	22 June 1972
ILO C111 Discrimination in Employment	22 June 1972
ILO C138 Minimum Age for Admission to Employment	-
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition Worst Forms of Child Labour	12 March 2001

<sup>30</sup> Ibid, p. 8

<sup>31</sup> Migrant Forum in Asia: *CEDAW and the Female Labour Migrants of Bangladesh*.

## E. COMPLIANCE WITH CEDAW ARTICLES

### DISCRIMINATION

Recent legislative reforms on violence against women, equal pay, maternity leave and parliamentary quotas have contributed to eliminating discrimination against women. Bangladesh has also made impressive gains in achieving gender parity in primary and secondary education.<sup>32</sup> These efforts have increased gender equality and are in line with the CEDAW. However, because Bangladesh's Constitution only guarantees equal rights to men and women in state and public life, but not the private sphere, women do not enjoy equal rights with men under laws governing marriage, separation/divorce, nationality, guardianship and custodial rights, and land distribution.<sup>33</sup>

These discriminatory laws and practices have widespread implications beyond family life as they limit women's access to resources, contribute to poverty and hinder women's self-determination and ability to act autonomously as equal members of society. Thus, the CEDAW Committee has called upon Bangladesh to "extend the application of the guarantees of equal rights between women and men to the private sphere in its Constitution". It also urged it to "harmonize domestic legislation with obligations under the CEDAW and enhance law reform through partnership and collaboration with religious leaders, lawyers and civil society organizations."<sup>34</sup>

Cultural biases and stigmatization also contribute to discrimination against women, and in particular limit their ability to access quality employment. Traditional notions of what constitutes appropriate women's work, means that many women are concentrated in jobs that are considered typically female. This is particularly true for women migrant workers who, because of patriarchal stereotypes casting them as docile, obedient, and willing to provide personal service, are most often employed as domestic workers, entertainers, restaurant/hotel staff, or assembly-line workers in clothing and electronics industries. Women employed in these sectors generally receive low wages and are subject to harsh conditions. They may also suffer from isolation, vulnerability, exploitation and abuse. As a result, these jobs tend to be shunned by local women.<sup>35</sup>

The CEDAW Committee has recognized Bangladesh's efforts to change stereotypical notions about women's roles in society through use of the media and other educational programmes. The Committee noted however, that despite these efforts, persistent "patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men ... continue to perpetuate discrimination against women and girls and are reflected in their disadvantageous and unequal status in many areas, including employment, decision-making, marriage and family relations, and the persistence of violence."<sup>36</sup> The

32 Organisation for Economic Co-operation and Development Development centre, *Social Institutions and Gender Index – Bangladesh* (webpage, 2012). Available from: <http://genderindex.org/>

33 CEDAW Committee, *Concluding Observations*.

34 *Ibid.*

35 Migrant Forum in Asia, *CEDAW and the Female Labour Migrants of Bangladesh*.

36 CEDAW Committee, *Concluding Observations*, para. 17.

Government should therefore amplify its efforts to challenge stereotypical attitudes that lead to gender divisions of labour, and diversify employment opportunities for women, including opportunities for working abroad.<sup>37</sup>

## POLICY MEASURES

Traditionally, women with limited skills were prohibited from migrating abroad for work. As a way of helping women lift themselves and their families out of poverty the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE) adopted new policies on female migration in 2003, allowing unskilled or semi-skilled women aged 35 years and older to migrate with special permission. The new policy also encouraged the development of training centres to teach women specialized skills such as use of domestic appliances, English and Arabic language skills, and raise awareness of their rights regarding wages, accommodation and medical services. Later, in 2006, the policy was amended to reduce the minimum age from 35 to 25 and restrictions on unmarried women were withdrawn.<sup>38</sup>

These changes were welcome, and have allowed more women to seek employment overseas. However, because many of these women have limited education and work experience, they are vulnerable to abuse. A comprehensive gender-sensitive migration policy is therefore needed that recognizes women's disadvantageous position in relation to men in the society, which is especially acute in the migration process.<sup>39</sup> The policy should ensure that pre-departure orientations, embassy and consular services and reintegration programmes are prepared to address the unique experiences of migrant women who, more often than men, are denied their basic rights, become victims of sexual harassment and physical abuse, and have little access to redress mechanisms for these violations.

Bangladesh's recently approved National Women's Development Policy 2011 (NWDP), which accords women equal political and economic rights as men, and advocates the removal of all forms discrimination against women, including discrimination against women migrant workers, is a good basis to start from in creating such a gender-sensitive policy on migration.<sup>40</sup>

## TRAFFICKING AND FORCED LABOUR

### Trafficking

Bangladesh is a source country for women subjected to forced labour and sex trafficking. According to the US State Department's 2012 Trafficking in Persons (TIP) Report, men and women in Bangladesh use recruitment agencies to migrate to Saudi Arabia, Bahrain, Kuwait, the United Arab Emirates (UAE), Qatar, the Maldives, Iraq, Iran, Lebanon, Malaysia, Singapore,

37 Migrant Forum in Asia, *CEDAW and the Female Labour Migrants of Bangladesh*.

38 *Ibid.*

39 *Ibid.*

40 Bangladesh, Ministry of Women and Children's Affairs, *National Women Development Policy 2011*, Arts. 23 and 25

Europe, and other countries for work. Some of these agencies engage in unethical practices, including charging exorbitant fees, fraudulently representing the terms and conditions of employment, and placing migrant workers in conditions of labour bondage.

## PROSECUTION

Bangladesh is a party to the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking of Women and Children for Prostitution, and in February 2012 Parliament passed the Human Trafficking Deterrence and Suppression Act, prohibiting and punishing all forms of human trafficking. Penalties for labour trafficking offense are now five to 12 years' imprisonment and fines of not less than 600 US dollars. Penalties for sex trafficking offences range from five years to the death sentence.<sup>41</sup> This new law represents a good gender-sensitive rights-based practice and addresses the CEDAW Committee's concerns, articulated in its most recent concluding observations, that Bangladesh should incorporate provisions of the SAARC into its domestic laws.

The penalties prescribed in the new law are considered to be sufficiently stringent, but to be effective the law must be adequately enforced. In the past, NGOs have alleged that members of parliament are working with corrupt recruitment agencies and brokers at the village level to facilitate fraudulent recruitment and trafficking. Despite these serious allegations, the Government has not investigated or prosecuted any officials suspected of involvement in trafficking.<sup>42</sup> Additionally, in 2011, only 14 trafficking offenders were convicted.<sup>43</sup> The CEDAW Committee has commented on this low number of convictions and called on Bangladesh to harmonize legal procedures aimed at the prosecution of traffickers.<sup>44</sup>

## PROTECTION

In 2011, the government identified 181 victims of trafficking. Although there are no shelters or services specifically for trafficking victims, the government does support nine homes, as well as a one-stop crisis centre for women victims of violence, which are open to trafficking victims. Additionally, due to the prevalence of violence against domestic workers in Saudi Arabia, the Bangladeshi Government runs a shelter for Bangladeshi female migrant workers who are fleeing abusive employers.<sup>45</sup>

While provision of shelter and support services is to be commended, there are no systematic procedures in place for identifying trafficking victims among vulnerable populations. This results in some victims being detained, fined or jailed for unlawful acts, such as illegal migration

41 US State Department, *Trafficking in Persons Report 2012 – Bangladesh*, (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

42 Ibid, p. 82.

43 Ibid, p. 82.

44 CEDAW Committee, *Concluding Observations*, para. 22b.

45 US State Department, *Trafficking in Persons Report*

or prostitution, that were committed as a result of trafficking.<sup>46</sup> To address this problem the CEDAW Committee has urged the Government to implement gender-sensitive training for the judiciary, police, border guards and social workers so that they can better identify victims and assist rather than prosecute them.<sup>47</sup>

## PREVENTION

Bangladesh's National Plan of Action for Combating Human Trafficking for 2012-2014 includes provisions for implementing the new anti-trafficking law, raising awareness about trafficking of women and children, and improving oversight of the migrant labour recruitment process.<sup>48</sup> This is a good gender-sensitive practice and addresses the CEDAW Committee's recommendation to Bangladesh that it "adopt a comprehensive action plan to address trafficking."<sup>49</sup>

## FORCED LABOUR

The Bangladeshi penal code prohibits forced or bonded labour; however, according to the US State Department's 2011 Human Rights Report for Bangladesh, the prescribed penalty of imprisonment for up to one year or a fine has not been sufficiently stringent to deter the offence, and the government has not enforced the prohibitions effectively.<sup>50</sup> Women migrant workers who use irregular channels of migration are particularly vulnerable to trafficking and forced labour. Bangladesh's lack of enforcement of its forced-labour laws is a violation of article 6 of CEDAW on trafficking which obligates States parties to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women."

## EMPLOYMENT

Pervasive under- and un-employment has contributed to mass poverty, and is "the single most critical development-retarding problem in Bangladesh," according to the Bangladesh Institute of Labour Studies (BILS)<sup>51</sup> Research by the institute has shown that approximately 80 percent of those who are employed are working in the informal sector, where labour standards are usually not recognized or followed. For those working in the formal sector things are not always much better, with widespread reports of human rights violations in the

46 Ibid.

47 CEDAW Committee, *Concluding Observations*, para. 22c.

48 US State Department: *Trafficking in Persons Report*, p. 83.

49 CEDAW Committee, *Concluding Observations*, para. 22c.

50 US State Department, *Human Rights Report 2011 – Bangladesh* (webpage, 2011). Available from: [www.state.gov/j/drl/rls/hrrpt/2011/sca/186459.htm](http://www.state.gov/j/drl/rls/hrrpt/2011/sca/186459.htm)

51 Jakir Hossain, Mostafiz Ahmed and Afriza Akter, *Bangladesh Labour Law: Reform Directions*, Bangladesh Institute of Labour Studies, Research and Advisory Team (November 2010), p. 2.

country's garment factories. Approximately 85 percent of garment workers are women who work long hours for very low wages, often in unsafe conditions. These women also face many barriers in forming unions and therefore are mostly not organized into representative bodies such as unions.<sup>52</sup>

To better regulate working conditions, the Government passed the Bangladesh Labour Law of 2006 (BLL). The BLL covers most issues related to employment including conditions of service, youth employment, maternity benefits, health and hygiene, safety, welfare, working hours and leave, wages, workers' compensation for injury, and trade unions. Specifically, workers are given a weekly day of rest and work hours are not to exceed 48 hours in one week. Overtime cannot be more than two hours per day, and must be compensated at twice the normal wage. Discrimination against women is prohibited and women receive 16 weeks maternity leave.<sup>53</sup>

Those covered by the law include any person who is employed directly or through a contractor/agency for any skilled, unskilled, physical, technical, business development or clerical job in any establishment or industry. However, the law does not cover domestic workers, agricultural workers, or workers at schools. Also, women are prohibited from working between 10:00 p.m. and 6:00 a.m. without consent, and from handling or running dangerous machines (unless they are sufficiently trained). Women are also prohibited from working underwater or underground.<sup>54</sup>

In many respects the BLL is a good example of gender-sensitive lawmaking in that it explicitly prohibits discrimination against women, requires equal pay for equal work and provides good maternity coverage. However, because the law does not cover workers in the informal sector or domestic work, where many women are employed, it increases their vulnerability to exploitation and abuse and is discriminatory. In response, the CEDAW Committee has called upon the government to "eliminate both horizontal and vertical segregation, narrow the wage gap between men and women, and apply the principles of equal remuneration and equal opportunities at work."<sup>55</sup> The CEDAW Committee also noted that gendered notions of appropriate work for women are discriminatory and "result in job opportunities that reflect familial and service functions ascribed to women or in informal jobs."<sup>56</sup> Thus the BLL's prohibitions on women working underground or underwater, running dangerous machines or working late hours are also discriminatory and contradict the CEDAW.

## REGULATION OF EMPLOYMENT AGENCIES

The Emigration Ordinance of 1982 provides for the appointment of agents in foreign countries for the purpose of safeguarding the interest of emigrants and promoting overseas employment (article 5). It also describes regulations for licensing and inspection

52 Ibid, pp. 2 – 3.

53 Ibid.

54 Ibid.

55 CEDAW Committee, *Concluding Observations*.

56 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15 2008) (Forty-second session, 2008), para. 13. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

of recruitment agencies (articles 10 and 17). It includes provisions for redress, including: the forfeiture of security deposits for misconduct by recruitment agencies, which may be paid to an affected person (article 14(2) (a)); penalties for fraudulently inducing to emigrate (article 21); penalties for charging higher than the prescribed amount of recruitment fees (article 23); and provides for the establishment of Special Courts consisting of the Chairman of a Labour Court (article 26).<sup>57</sup>

Although this ordinance contains several provisions for the protection of migrant workers, lax oversight of Bangladesh's recruiting agencies means that many are able to violate the law with impunity. According to the US State Department's 2011 TIP Report, many agencies charge recruitment fees in excess of a year's salary, and fraudulently represent the terms of employment. This practice contributes to migrants becoming victims of forced labour, including women and girls lured by promises of good jobs, who are then trafficked from Bangladesh to India, Pakistan, and other place and forced to work as prostitutes against their will.<sup>58</sup>

Legislation against abusive practices by recruitment agencies is not enough to meet CEDAW obligations to ensure substantive equality for women. If these laws are not enforced, women will continue to be discriminated against and vulnerable to abuse. To ensure substantive equality for women migrating from Bangladesh for work, the government must improve oversight of international recruiting agencies to ensure their practices comply with the law and respect the human rights of women.

## REMITTANCES

Migrant worker remittances make significant contributions to Gross Domestic Product (GDP), family welfare, education, consumer demand, and community-level development. Remittances in 2010 were 10.7 billion US dollars and contributed 13 percent of Bangladesh's GDP.<sup>59</sup> According to the World Bank, Bangladesh is one of top five remittance-receiving countries. For that reason it is important that programmes and systems are in place to facilitate remittances from migrant workers. The law in Bangladesh strictly prohibits sending remittances through informal channels. Despite this, a study by the World Bank showed that in 2005, only 46 percent of total remittances were received through banking channels. Forty percent were received through the informal hundi systems, 5 percent were delivered through friends and relatives, and the rest was delivered during visits home by migrant workers themselves.<sup>60</sup>

57 Bangladesh, *Emigration Ordinance 1982*.

58 US State Department, *Trafficking in Persons Report*, p. 81.

59 Institute for Human Rights and Business, *Bangladeshi Migrant Workers – Responsible Recruitment, Responsible Return*, (London, June 2011). Available from: [www.ihrb.org/pdf/June\\_2011\\_IHRB\\_Business\\_and\\_Migration\\_Roundtable\\_3\\_Report.pdf](http://www.ihrb.org/pdf/June_2011_IHRB_Business_and_Migration_Roundtable_3_Report.pdf)

60 Abul Kalam Azad, "Migrant Workers' Remittances: A Source of Finance for Micro-Enterprise Development in Bangladesh?", in *Remittances – Development Impact and Future Prospects*, Amuel Munzele Maimbo and Dilip Ratha, eds. (The World Bank, Washington DC, 2005), p. 126. Available from: <https://openknowledge.worldbank.org/bitstream/handle/10986/7339/32598a.pdf>

In response, Bangladesh has established special programmes to encourage remittances through official channels, and enhance the contribution to national economic development, such as: a speed case system to facilitate remittances; appointment of banking representatives in major labour-importing countries; agreements with banks in host countries; arrangements for investments in privatized industries; and special savings incentives.<sup>61</sup> The creation of such safe, legal, and inexpensive channels for women migrant workers to send remittances to their countries of origin is an example of gender-sensitive rights-based practice as their money plays a critical role in supporting families and communities by jump-starting small and medium enterprises, and promoting investment in rural areas often left behind by national development initiatives.<sup>62</sup>

## Minimum Wage

According to the International Labour Organization's (ILO) Global Wage Report 2010/2011, Bangladesh's average monthly minimum wage is 58 dollars - the lowest among all Asian countries.<sup>63</sup> This extremely low minimum wage has been a source of constant strife in the country, causing tens of thousands of workers to strike and leading to the closure of 300 clothing factories.<sup>64</sup> Commenting on these low wages, Prime Minister Sheikh Hasina has stated, "The wage the workers are paid, I will say, is not only insufficient, but also inhumane. It is simply impossible for the [garment workers] to even live from hand to mouth in the capital with the peanuts they get in wages."<sup>65</sup> The extremely low wages paid to Bangladesh's factory workers and other low-skilled jobs contravene the International Covenant on Economic, Social and Cultural Rights (ICESCR) which recognizes the right to fair wages – defined in the Covenant as 'wages that, at a minimum, provide a decent living for the worker and her family'.<sup>66</sup> The fact that Bangladesh's minimum wages are the lowest in Asia is also a driver of women migrating out of the country for work.<sup>67</sup>

## Minimum age

The Bangladesh Labour Act (BLA) provides that the minimum age to work is 14 (although a special clause states that children between the ages of 12 and 14 may be employed to do "light work" that does not endanger their health, development and education).<sup>68</sup> National legislation also prohibits women who are younger than 25 from emigrating for work.<sup>69</sup> This prohibition,

61 International Organization for Migration, *Labour Migration in Asia – Protection of Migrant Workers, Support Service and Enhancing Development Benefits*, (Geneva, 2003). Available from: [www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/labour\\_migration\\_asia.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/labour_migration_asia.pdf)

62 UNIFEM, *Good Practices to Protect Women Migrant Workers*, report from high-level government meeting of countries of employment, (2005). Available from: [www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf](http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf)

63 International Labour Organization, *Global Wage Report 2010/11: Wage policies in times of crisis* (Geneva, 2010). Available from: [www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_145265/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_145265/lang--en/index.htm)

64 BBC News Asia, "Bangladesh Pay Row shuts Ashulia Garment Factories", 17 June 2012. Available from: [www.bbc.co.uk/news/world-asia-18475788](http://www.bbc.co.uk/news/world-asia-18475788)

65 Institute for Global Labour and Human Rights, "Why is Wal-Mart blocking 35 cents an hour for Bangladeshi Workers?", (webpage, July 28, 2010). Available from: [www.globallabourrights.org/alerts?id=0176](http://www.globallabourrights.org/alerts?id=0176)

66 UNIFEM, *Human Rights Protections Applicable to Women Migrant Workers*, briefing paper (New York, 2003), p. 8. Available from: [www.unrol.org/files/HRProtectionsApplicable2WMW\\_eng.pdf](http://www.unrol.org/files/HRProtectionsApplicable2WMW_eng.pdf)

67 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, UNIFEM, (New York, 2005), p. 29. Available from: [www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

68 Abul Kalam Azad, "Migrant Workers' Remittances".

69 International Labour Organization, *Decent Work Country programme (2006 – 2009) – Bangladesh*, (Geneva, 2008), p. 9. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf)

designed to protect women, in fact violates their right to mobility, and is discriminatory since men are not subject to the same age restrictions. Additionally, rather than protecting women, such prohibitions, which do not address the root causes of exploitation and abuse, predispose women to violence, as those who must migrate choose dangerous avenues to move – driving them into the hands of traffickers.<sup>70</sup> Hence Bangladesh's age restrictions on migration should be amended to ensure compliance with article 11(1) of the CEDAW which guarantees women equal rights in employment, including the right to the same employment opportunities as men and the application of the same criteria for selection in matters of employment.<sup>71</sup>

## BILATERAL AGREEMENTS

Bangladesh has concluded bilateral labour agreements with Qatar (1988/2008), UAE (2007), Oman (2008), Republic of Korea (2007), Libya (2008), Kuwait (2000/2008), Malaysia (2003/2006), and the Maldives, and is in the process of negotiating agreements with Bahrain, Italy and Jordan.<sup>72</sup> The creation of bilateral Memorandums of Understandings (MoUs) between countries of origin and countries of employment is an example of rights-based good practice as it provides effective government-to-government migration channels, sets out methods of migration management to be jointly implemented, and guarantees women migrant workers coverage under the labour law.

The CEDAW Committee urges governments to enter into to such agreements,<sup>73</sup> as does the Global Commission on International Migration, which has stated that: "Bilateral agreements are a valuable means of addressing migration issues that affect two states. They must always respect the normative framework affecting international migrants and thereby safeguard migrant rights."<sup>74</sup> Bangladesh should continue to develop bilateral MoUs and agreements with other labour-receiving countries that are in line with international standards and contain provisions explicitly protecting women migrant workers.<sup>75</sup>

## GOOD PRACTICES FROM BANGLADESH

Since 2005, UN Women has worked with Bangladesh's Ministry of Expatriates' Welfare and Overseas Employment division to empower potential, current and returned women migrant workers and their communities. In 2009-10, UN Women assisted the Bangladesh Government in establishing its first resource centre to provide comprehensive information, resources and training to aspiring migrant women, and to conduct rehabilitation programmes for women returning from work abroad.

70 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, p. 27.

71 UNIFEM, *Human Rights Protections Applicable to Women Migrant Workers*, p. 9.

72 International Organization for Migration, *Labour migration from Colombo Process countries – Good practices, challenges and ways forward*, (Geneva, 2011). Available from: [http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=1&products\\_id=758](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=1&products_id=758).

73 CEDAW Committee, *General recommendation No. 26*, Art. 27a.

74 UNIFEM, *Good Practices to Protect Women Migrant Workers*.

75 Ibid. UNIFEM (2005), *Good Practices to Protect Women Migrant Workers*.

UN Women has also worked in tandem with the Government to train labour attachés of embassies and government officials in receiving countries to ensure they are sensitive to the needs of immigrating women. Additionally, a 26-episode programme was broadcast on national radio in local dialects, which focused on the safest ways to migrate for work. It received an overwhelming response and many aspiring women migrants called in with queries.<sup>76</sup>

BOMSA's efforts to ensure safe migration of women and reduce their vulnerabilities to trafficking also represent good practices. Some of these projects include:

- Providing skills training for thousands of female migrant workers.
- Providing pre-departure training of female migrant workers to ensure they are aware of their rights and can avail themselves of assistance if needed.
- Supporting projects aimed at streamlining remittances through official channels.
- Providing counselling for traumatized returnee female migrant workers.
- Assisting returnee women migrant workers with initiating small and medium enterprises.
- Training returnee women migrant workers in skills that allow for successful reintegration, including homestead gardening and livestock rearing.<sup>77</sup>

## EQUALITY BEFORE THE LAW

### Freedom of Movement

The notion of women migrating for work goes against Bangladesh's strict cultural restraints and traditions, which identify the public realm as a man's world and the domestic sphere as the woman's domain. Stereotypes, customs and norms, prevalent throughout Bangladeshi society, result in far fewer options, training opportunities and support services for women wishing to migrate, compared with those available to men. This denial of women's right to freedom of movement and right to choose their profession accounts for the overall low number of women migrant workers.<sup>78</sup> Consequently, the CEDAW Committee has urged the government to do more to eliminate stereotypical attitudes that constrain women's ability to freely choose where they work.<sup>79</sup>

### Women's Access To Justice

Despite traditional and cultural biases against women migrating, Bangladeshi women are increasingly being recruited as domestic workers in the Middle East and other countries, in part because other labour-sending countries are tightening regulations or imposing bans in response to widespread exploitation.

While this has opened up opportunities for women, according to Human Rights Watch, the Bangladeshi government "has failed to introduce minimum protection measures ... to ensure

<sup>76</sup> UNIFEM, *Good Practices from Bangladesh*

<sup>77</sup> *Ibid.*

<sup>78</sup> Migrant Forum in Asia, *CEDAW and the Female Labour Migrants of Bangladesh*.

<sup>79</sup> CEDAW Committee, *Concluding Observations*.

that embassies abroad are adequately equipped with labour attaches and shelters to respond to cases of abuse”.<sup>80</sup> As a result, female migrant workers subjected to illegal recruitment practices, non-payment or underpayment of wages, sexual harassment, lack of food, or denial of access to medical care are often unable to seek redress for these labour violations.

According to the US State Department, because embassies abroad are unresponsive to complaints of migrant workers, “when Bangladeshi migrant workers [have] complaints of labour and recruitment violations they most often resort to arbitration by BAIRA, which [does] not provide sufficient financial compensation and rarely address[e] the illegal activities of some BAIRA-affiliated recruitment agents.”<sup>81</sup> Failing to ensure that migrant women have adequate access to redress mechanisms is a violation of the CEDAW. In General Recommendation 26 the CEDAW Committee requires governments to “put in place easily accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse” and “ensure that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid.”

Bangladesh has set up the Wage Earners’ Welfare Fund to provide financial assistance to migrant workers facing difficulties overseas is a response to some of these problems. The Fund is based on subscriptions from the migrant workers, licenses of recruiting agencies, surcharges on the fees collected through the missions abroad and personal and institutional contributions. The ILO has described such welfare funds are considered good rights-based practice as they increase women’s access to justice and redress by providing “assistance in forced repatriation in the event of illness, violence at work, contract violation, or non-existent jobs. They can also be used for litigation in countries of employment, medical care for injured workers abandoned by their employers, and for conciliating disputes.”<sup>82</sup>

## F. ANALYSIS AND CONCLUSIONS

The Government of Bangladesh is taking steps to improve the migration process for women workers. Examples of gender-sensitive and rights-based good practices include:

- Ratification of all core international human rights instruments, including CEDAW and the Convention on the Protection of Migrant Workers.
- Partial withdrawal of reservations to CEDAW and a commitment, through the Government’s Development Plan for 2010-2021, to withdraw all remaining reservations.
- Active participation in the Colombo process, a regional consultative process on the management of overseas employment and contractual labour for countries of origins in Asia.

80 Human Rights Watch, *World Report 2012*.

81 US State Department, *Trafficking in Persons Report*, p. 83.

82 Available from: [www.pstalker.com/ilo/o-welfare.html](http://www.pstalker.com/ilo/o-welfare.html)

- Reforms to legislation on violence against women, equal pay, maternity leave and parliamentary quotas, which have contributed to eliminating discrimination against women.
- A national overseas employment policy, which is a good basis for formulation of a gender-sensitive migration policy, as recommended by the CEDAW Committee.
- Adoption of the National Women Advancement Policy in 2011, which prohibits discrimination against women and accords them equal political and economic rights to those of men, through benefits like social security, ensuring the enactment of laws to reduce violence against women, and catering to their health and nutrition needs.
- The Perspective Plan for Bangladesh (the Government's development plan for the period 2010-2020), which aims to: "give women their rightful share in skills development training both at home and abroad, and will improve professional excellence"; remove reservations to CEDAW; review all laws relating to gender inequality "to ensure gender sensitive good governance, security at home and in the workplace, the rule of law, and transparency and accountability in all public and private organizations"; and "enhance the economic participation rate of women from 29 percent to at least 40 percent by 2021".<sup>83</sup>
- Use of the media and other educational programmes to change stereotypical notions about women's roles in society.
- MoEWOE policies on female migration to teach specialized skills and rights awareness to migrant women.
- Passage of the Human Trafficking Deterrence and Suppression Act prohibiting and punishing all forms of human trafficking
- A National Plan of Action for Combating Human Trafficking for 2012-2014 providing for implementation of the new anti-trafficking law; raising awareness about trafficking of women and children; and improving oversight of the migrant labour recruitment process.
- A government-run shelter for Bangladeshi women fleeing abusive employers in Saudi Arabia.
- The Bangladesh Labour Law of 2006 that prohibits discrimination against women; requires that workers are given one day of rest per week; limits the number of hours worked per week to 48 unless overtime is paid at a rate of double the employees wage; and provides for 16 weeks of maternity leave.
- Emigration Ordinance 1982, which provides for the appointment of agents in foreign countries for the purpose of safeguarding the interest of emigrants, regulates licensing of recruitment agencies, and lays out: provisions for redress, including the forfeiture of security deposit for misconduct by recruitment agencies, which may be paid to an affected person; penalties for fraudulently inducing to emigrate; and the establishment of Special Courts consisting of the Chairman of a Labour Court.
- Bilateral labour agreements with Qatar, UAE, Oman, Republic of Korea, Libya, Kuwait, Malaysia and the Maldives, and similar agreements with Bahrain, Italy and Jordan currently under negotiation.
- Resource centres supported by the Government and UN Women that provide comprehensive information, resources and training to aspiring migrant women and conduct rehabilitation programmes for women returning from work abroad.
- Training of labour attachés of embassies and government officials in receiving countries to

83 Bangladesh, Planning Commission, General Economics Division, *Outline Perspective Plan of Bangladesh, 2010-2021* (Dhaka, 2010) p.7. Available from: [www.un-bd.org/docs/Final\\_Draft\\_OPP\\_June\\_2010.pdf](http://www.un-bd.org/docs/Final_Draft_OPP_June_2010.pdf)

ensure they are sensitive to the needs of migrant women.

- Wage Earners' Welfare Fund that provides financial assistance to women and men migrant workers facing difficulties overseas.
- Special programmes to encourage remittances through official channels, and enhance the contribution to national economic development, including a new bank dedicated to providing services for migrant workers by improving access to soft loans, improving processes for transferring remittances, improving loans after return and increasing the number of pre-departure training centres.<sup>84</sup>
- Nine government-run homes for women and children victims of violence, including trafficking, as well as a "one-stop crisis centre" for women and children in the Dhaka general hospital. These centres, in cooperation with NGOs, provide legal, medical, and psychiatric services.
- The cancellation of licences and closure of some recruiting agencies found to have engaged in fraudulent recruitment practices that potentially facilitated human trafficking.

According to the Institute for Human Rights and Business, "while many important initiatives regarding migrant worker protection are underway, these are not connected, so there is a lack of scale and limited impact."<sup>85</sup> As a consequence, women migrant workers continue to suffer from exploitation and abuse at all stages of the process including during recruitment, at work in receiving countries, and upon return to Bangladesh. Exorbitant recruitment fees, false information, lack of pre-departure training, unsuitable job skill matching, unsafe work conditions, passport retention, sexual harassment and threats of violence, and limited access to redress mechanisms are just some of the violations of human rights experienced by Bangladeshi women migrant workers.<sup>86</sup> Thus, despite many positive developments, much more must be done to better protect the rights of Bangladeshi women who chose to migrate for work.

## G. RECOMMENDATIONS

- Withdraw remaining reservations to CEDAW
- Sign all relevant international conventions on protection of migrant workers and anti-trafficking
- Ensure enforcement of the newly enacted laws against domestic violence
- Extend the application of the guarantees of equal rights between women and men to the private sphere in the Constitution, and amend or repeal discriminatory laws related to marriage, divorce, nationality, guardianship and custodial rights so that they fully comply with obligations under the CEDAW.
- Amplify efforts to challenge stereotypical attitudes that lead to gender divisions of labour, and diversify employment opportunities for women, including opportunities for working overseas.
- Enact a comprehensive gender-sensitive migration policy that ensures that pre-departure orientations, embassy and consular services and reintegration programmes are

<sup>84</sup> Institute for Human Rights and Business, *Bangladeshi Migrant Workers*, p. 13.

<sup>85</sup> *Ibid.*, p. 2.

<sup>86</sup> *Ibid.*

- prepared to address the specific experiences of migrant women.
- Better enforce laws related to prosecution of traffickers; put in place systematic procedures to identify trafficking victims among vulnerable populations; stop penalizing trafficking victims for crimes committed as a result of being trafficked; implement gender-sensitive training for judiciary, police, border guards, and social workers so that they can better identify and assist victims of trafficking.
  - Increase penalties for forced labour offences and ensure better implementation and enforcement of laws related to forced labour.
  - Ensure debt bondage is addressed by all stakeholders, including the private sector; require that all migration charges are borne by employers.
  - Amend the Bangladeshi Labour Law to cover domestic workers and those working in the informal sector; repeal discriminatory provisions limiting women from working at night, from running dangerous machines and from working underwater or underground.
  - Increase oversight of recruitment agencies to ensure they respect the human rights of women and prosecute those found in violation of the law; ensure agencies do not charge exorbitant fees, do not confiscate passports, and do not misrepresent conditions of work overseas.
  - Ensure adequate pre-departure training for women migrants that includes information about: legal rights and entitlements in countries of employment; procedures for invoking formal and informal redress mechanisms; processes by which to obtain information about employers; cultural conditions in countries of destination; stress management, first aid and emergency measures; including emergency telephone numbers of home embassy and services; information about safety in transit, including airport and airline orientations; and information on general and reproductive health, including HIV/AIDS prevention.
  - Continue to implement programmes that create safe, legal and inexpensive channels for remittances for women migrant workers.
  - Increase the minimum wage to provide workers with a decent living.
  - Remove discriminatory provisions prohibiting women under 25 from migrating abroad for domestic work.
  - Conclude bilateral agreements with all countries receiving Bangladeshi migrant labourers and ensure agreements promote respect for the rights of women migrant workers.
  - Ensure that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid; and provide for legal reviews of work contracts to ensure they are valid and protect women's rights on a basis of equality with men.
  - Ensure protocols are in place for safe repatriation of migrant workers in emergency situations.
  - Improve systems for reintegrating and rehabilitating returned women migrant workers, including comprehensive socio-economic, psychological and legal services.
  - Apply a multi-stakeholder approach to improve the protection of migrant workers' rights that involves trade unions, recruitment agents, governments, multinationals, employers, and civil society organizations.
  - Adopt a model contract between the Government and recruitment agencies.
  - Continue to train and supervise Bangladeshi diplomatic and consular staff to ensure that they fulfill their role in protecting the rights of women migrant workers abroad. Such protection should include quality support services available to women migrants, including timely provision of interpreters, medical care, counselling, legal aid, and shelter when needed.

## REFERENCES

- Annex IV.8 Compilation of Reservations to CEDAW  
Islam, Nurul. Study on Women Migrants Situation (Profile of women migrants, causes, problems & prospects of migration), Dhaka, April 2011.
- National Report submitted in accordance with paragraph 15 (A) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1 \* Bangladesh HUMAN RIGHTS COUNCIL, Working Group on the Universal Periodic Review, Fourth session, Geneva, 2-13 February 2009.
- Summary prepared by the Office of the High Commissioner on Human Rights, in accordance with paragraph 15 (C) of the annex to Human Rights Council Resolution 5/1 \* Bangladesh. Human Rights Council Working Group on the Universal Periodic Review, Fourth session, Geneva, 2-13 February 2009.
- Overcoming Barriers: Human Mobility and Development*. UNDP Human Development Report, 2009.
- The Real Wealth of Nations: Pathways of Human Development*. UNDP Human Development Report, 2010, p. 148.

## INTERNET

- <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/bangladesh>
- <http://www.bbc.co.uk/news/world-south-asia-12650940>
- CIA World Factbook
- <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/bangladesh>
- [http://www.indexmundi.com/bangladesh/labor\\_force.html](http://www.indexmundi.com/bangladesh/labor_force.html)
- <http://www.bbc.co.uk/news/world-south-asia-1265094>
- <http://www.hrw.org/world-report-2011/bangladesh>
- [http://www.ihrb.org/pdf/June\\_2011\\_IHRB\\_Business\\_and\\_Migration\\_Roundtable\\_3\\_Report.pdf](http://www.ihrb.org/pdf/June_2011_IHRB_Business_and_Migration_Roundtable_3_Report.pdf)



Photo credit: United Nations/Pranab Aich



## SENDING COUNTRIES: SOUTH ASIA

# Republic of India



## A. COUNTRY CONTEXT

India is located in South Asia between the Arabian Sea and the Bay of Bengal, and it shares borders with Pakistan, China, Nepal, Bangladesh, and Myanmar. It is the world's largest and fastest-growing democracy and the second most populous country with a population of 1.21 billion. India is a highly diverse, multilingual, and multiethnic society. Forty-one percent of Indians speak Hindi, while 14 other official languages are spoken throughout the country. Hinduism is the most widely practiced religion at 80 percent, while Muslims constitute just over 13 percent, and Christians and Sikhs 2 percent each.<sup>1</sup> India is a lower-middle-income country<sup>2</sup> and ranks medium on the UNDP's latest Human Development Index.<sup>3</sup> Gross national Income was placed at 1,410 US dollars per capita in 2011<sup>4</sup>, and 41 percent of the population lives below the international poverty line.<sup>5</sup>

Over the past decade India has experienced strong economic growth, owing largely to its service industry, which employs one-third of its work force and accounts for more than half of its output.<sup>6</sup> However, the country continues to face challenges related to widespread poverty and inequality, inadequate physical and social infrastructure, limited non-agricultural employment opportunities, insufficient access to quality basic and higher education, and rural-to-urban migration.<sup>7</sup> To address some of these issues the government has made

1 US Central Intelligence Agency, *The World Factbook 2012 – India* (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

2 Available from: <http://data.worldbank.org/country/india>

3 Available from: <http://hdrstats.undp.org/en/countries/profiles/IND.html>

4 Available from: <http://data.worldbank.org/country/india>

5 Available from: <http://hdrstats.undp.org/en/indicators/38906.html>

6 *Ibid.*

7 Available from: [http://www.indexmundi.com/india/economy\\_overview.html](http://www.indexmundi.com/india/economy_overview.html)

significant investments in initiatives to bring basic services to the poor, including elementary education, basic health care, health insurance, rural roads, and rural connectivity. The government also recently launched the National Rural Livelihoods Mission, a community-based rural poverty reduction programme that aims to reach almost a quarter of India's population.<sup>8</sup>

Human Development Index (2011)	Rank 134, Medium human development
Total migrant stock (2010) <sup>9</sup>	945,865
Immigrant share of population (2010) <sup>10</sup>	0.9%
Female migrant stock as a percentage of all international migrants (2010) <sup>11</sup>	68.2%

India is a receiving country for millions of immigrants from neighbouring countries, including Bangladesh, Nepal, Pakistan and Sri Lanka, who have migrated due to political instability their own country, or in search of better livelihoods. A large proportion of these workers are undocumented and nearly half are women.<sup>12</sup> However, India is also a major labour-sending country and is the world's largest recipient of migrant worker remittances.<sup>13</sup> According to the International Labour Organization (ILO), "migration flows from India since the 1990s have not only registered impressive growth in the traditional destinations like the United States of America, the United Kingdom, Canada and the Gulf countries, but also have diversified and expanded to newly emerging migrant destinations in continental Europe, Australasia, East Asia and South-East Asia."<sup>14</sup>

Thanks to its substantial educated English-speaking population, India has become a major exporter of information technology services and software workers to developed countries.<sup>15</sup> However, the majority of workers migrating from India are unskilled and semi-skilled labourers who have taken jobs in various Gulf Cooperation Council (GCC) countries.<sup>16</sup> This report will focus primarily on India as a labour-sending country of these workers.

8 Available from: <http://www.worldbank.org/en/country/india/overview>

9 *Migration of Women Workers from South Asia to the Gulf*, p. 75, UN Women, 2012.

10 Migration and Remittances Factbook, World Bank, Available at: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/India.pdf>

11 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, UN Women South Asia and the V.V. Giri National Labour Institute, (New Delhi, 2012), p. 75. Available from: [www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/](http://www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/)

12 UN Women, *Asia Pacific and Arab States Regional programme on Empowering Women Migrant Workers in Asia* (webpage, n.d.). Available from: [www.migration-unifem-apas.org/india/index.html](http://www.migration-unifem-apas.org/india/index.html)

13 International Labour Organization Sub-regional Office for South Asia, *Managing International Labour Migration from India: Policies and Perspectives* (Geneva, October 2008), p. iii. Available from: [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms\\_123412.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms_123412.pdf)

14 Ibid.

15 US Central Intelligence Agency, *The World Factbook 2012*

16 Available from: [http://www.colomboprocess.org/index.php?option=com\\_content&view=article&id=53&Itemid=74](http://www.colomboprocess.org/index.php?option=com_content&view=article&id=53&Itemid=74)

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

India has ratified six of the nine core international human rights treaties, including the CEDAW. It has signed but not ratified the Convention against Torture, and the Convention on Enforced Disappearance. It has neither signed nor ratified the Convention on the Protection of the Rights of All Migrant Workers. In its 2007 Concluding Observations, the CEDAW Committee noted that adherence to the major international human rights instruments “enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.” To that end, the Committee urged the Government to consider ratifying the treaties to which it is not yet a party, in particular the Convention on Migrant Workers (CMW).<sup>17</sup>

In 1993, India established the National Human Rights Commission (NHRC) to provide redress for human rights violations. The NHRC is mandated with reviewing laws for compliance with international human rights standards, and monitoring the implementation of treaties and instruments on human rights. One of the main focuses of the Commission has been to create a plan of action to prevent and combat human trafficking, placing special emphasis on women and children.<sup>18</sup>

Additionally, the Government has taken many positive steps specifically to promote and protect women’s human rights, including: amendment of the Constitution to ensure that one-third of the seats in local government are reserved for women; passage of legislation protecting women from sexual harassment in the workplace (including domestic workers); enactment of the Unorganized Worker Social Security Act (2008); drafting the Domestic Workers Welfare and Social Security Act (2010); proposal of an Equal Opportunity Commission Bill (2011); creation of a Working Group on Women’s Agency and Empowerment to oversee gender issues and ensure the fulfilment of women’s rights as part of the 2012-2017 national plan; 2009 amendments to the Criminal Procedure Code strengthening procedural safeguards with respect to crimes against women; and implementation of the Awareness Generation Project for Rural and Poor Women that supports campaigns to educate women about their rights and provide them with legal aid.<sup>19</sup>

Despite these efforts, persistent discrimination in education and in the workplace have resulted in lower literacy rates for women (65 percent) than men (82 percent), unemployment levels that are three times higher for young women than young men, and serious wage disparities in both formal and informal job sectors.<sup>20</sup> Rape, domestic violence, dowry-related deaths, honour killings, and sexual harassment also remain serious problems for women.<sup>21</sup> Discrimination and poverty are major factors leading Indian women to migrate for work, both within India and

17 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – India* (CEDAW/C/IND/CO/3) (Thirty-seventh session, 2007). Available from: <http://www2.ohchr.org/english/bodies/cedaw/>

18 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 48. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

19 Ibid.

20 Ibid.

21 US State Department, *Human Rights Report 2011 – India*, (2011), p. 1. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

abroad. However, during the migration process women are also vulnerable to a wide range of human rights abuses, including exploitation by recruitment firms, being forced to work long hours with no pay and few days off, and psychological, physical, and sexual abuse. Many women also become victims of trafficking and forced labour but have little access to justice mechanisms for seeking redress.<sup>22</sup>

## C. KEY STAKEHOLDERS

**The Ministry of Overseas Indian Affairs (MOIA)** is the central ministry for migration management in India. Its mission is to administer the Emigration Act of 1983, and facilitate safe and regular migration.

**The National Human Rights Commission** is an autonomous body mandated to: investigate allegations of human rights abuses; conduct legislative reviews; promote human rights awareness support efforts of NGOs focused on human rights; and recommend measures to the government for ways to improve the promotion and protection of human rights.

**The Ministry of Women and Child Development (MWCD)** is the national agency charged with promoting the social and economic empowerment of women through: cross-cutting policies and programmes; mainstreaming gender concerns; creating awareness about women's rights; and facilitating institutional and legislative support women's issues.

**The National Commission for Women (NCW)** is a statutory body mandated to: conduct gender-sensitive legislative reviews; make recommendations to the government regarding effective implementation of laws that promote and protect the rights of women; investigate complaints regarding women's deprivation of their rights; conduct studies on issues relevant to women; and advise in the planning process for socio-economic development of women.

**The National Domestic Workers Movement** has programmes in 17 states across India, and aims to legitimize both domestic work and the domestic worker at the state, national and international level. Initiatives include: efforts to organize domestic workers through training and capacity building; rights-awareness campaigns; provision of assistance to trafficked women and child domestic workers; and lobbying of government bodies and policy makers to improve justice for domestic workers.

**Ernakulam Social Service Society** is a human rights-based programme to raise awareness among rural women about their constitutional rights, promote legal literacy, enhance legal redress mechanisms, provide counseling, and support community watch programmes. It also aims to check migration by promoting homestead livelihood measures and improving the standard of living of the target population.

<sup>22</sup> Megha Shree, "Victimization of Indian Female Migrant Workers in Gulf Countries", in *Proceedings of the First International Conference of South Asian Society of Criminology and Victimology (SASCV)*, K Jaishanker and N Ronel, eds. (Tirunelveli, India, 2010). Available from: [http://www.academia.edu/990545/Victimization\\_of\\_Female\\_Indian\\_Migrant\\_Workers\\_in\\_Gulf\\_Countries](http://www.academia.edu/990545/Victimization_of_Female_Indian_Migrant_Workers_in_Gulf_Countries)

**All-India Human Rights Association (AIHRA)** is an NGO with representation in every state of India that investigates allegations of human rights abuses, provides legal services to victims, promotes human rights awareness, and advocates with the government.

**The centre for Social Research** is a non-governmental organization whose mission is to empower the women and girls of India, guarantee their fundamental rights, and increase understanding of social issues from a gender perspective.

**Shakti Shalini** is a Delhi-based NGO dedicated to advancing women's rights by fighting dowry-related crimes and domestic violence by raising public awareness and supporting a women's shelter for victims.

## D. RATIFICATION RECORD

The following table illustrates India's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	9 July 1993
ICCPR	10 Apr 1979
ICESCR	10 April 1979
ICERD	3 December 1968
CRC	11 December 1992
ILO 29 Forced or Compulsory Labour	30 November 1954
C87 Freedom of Association and Protection of the Right to Organize Convention 1948	-
ILO 97 Migration for Employment	-
ILO 98 Right to Organize and Collective Bargaining	-
ILO 105 Abolition of Forced Labour	18 May 2000
C100 Equal Remuneration Convention 1951	25 September 1958
ILO 111 Discrimination in Employment	3 June 1960
ILO 138 Minimum Age for Admission to Employment	-

ILO 143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO 181 private employment agencies	-
ILO 182 prohibition worst forms of child labour	-

## E. COMPLIANCE WITH CEDAW ARTICLES

India ratified the CEDAW in 1993, but declared it would abide by articles 5(a) and 16(1) only “in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.” Additionally, the Government noted that with regard to article 16(2), while “it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and levels of literacy.” The Government also noted that it does not consider itself bound by paragraph 1 of article 29.

In its Concluding Observations for India, the CEDAW Committee expressed concern about the Government’s policy of non-interference in the personal laws of communities (based on religious and other faith basis), noting that it not only contradicts the overall spirit and aim of the Convention, but it also contradicts India’s Constitutional guarantees of equality and non-discrimination. It thus urged the government to withdraw its reservations to articles 5(a) and 16(1) and to “proactively initiate and encourage debate within the relevant communities on gender equality and the human rights of women and, in particular, work with and support women’s groups as members of these communities so as to (a) modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women and (b) review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention”.<sup>23</sup>

## DISCRIMINATION

Discrimination in India starts at birth with cultural preferences for boys leading to selective abortions, which in 2011 resulted in only 914 girls born for every 1000 boys.<sup>24</sup> The CEDAW Committee expressed concern about the continuing deterioration in the ratio of females to males despite the fact that sex selection is prohibited by the Pre-conception and Prenatal Diagnostic Technique Act. The Committee urged the Government to take measures to effectively implement and monitor the Act, while ensuring safeguards are in place to prevent criminalization of women who are pressured into seeking sex-selective abortions.<sup>25</sup>

23 CEDAW Committee, *Concluding Observations*.

24 UN Women, *UN Women in India (n.d.)*. Available from: [www.unwomensouthasia.org/assets/unw\\_electronic.pdf](http://www.unwomensouthasia.org/assets/unw_electronic.pdf)

25 CEDAW Committee, *Concluding Observations 2007*, paras. 38-39.

The CEDAW Committee has commended India for efforts taken to eradicate discrimination against women, such as the Constitution's inclusion of the fundamental right to gender equality and non-discrimination and a specific enabling provision on affirmative action.<sup>26</sup> The Committee has also noted its appreciation for contributions made by the Supreme Court of India in this respect.<sup>27</sup> Some Supreme Court cases of particular note that have integrated CEDAW into domestic law include:<sup>28</sup>

- *Masilamani Mudliar and Others v. The Idol Swaminathaswami Thirukloi and Others* (1996) – holding that “personal laws, derived from scriptures, conferring inferior status on women are anathemas to equality.”
- *Vishaka v. State of Rajasthan* (1997) – defining sexual harassment in the same way it is defined in the CEDAW Committee's General Recommendation 19, noting that, in the absence of domestic law “to check the evils of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purposes of interpretation of the guarantee of gender equality and the right to work with human dignity.”
- *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000) – requiring that the principles contained in article 11 of the CEDAW be read into the contract of service between the employer and women employees and thus entitling the women to all the benefits of the Maternity Benefit Act.
- *Vasantha v. Union of India* (2001) – striking down provisions of the Factories Act which prohibited women from night-shift work, and providing guidelines and welfare measures for women who work at night.

These decisions are examples of gender-sensitive practices in line with article 2(c) of the CEDAW, which obligates States parties to ensure through national tribunals and other public institutions the effective protection of women against any act of discrimination.

More recently, the Government has introduced legislation to further eliminate discrimination and promote the rights of women. For example, a new law providing social security to unorganized workers was enacted in 2008 that provides health and maternity benefits, death and disability compensation, and old age protection. The vast majority of women workers in India are employed in the informal and unorganized sector.<sup>29</sup> Thus, this law is a gender-sensitive good practice that recognizes their contribution to the economy by providing them with some of the same social security protections as employees in the formal sector, most of whom are men. Such legislation is in compliance with article 11(e) of the CEDAW, which obligates States parties to ensure women have the equal right “to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work.”

Additionally, a law on Protection of Women against Sexual Harassment at the Workplace (2010) was recently cleared by the Cabinet and covers every workplace in both the organized and unorganized sector. The law provides a comprehensive definition of sexual harassment,

26 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – India* (CEDAW/C/IND/1) (Twenty-second session, 2000). Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

27 CEDAW Committee, *Concluding Observations 2000*.

28 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 38. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

29 *Ibid.*, para. 85.

stating that no woman in the workplace shall be subjected to “sexually determined behaviour, physical contact, advances, sexually coloured remarks, showing pornography, sexual demand, request for sexual favour, or any other unwelcome conduct of a sexual nature whether verbal, textual, physical, graphic or electronic or by any other actions.” The law also places an obligation on the employer to prevent sexual harassment, to provide a mechanism for redress and to assist victims in filing criminal complaints with the local police.<sup>30</sup> A joint survey by UN Women and the NGO Jagori found that 66 percent of women had been sexually harassed between two and five times in 2010. Another survey conducted in the information technology and outsourcing industry found that 88 percent of women had faced sexual harassment in the workplace.<sup>31</sup> Thus, the new law prohibiting sexual harassment is a much needed gender-sensitive good practice in line with article 11(f) of the CEDAW guaranteeing women the right to the protection of health and safety in working conditions.

Despite these initiatives, discrimination against women in employment remains rife and women are regularly paid less than men for the same job, promoted less frequently, and discriminated against in credit applications.<sup>32</sup> Statistics show that around 25-30 percent of working women in rural, and 15-18 percent in urban areas participate in the formal labour market. Most other women workers are engaged in the informal or agricultural sectors. This is largely due to entrenched stereotypes about the roles of girls and women in society. In Concluding Observations, the CEDAW Committee called upon India to “strengthen its efforts to combat the widespread acceptance of stereotypical roles of men and women and recommended that gender issues and sensitivity training be made an integral and substantive component of all teacher training.”<sup>33</sup>

## POLICY MEASURES

Recent policies initiated by the government acknowledge that women are not just equal citizens, but also agents of economic and social growth. For example the National Plan for 2007-2010 described the necessity of interventions that: “(i) provide women with basic entitlements; (ii) address the reality of globalization and its impact on women by prioritizing economic empowerment; (iii) ensure an environment free from all forms of violence against women; (iv) ensure participation and adequate representation of women at the highest policy levels, particularly in Parliament and State assemblies; and (v) strengthen existing institutional mechanisms and create new ones for gender mainstreaming and effective policy implementation.” The new 2012-2017 plan builds on these policies, placing special emphasis on strengthening the role of women in governance and their rights to participation in improving public institutions and the delivery of public services.<sup>34</sup> These are examples of good gender-sensitive rights-based policies, however in order to comply with the CEDAW Committees recommendations, the Government must ensure that it regularly conducts impact assessments of policies in order to ensure that desired goals are being met.<sup>35</sup>

30 Ibid, para. 91.

31 US State Department, *Human Rights Report 2011*, p. 41.

32 Ibid, p. 43.

33 CEDAW Committee, *Concluding Observations 2007*, para. 35.

34 India, *Draft Report to CEDAW Committee*, para. 91.

35 CEDAW Committee, *Concluding Observations 2007*, para. 15.

With respect to women who migrate abroad for work, the Emigration Act of 1983 is also an important policy measure. Section 22 of this Act requires all Indian citizens who wish to migrate for employment purposes to obtain emigration clearance from the Office of the Protector of Emigrants, Ministry of Overseas Indian Affairs, whose job it is to “examine the employment contracts to ensure that the terms and conditions are neither discriminatory nor exploitative and that the provisions for travel, wages and working and living conditions are in conformity with the prescribed norms.”<sup>36</sup> The policy also sets forth certain requirements for licensing of recruitment agencies, including setting limits on the amount of recruitment fees that may be charged to prospective workers.

Critics have noted however, that in many cases, employment contracts are not scrutinized well and there are few systems in place to monitor the working conditions of migrants in destination countries. The ILO has reported that “this is why unskilled and semi-skilled migrants, especially those working in Gulf countries, still continue to encounter problems like premature termination of job contracts, changing the clauses of contract to the disadvantage of workers, delay in payment of salaries, violation of minimum wage standards, freezing of fringe benefits and forced overtime at work without returns.” Additionally, according to the ILO, “provisions related to the ceiling fees are grossly flouted” and recruitment agencies generally charge as much as they can obtain.<sup>37</sup>

Failure of sending countries to adequately conduct legal reviews regarding the validity of work contracts, and design effective monitoring systems to ensure protection of migrant women’s rights, is in contradiction to the CEDAW Committees General Recommendation 26, which urges governments to “formulate a gender-sensitive rights-based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access for women migrant workers to work opportunities abroad, promoting safe migration and ensure the protection of the rights of women migrant workers”.<sup>38</sup> UN Women has noted this problem and commented that, while several ministries in India, including those for labour, women, and home affairs, have mandates related to women migrant workers, there is little coordination among them on how best to protect women migrants’ human rights.

## TRAFFICKING AND FORCED LABOUR

According to the US State Department’s 2012 Trafficking in Persons (TIP) Report, India is a source, destination, and transit country for women and children subjected to forced labour and sex trafficking. Ninety percent of all trafficking in India is internal and millions are subjected to forced labour, working in brick kilns, rice mills, agriculture, and embroidery factories. Physical and sexual violence, as well as debt, are used as weapons to coerce people into forced labour.<sup>39</sup>

36 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 13-14.

37 *Ibid.*, pp. 14-15.

38 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf).

39 US State Department, *Trafficking in Persons Report 2012 – India* (2012), p. 184. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

The ILO's Committee of Experts on the Application of Conventions and Recommendations in its 2010 Individual Observation concerning Forced Labour Convention, 1930 (No. 29) for India noted that despite the Bonded Labour System (Abolition) Act, 1976, some governments create obstacles to the eradication of bonded labour and continue to deny its existence. The report also stated that because many state officials have a poor understanding of the legal definition of bonded labour, and fail to compile data on forced labour, the identification and release of bonded labourers has been extremely low.<sup>40</sup>

Additionally, the TIP report notes that each year many Indians who voluntarily migrate abroad to work as domestic servants and low-skilled workers in the Middle East find themselves subjected to forced labour. This also occurs to a lesser extent to those migrating to South-East Asia, Europe, the United States, Africa and the Caribbean. Traffickers posing as legitimate labour-recruitment agencies, and high debts incurred to pay exorbitant recruitment fees are largely to blame.<sup>41</sup>

## PROSECUTION

The Indian Penal Code prohibits forced labour, and the Immoral Traffic Prevention Act (ITPA) prohibits sex trafficking. Positive enforcement measures in recent years include: the establishment of 194 Anti Human Trafficking Units (AHTUs) in police departments throughout the country; a scorecard system with AHTUs that aims to improve the availability of data on trafficking; and a dedicated federal anti-trafficking unit, established in January 2012, staffed by police officers with nationwide investigative authority.<sup>42</sup> These are good practices in line with article 6 of the CEDAW, which obligates governments to "take all appropriate measures, including legislation, to suppress all forms of traffic in women." In particular, the scorecard system complies with General Recommendation 26, which urges governments to conduct and support data collection and analysis to identify the problems and needs faced by women.<sup>43</sup>

However, according to the TIP Report the laws related to forced labour and trafficking are unevenly enforced, and official complicity in trafficking offenses remains problematic. The report notes that "corrupt law enforcement officers reportedly continue to facilitate the movement of sex trafficking victims, protect suspected traffickers and brothel keepers from enforcement of the law, and receive bribes from sex-trafficking establishments and sexual services from victims." However, few officials are ever prosecuted.<sup>44</sup> Failure to hold officials accountable for participating in the exploitation of women violates article 2(b) and (c) of the CEDAW, which obligate States parties to adopt appropriate measures, "including sanctions

40 International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning Forced Labour Convention, 1930 (No. 29) - India*, (Geneva, 2010). Available from: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_087808.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087808.pdf).

41 US State Department, *Trafficking in Persons Report 2012*, p. 184.

42 Ibid, p. 185.

43 CEDAW Committee, *General recommendation No. 26*, para. 23(b).

44 US State Department, *Trafficking in Persons Report 2012*, p. 185.

where appropriate, prohibiting all discrimination against women” and to “ensure that public authorities and institutions shall act in conformity with this obligation.”

## PROTECTION

In 2009 the Ministry of Home Affairs (MHA) worked with the UN Office on Drugs and Crime (UNODC) to develop standard operating procedures to assist in identifying trafficking victims and refer them to protection services. Additionally, the government currently funds 100 NGO-operated hotlines to assist vulnerable people including trafficking victims, and operates shelters for victims of violence. Some Indian diplomatic missions in the Middle East also run temporary shelters and provide services including medical care and legal assistance to Indian migrant workers. These are good practices in line with General Recommendation 26 which states that diplomatic services should protect the rights of women migrant workers abroad by providing quality support services including medical care and counseling, legal aid, and shelter when needed.<sup>45</sup>

The TIP report notes however, instances of trafficking victims being penalized for acts committed as a result of being trafficked, stating that “Section 8 of the ITPA (solicitation) and section 294 of the Indian Penal Code (IPC) (obscenity in public places) continued to be used to criminalize sex-trafficking victims.” Some victims have also been punished for being undocumented migrants or for document fraud.<sup>46</sup> To address this problem the Indian government is considering proposed amendments to the ITPA that will widen its scope, include a definition of trafficking in line with the UN Convention on Transnational Organised Crime (UNTOC), and provide better protection of the human rights of victims.<sup>47</sup>

## PREVENTION

Recent efforts to prevent trafficking have included public awareness-raising initiatives through radio talk shows and press conferences; safe emigration awareness campaigns; and bi-monthly ministerial meetings, including anti-trafficking officers from state governments to coordinate on trafficking prevention efforts.<sup>48</sup> Additionally, in 2007 the Government launched “Ujjawala” (A New Dawn of Light), a programme focused on the prevention of trafficking as well as the rescue, rehabilitation and re-integration of victims. In 2010-2011, 100 million rupees was budgeted for the programme and 51 new projects were initiated.<sup>49</sup> These efforts are good gender-sensitive practices in line with obligations under article 6 of the CEDAW to take all appropriate measures to suppress trafficking.

45 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

46 US State Department, *Trafficking in Persons Report 2012*, p. 185.

47 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 42.

48 US State Department, *Trafficking in Persons Report 2012*, p. 186.

49 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 43.

## EMPLOYMENT

Federal labour law in India sets health and safety standards and is applicable in all industries. The law mandates “a maximum eight-hour work day and 48-hour work week, as well as safe working conditions, which include adequate provisions for restrooms, canteens, medical facilities, ventilation, a minimum rest period of 30 minutes after every four hours of work, and premium pay for overtime. It does not mandate paid holidays and prohibits compulsory overtime.” However, laws related to wages, hours, and occupational health and safety do not apply to the informal sector, which includes domestic workers.<sup>50</sup>

Domestic workers are an important part of the service sector because by helping with household duties, they allow other women to participate in the workforce. Many poor rural women migrate internally to cities within India in order to work as domestic help. According to India’s National Commission for Women, “in the last few decades there has been a tremendous growth in the demand for domestic workers which has led to trafficking and other forms of exploitation of millions of women and children of both sexes”. However, because domestic work is part of the informal employment sector these jobs are not covered by most of the provisions of the Labour Law. The National Commission for Women also notes that thousands of placement agencies have begun operating to meet this demand, some of which exploit and traffic women but who “remain largely outside the purview of any legislative control.”<sup>51</sup>

To remedy these problems, the National Commission for Women has drafted an act specifically for domestic workers, but it has yet to be passed by Parliament. The Domestic Workers Welfare and Security Act, 2010 provides for decent working conditions: a registered contract; specified working hours; paid holidays; protection against harassment; social security and access to benefits. It demands regulation of recruitment and placement agencies and defines specific roles for all government agencies, including: the labour department; police; state advisory boards; and district boards.<sup>52</sup> Excluding occupations that are primarily filled by women from protection by the labour laws is discriminatory. This Act would, if enacted, counteract such an exclusion of domestic workers, and thus be a gender-sensitive rights-based practice in line with article 11 of the CEDAW which affords women equal rights to all the benefits and conditions of employment.

Women who leave the country for work are governed by the Emigration Act of 1983. A large percentage of these women also are engaged in domestic service in Gulf countries. Similarly to women domestic workers in India, many of these women suffer from poor living and working conditions and exploitation by middle men and agents. In order to protect their rights, the Government has made it mandatory for female migrants who have not completed matriculation and are below 30 years of age to get emigration clearance for the Governments Protector of Emigrants (POE) prior to migration for overseas employment.<sup>53</sup> However, according to UN Women, “anecdotal evidence indicates that the provision not only restricts

50 US State Department, *Human Rights Report 2011*, p. 64.

51 India National Commission for Women, *Annual Report 2009-2010* (New Delhi, n.d.), p. 35. Available from: [http://ncw.nic.in/AnnualReports/200910/Annual\\_Report\\_2009-10\\_English\\_Full.pdf](http://ncw.nic.in/AnnualReports/200910/Annual_Report_2009-10_English_Full.pdf)

52 Ibid, Annex XII.

53 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p. 74.

the rights of women to work but also promotes unregulated migration, where female workers end up in more vulnerable situations.”<sup>54</sup>

On a positive note, however, the Government has recently introduced a compulsory insurance scheme for Indian migrant workers that is valid for the entire period of employment overseas, and has begun issuing smart cards to first-time migrant workers that contain important details related to their travel documents, work contracts, and insurance.<sup>55</sup> These are good rights-based practices in line with General Recommendation 26, which obligates governments to protect women migrants’ rights to health care and independent access to travel documents.<sup>56</sup>

## REGULATION OF EMPLOYMENT AGENCIES

Much of the focus of India’s Emigration Act 1983 is on regulating recruitment agencies. For example, it requires that in order to be licensed, a recruitment firm must demonstrate “financial soundness, trustworthiness, adequacy of premises, and experience in the field of handling manpower export”. Firms must also deposit a security bond ranging from 0.3 to 1 million rupees.<sup>57</sup> However, according to the ILO, “addressing problems encountered by migrants during the recruitment process, like overcharging and cheating by sub-agents, has taken a back seat.” Agents regularly charge migrants as much as possible, and engage in visa trading where they sell to the highest bidder. “More often than not, it is the poor migrants who consider migration as the only strategy for economic upliftment who gets trapped in such situations,” the ILO has reported.<sup>58</sup> Other problems noted by the ILO include delayed repatriation because bank guarantees that recruitment firms are required to pay are insufficient to cover the costs of repatriation, and inadequate pre-departure orientation.

The government’s failure to adequately regulate and monitor recruitment agencies results in women migrant workers being subjected to exploitation and abuse, debt bondage and trafficking, and is in violation of General Recommendation 26, which obligates governments to “design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers,” and “facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers’ awareness of potential exploitation.”<sup>59</sup>

Women and girls who migrate internally to work as domestic help within India suffer from similar problems. In major cities like Delhi, thousands of agencies operate illegally and without any oversight, which has led to many cases of abuse, trafficking, and forced labour. In a recent case, the High Court of Delhi addressed this problem, noting the lack of comprehensive legislation regulating placement agencies, and the need to better control recruitment of women and children to minimize exploitation as much as possible. To that end the Court

54 Ibid.

55 Ibid.

56 CEDAW Committee, *General recommendation No. 26*, paras. 24 (d) and (e).

57 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, p. 14.

58 Ibid, p. 15.

59 CEDAW Committee, *General recommendation No. 26*, paras. 24(b) & (c)(i).

issued guidelines for registering, regulating, monitoring and supervising the working of placement agencies that provide employment to women and minors as domestic help in Delhi (the minimum legal age for domestic service in India is 14). Specifically, the Court directed the Labour Department to:

- (a) Register all placement agencies within a finite period of time. Failure to register within that prescribed time should result in penal action;
- (b) All placement agencies located in Delhi must register, as well as any who place women and children in homes located in Delhi.
- (c) The registration information should require:
  - 1) Details of the agencies;
  - 2) Number of persons, who are employed through the agencies, their names, ages and their addresses;
  - 3) Details of salaries fixed for each person;
  - 4) Addresses of the employers;
  - 5) Period of employment;
  - 6) Nature of work;
  - 7) Details of the commissions received from the employers.
- (d) Both the Child Welfare Committee and the Delhi Commission for Women should have access to this information.<sup>60</sup>

This decision by the Court represents a gender-sensitive good practice in line with article 6 of the CEDAW obligating States parties to take all appropriate measures to suppress all forms of trafficking in women. It also complies with General Recommendation 26 which urges government to provide a list of authentic, reliable recruitment agencies and design monitoring systems to ensure agencies respect the rights of all women migrant workers.<sup>61</sup>

## MINIMUM AGE AND MINIMUM WAGE

### Minimum Age

The Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children below the age of 14 years in occupations that are hazardous to the children's lives and health, a list of which is provided in the Act. Since the passage of the Act, the list of prohibited occupations has been expanded, once in 2006 and again in 2008, and now includes children working in the domestic sector as well as roadside eateries and motels.<sup>62</sup> In its 2007 Concluding Observations, the CEDAW Committee noted its concern that "the employment of children – the majority of whom are girls – as domestic help in private homes where children are exposed to all forms of abuse, including sexual abuse" was not being targeted.<sup>63</sup> Thus,

60 *Bachpan Bachao vs Union of India; Shramjeevi Mahila Samiti vs State & others; and Kalpana Pandit v. State*, Decision of the High Court of Delhi at New Delhi, 24 December 2010. Available at: <http://nird.org/wp-content/uploads/2012/01/PLACEMENT-AGENCIES-JUDGEMENT.pdf>

61 CEDAW Committee, *General recommendation No. 26*, paras. 24(b)(ii) and (c)(i).

62 International Labour Organization, *National Legislation and Policies against Child Labour in India* (webpage, n.d.). Available from: [www.ilo.org/legacy/english/regions/asro/newdelhi/ipecc/responses/india/national.htm](http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipecc/responses/india/national.htm)

63 CEDAW Committee, *Concluding Observations 2007*, para. 48.

regulations that now prohibit children from being exploited as domestic workers constitute good gender-sensitive rights-based practices.

However, despite these regulations, many underaged girls continue to work as domestic servants throughout India. According to the National Domestic Workers Movement (NDWM), middle men seek out and recruit girls as young as five from impoverished rural families to work in houses in large cities such as Mumbai, Delhi, Lucknow, Chennai, and Hyderabad. Many of these girls “begin their working lives in debt to the employer who had paid an advance to the family member or to the recruiter.”<sup>64</sup> The government’s failure to effectively implement the ban on children younger than 14 being employed in domestic settings violates the Convention on the Rights of the Child, to which India is a party. Additionally, the Government’s failure to protect these children, the majority of whom are girls, violates the CEDAW’s principle of substantive equality which requires equality of results and real change for women and girls rather than merely de jure equality.<sup>65</sup>

Additionally, as stated earlier, the law places restrictions on women below 30 years of age on emigrating for employment as domestic workers. Having a different minimum age for women migrant workers than for male migrant workers (who are allowed at a much younger age, which depends on the job sector) is prima facie discriminatory and contrary to article 1 of the CEDAW which defines discrimination as any distinction which impairs women’s enjoyment of their human rights and fundamental freedoms, in respect to the economic or any other field, on an equal basis with men. According to General Recommendation 26, States parties to the CEDAW are urged to lift discriminatory bans that restrict women’s migration based on age.<sup>66</sup>

## Minimum wage

State laws in India set minimum wages for most industries, however, the Government’s recently established Mahatma Gandhi National Rural Employment Guarantee programme (2010), guarantees a minimum wage of 100 rupees per day (2.00 dollars).<sup>67</sup> For those not covered by this scheme, the average wage across the country is 1.79 dollars per day.<sup>68</sup> Labour laws regulating minimum wages generally do not apply to those employed in the informal sector.<sup>69</sup> Low wages contribute to poverty, which is one of the main factors causing women to migrate for work. Women migrant workers, many of whom are engaged as domestic help, often find that pay in destination countries is equally insufficient to maintain a decent standard of living. To combat this problem, South Asian nations including Nepal, India, Sri Lanka and Bangladesh have recently come together to put pressure on receiving countries to pay a set minimum wage to migrant domestic workers abroad.<sup>70</sup> Subsequently, a minimum wage has been fixed by the Indian missions to Gulf countries in the range of 300-350 dollars per month.<sup>71</sup> This

64 National Domestic Workers Movement, *Child Domestic Workers* (webpage, n.d.). Available from: [http://ndwm.org/?page\\_id=239](http://ndwm.org/?page_id=239)

65 International Women’s Rights Action Watch, *CEDAW Knowledge Resource*, (Kuala Lumpur, webpage, n.d.). Available from: [www.iwraw-ap.org/convention/equality.htm](http://www.iwraw-ap.org/convention/equality.htm)

66 CEDAW Committee, *General recommendation No. 26*, para. 24(a).

67 US State Department, *Human Rights Report 2011*, p. 64.

68 UNDP, UNDP in India (webpage, n.d.). Available from: <http://www.undp.org/content/india/en/home/countryinfo/>

69 US State Department, *Human Rights Report 2011*, p. 64.

70 Yadav Raj Joshi, “South Asia Agrees on Minimum Wage for Housemaids”, *Himalayan Times*, Kathmandu, 26 June 2012. Available from: <http://www.thehimalayantimes.com/fullNews.php?headline=S+Asia+agrees+on+minimum+wage+for+housemaids&NewsID=337393>.

represents a good gender-sensitive policy in line with the CEDAW Committee's General Recommendation 26 which holds that women migrant workers are entitled to the protection of their human rights, including the right to be free from poverty and to an adequate standard of living.<sup>72</sup>

## BILATERAL AGREEMENTS

According to the ILO, "one of the major successes of the overseas employment policy of India in the recent years has been the signing of bilateral agreements/MOUs with major labour-receiving countries."<sup>73</sup> To date, India has entered into labour agreements with: Jordan and Qatar (1980s); UAE (December, 2006); Kuwait (April 2007); Oman (November 2008) and Malaysia (January 2009). An Additional Protocol to the existing Labour Agreement between India and Qatar was signed on 20 November 2007.<sup>74</sup> One of the main aims of these agreements is to ensure better protection and welfare for migrant workers. To that end, the MoUs generally contain the following: "(i) A declaration of mutual intent to enhance employment opportunities and for bilateral cooperation in protection and welfare of workers; (ii) The host country to take measures for protection and welfare of the workers in the organized sector; (iii) A statement of the broad procedure that the foreign employer shall follow to recruit Indian workers; (iv) The recruitment and terms of employment to be in conformity of the laws of both countries; and (v) A joint working group to be constituted to ensure implementation of the MoU and to meet regularly to find solutions to bilateral labour problems."<sup>75</sup>

UN Women encourages the use of bilateral MoUs between countries of origin and countries of employment, as they provide effective government-to-government migration channels, set out methods of migration management to be jointly implemented, and guarantee women migrant workers coverage under the labour law.<sup>76</sup> The CEDAW Committee also requires States parties to the Convention to "enter into bilateral or regional agreements or memoranda of understanding protecting the rights of women migrant workers as elaborated in General Recommendation 26."<sup>77</sup>

While it is generally recognized that India's bilateral agreements with receiving countries are a good first step in protecting the rights of migrant workers, advocates argue that in order to more effectively they must be "backed up by concrete initiatives in the areas of model contracts, workplace monitoring, dispute resolution mechanisms, mechanisms for access to justice, monitoring practices of recruitment agencies, and adequate labour inspections

71 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p.75.

72 CEDAW Committee, *General Recommendation No. 26*, para. 6.

73 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, p. 20.

74 International Labour Organization, *Labour Migration in India, a Review of Issues, Policies and Practices* (Geneva, 2011). Available from: [www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf](http://www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf), p.23. Available from: <http://www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf>

75 *Ibid.*, p. 24.

76 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment (2005)*, p. 19. Available from: <http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf>

77 CEDAW Committee, *General Recommendation No. 26*, para. 27(a).

systems. While these may be harder to negotiate, they should nevertheless receive high priority if MoUs are to have operations value in protecting Indian migrant workers abroad”.<sup>78</sup>

## HEALTH

To protect workers in the unorganized employment sector, including domestic workers, the Government initiated the Rashtriya Swasthya Bima Yojna<sup>79</sup> (RSBY) programme in 2007, with the objective of providing cashless health insurance cover of 30,000 rupees per family, which includes a maternity package for normal and caesarean deliveries.<sup>80</sup> As the majority of women workers in India are employed in the unorganized sector, this represents a good gender-sensitive rights-based practice in line with article 12 of the CEDAW, which obligates States parties to take all appropriate measures to eliminate discrimination against women in health care and ensure equal access to health services.

In 2006, the Ministry of Overseas Indian Affairs (MOIA) introduced a compulsory insurance scheme called Pravasi Bharatiya Bima Yojana<sup>81</sup> (PBBY) to cover emigrant workers. This insurance package covers any Indian who goes abroad for employment purposes after obtaining emigration clearance. The policy is valid for a minimum of two years or the actual period of employment, whichever is longer, and coverage includes: death benefits; emergency care; cashless hospitalization care; maternity benefits; and legal expenses related to employment.<sup>82</sup> This insurance scheme for migrant workers also constitutes a good rights-based practice in line with article 12 of the CEDAW.

With respect to medical clearance for migration, India has a clear policy against mandatory HIV testing.<sup>83</sup> This is a good rights-based policy in line with General Recommendation 26, which cautions that all pre-departure HIV/AIDS testing or health examinations must be voluntary.

## EQUALITY BEFORE THE LAW

### Women’s Access to Justice

Article 39 A of India’s Constitution provides for free legal aid to the poor, and articles 14 and 22(1) make it obligatory for the State to promote justice on the basis of equal opportunity to all. The Legal Services Authorities Act, which came into force in 1995, established a nationwide

78 Migrant Forum in Asia, *Resources on Indian Labour Migration*, (Quezon City, Philippines, 24 February 2012). Available from: [www.mfasia.org/india/429-resources-on-indian-labor-migration](http://www.mfasia.org/india/429-resources-on-indian-labor-migration)

79 National Health Insurance Scheme

80 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 240. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

81 Overseas Indian Insurance Scheme

82 India, Ministry of Overseas Indian Affairs, *Salient Features of PBBY*, (New Delhi, 4 January 2008). Available from: [http://moia.gov.in/pdf/p\\_b\\_b\\_ywef\\_%201\\_4\\_8.pdf](http://moia.gov.in/pdf/p_b_b_ywef_%201_4_8.pdf)

83 UNDP, “Grim Prospects for HIV Positive, At-Risk Migrants in South Asia”, 30 November 2010. Available from: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2010/11/30/undp-report-grim-prospects-for-departed-hiv-positive-migrants-in-south-asia.html>

uniform network for providing free and competent legal services to the poor. In the CEDAW Committee's 2007 Concluding Observations it acknowledged India's efforts at making legal aid available to poor women, and made note of the National Legal Service Authority's efforts to enhance legal literacy for women and provide access to justice. However, the Committee expressed concern about the quality and scope of the free legal services provided and the limited access to legal services by women in rural and tribal areas. To remedy these problems the Committee urged the Government to "provide free legal services to poor and marginalized women in rural and tribal areas and monitor the quality and impact of such services in regard to ensuring women's access to justice."<sup>84</sup>

Women who use recruitment services to migrate from rural to urban areas for work also face difficulty in accessing justice mechanisms and seeking redress for violations. The High Court of Delhi at in New Delhi has noted that in cases where women rights are violated by recruitment firms and/or employers, "existing laws do not provide an effective speedy remedy which ensures that women are able to seek recovery and wages, ensure their freedom of movement and ensure access to shelter options in cases of abuse."<sup>85</sup> The State's failure to ensure women adequate access to justice violates article 15 of the CEDAW, which requires States Parties to "accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity."

Women who are subjected to human rights and workplace violations while working abroad can file complaints with the Indian diplomatic missions, labour attachés or welfare officers, and receive assistance in settling employment disputes.<sup>86</sup> Migrant workers' complaints regarding Indian recruitment agencies can also be submitted to the Government's diplomatic mission in the country of employment, and will be forwarded to the Ministry of Overseas Indian Affairs. Subsequently "a show-cause notice under the Emigration Act, 1983 is issued to the registered Recruiting Agents against whom complaints are received and the Recruiting Agent is directed to settle/ resolve the complain in the first instance. If the Recruiting Agent fails to respond to the Show-Cause Notice or his reply is not satisfactory, his Registration Certificate is initially suspended for 30 days. If the complaint still remains unresolved, the Registration Certificate is suspended for a further indefinite period and action is initiated for cancellation of the Registration Certificate and forfeiture of Bank Guarantee, as warranted. In respect of complaints received against agents who are not registered with Protector General of Emigrant, Ministry of Overseas Indian Affairs, these are referred to the police authorities concerned for investigation and action."<sup>87</sup>

Initiatives that hold recruitment employers and recruitment agencies accountable for respecting migrant workers rights, and provide mechanisms for redress, are good practices. However, the reality is that many Indian women who migrate abroad for employment have limited access to information, and often their movement is restricted. Most are engaged as domestic workers and thus are often isolated and forced to work long hours with no breaks or days off. Many do not speak the language of the host country. All of these factors make it difficult for them to file complaints with the diplomatic mission against their employer or recruitment agencies. The

84 CEDAW Committee, *Concluding Observations 2007*, paras. 18-19.

85 *Bachpan Bachao vs Union of India; other cases*

86 International Labour Organization, *Labour Migration in India*.

87 *Shakti Vahini Social Research Initiative, Action Against Recruiting Agents, (New Delhi, 12 August 2011)*. Available from: <http://equalityindia.wordpress.com/2011/08/12/action-against-recruiting-agents/>

CEDAW Committee commented on this problem in General Recommendation 26 where it noted that gender-insensitive environments in many destination countries result in limited mobility for women and limited access to relevant information about their rights and entitlements. Thus, the CEDAW Committee has recommended that Government policies take notice of the different sectors into which women migrate and ensure that legal remedies reflect this reality.<sup>88</sup>

On a positive note, some Indian diplomatic missions have established shelters that provide temporary accommodation for runaway or rescued women migrant workers while they are in the process of seeking redress for their grievances. These shelters also serve as transit homes before the worker is repatriated back to India.<sup>89</sup> Additionally, for women who migrate for work within India and find themselves in difficult circumstances, the Ministry of Women and Child Development runs short-stay homes that provide shelter and services. Over 700 of these shelters are currently in operation throughout the country.<sup>90</sup> Provision of shelter services for women migrant workers abroad is a good, gender-sensitive, rights based practice in line with General Recommendation 26, which urges governments to ensure their diplomatic missions fulfil their role in protecting the rights of women migrant workers and provide shelter when needed.<sup>91</sup> Additionally, provision of shelter to internal women migrants who have suffered from abuse and exploitation is in line with the Committee's General Recommendation 19 which requires States parties to provide appropriate protective and support services to victims of gender-based violence.<sup>92</sup>

## F. ANALYSIS AND CONCLUSIONS

The number of Indians migrating for work, both within the country as well as abroad, has expanded dramatically in recent years. Many of these migrant workers are women fleeing poverty and in search of better employment opportunities. Too many, however, fall victim to recruitment agents who exploit their situation, and are often plunged into further poverty and crippling debt, and can be subjected to physical and psychological abuse. The Government of India has acknowledged these problems and made significant efforts to better promote and protect the human rights of migrant women. Examples of gender-sensitive rights-based good practices related to women migrant workers include:

- Ratification of six of the nine core international human rights treaties, including the CEDAW.
- Establishment of the National Human Rights Commission (NHRC) to review laws to ensure their compliance with international human rights standards, and monitor the implementation of treaties and instruments on human rights.

88 CEDAW Committee, *General recommendation No. 26*, paras. 5 and 13.

89 India, Ministry of Women and Child Development, with the United Nations Office on Drugs and Crime, *India Country Report - To prevent and combat trafficking commercial and sexual exploitation of women and children*, World Congress III against sexual exploitation of children and adolescents (November 2008), p. 28. Available from: [www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf](http://www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf)

90 India, *Combined Fourth and Fifth Periodic Reports of India to the CEDAW Committee* (New Delhi, 11 September 2012). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5_en.pdf)

91 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

92 CEDAW Committee, *General recommendation No. 19 on violence against women*, (UN Doc A/47/38 at 1, 1993), (Eleventh session, 1992), para. 24(b). Available from: [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19)

- Amendment of the Constitution to ensure that one-third of the seats in local government are reserved for women.
- Enactment of the Unorganized Worker Social Security Act (2008) that provides health and maternity benefits, death and disability compensation, and old age protection.
- The Domestic Workers Welfare and Social Security Act (2010) that provides a registered contract, specified working hours, paid holidays, protection against harassment, social security and access to benefits. It also demands regulation of recruitment and placement agencies and defines specific roles for all government agencies, including the labour department, police, state advisory boards and district boards.
- Proposal of an Equal Opportunity Commission Bill (2011).
- Creation of a Working Group on Women's Agency and Empowerment to oversee gender issues and ensure the fulfilment of women's rights as part of the 2012-2017 national plan.
- 2009 amendments to the Criminal Procedure Code strengthening procedural safeguards with respect to crimes against women.
- Implementation of the Awareness Generation Project for Rural and Poor Women that supports campaigns to educate women about their rights and provide them with legal aid.
- Constitutional provisions for the fundamental right to gender equality and non-discrimination, and a specific enabling provision on affirmative action.
- Supreme Court cases integrating CEDAW into domestic law.
- Law on Protection of Women Against Sexual Harassment at the Workplace, 2010, covering every workplace in both the organized and unorganized sector.
- National Plan 2007-2010 that: (i) provided women with basic entitlements; (ii) addressed the reality of globalization and its impact on women by prioritizing economic empowerment; (iii) ensured an environment free from all forms of violence against women; (iv) ensured participation and adequate representation of women at the highest policy levels, particularly in Parliament and State assemblies and (v) strengthened existing institutional mechanisms and create new ones for gender main-streaming and effective policy implementation.
- Emigration Act of 1983 that has provisions for examining employment contracts to ensure that the terms and conditions are neither discriminatory nor exploitative and that the provisions for travel, wages and working and living conditions are in conformity with the prescribed norms. The policy also sets certain requirements for licensing of recruitment agencies, including setting limits on the amount of recruitment fees that may be charged to prospective workers.
- Indian Penal Code prohibitions on forced labour.
- Immoral Traffic Prevention Act (ITPA), which prohibits sex trafficking.
- Establishment of Anti Human Trafficking Units (AHTUs) in police departments throughout the country.
- Scorecard system with AHTUs that aims to improve the availability of data on trafficking.
- Dedicated federal anti-trafficking unit, established in January 2012, staffed by police officers with nationwide investigative authority.
- Development of standard operating procedures to assist in identifying trafficking victims and refer them to protection services.
- Funding of 100 NGO-operated hotlines to assist vulnerable people including trafficking victims, and government-run shelters for victims of violence.
- Temporary shelters run by some Indian diplomatic missions in the Middle East to provide services including medical care and legal assistance to Indian migrant workers.

- Public awareness-raising initiatives through radio talk shows and press conferences and safe emigration awareness campaigns.
- Bi-monthly ministerial meetings, including anti-trafficking officers from state governments to coordinate on trafficking prevention efforts.
- Launching of “Ujjawala” (A New Dawn of Light), a programme focused on the prevention of trafficking as well as rescue, rehabilitation and re-integration of victims.
- Federal labour law sets health and safety standards and is applicable in all industries. The law mandates a maximum eight-hour work day and 48-hour work week, prohibits compulsory overtime, and requires safe working conditions, including adequate provisions for restrooms, canteens, medical facilities, ventilation, a minimum rest period of 30 minutes after every four hours of work, and premium pay for overtime.
- Distribution of smart cards to first-time migrant workers, containing important details related to their travel documents, work contracts, and insurance.
- Mahatma Gandhi National Rural Employment Guarantee programme (2010) guarantees a minimum wage of 100 rupees per day (2.00 dollars).
- A minimum wage has been fixed by the Indian missions to Gulf countries in the range of 300-350 dollars per month.
- Signing of bilateral agreements/MOUs with major labour-receiving countries.
- Initiation of the Rashtriya Swasthya Bima Yojna (RSBY) programme in 2007, with the objective of providing cashless health insurance cover of 30,000 rupees per family, which includes a maternity package for normal and caesarean deliveries
- Pravasi Bharatiya Bima Yojana (Overseas Indian Insurance Scheme) to cover emigrant workers, which includes: death benefits; emergency care; cashless hospitalization care; maternity benefits; and legal expenses related to employment.
- Policy against mandatory HIV testing.
- The Legal Services Authorities Act, establishing a nationwide uniform network for providing free and competent legal services to the poor.

Despite these positive legislative and policy measures, entrenched stereotypes about women’s roles in Indian society, combined with discrimination in education and employment, have led to lower levels of literacy for women than men, less participation in the workforce and serious wage disparities. These are all factors that contribute to women’s poverty and are push factors causing them to migrate for work. During the migration process women continue to be discriminated against, making them vulnerable to a wide range of human rights abuses. Thus the Government must continue to amend legislation and enact programmes that promote and protect the human rights of women migrant workers.

## G. RECOMMENDATIONS

- Ratify the human rights treaties to which India is not yet a party, in particular the Convention on Migrant Workers.
- Withdraw reservations to articles 5(a) and 16(1) of the CEDAW.
- Work to modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women.

- Review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention.
- Amend the Emigration Act 1983 to ensure that it is both gender-sensitive and rights-based, and ensures adequate protection of the human rights of all migrant workers, especially women migrant workers.
- Adopt a comprehensive gender-sensitive migration policy, which includes regulation of recruitment agencies, standard contracts and other protection rights for women migrant workers.
- Provide a list of authentic, reliable recruitment agencies and create a unified information system on available jobs abroad.
- Require recruitment agencies to participate in awareness-raising and training programmes and sensitize them on the rights of women migrant workers, the forms of sex- and gender-based discrimination, the exploitation women may experience and the responsibilities of agencies towards the women.
- Facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation.
- Ensure that contracts for women migrant workers are legally valid.
- Ensure that occupations dominated by women migrant workers, such as domestic work, are protected by labour laws, including wage and hour regulations, health and safety codes and leave regulations.
- Enact policies allowing for monitoring of health and safety conditions in the kinds of workplaces where migrant women dominate.
- Ensure that women migrant workers have the ability to access remedies when their rights are violated.
- Ensure effective gender-sensitive rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of their rights.
- Regularly conduct impact assessments of policies in order to ensure that goals are being met.
- Amend sections 8 and 20 of the ITPA to provide better protection of women migrant workers' human rights.
- Repeal discriminatory bans on women under 30 migrating for employment as domestic workers.
- Undertake more effective efforts to ensure underaged girls in India are not employed as domestic servants.
- Convict and sentence government officials for corruption and collusion in trafficking-related offences, in particular corrupt law enforcement officers and politicians.
- Amend labour laws regulating minimum wages so that they apply to workers in the informal sector.
- Develop model contracts and ensure effectiveness of workplace monitoring, dispute resolution mechanisms, and mechanisms for access to justice, in order to better protect Indian migrant women abroad.
- Improve the quality and scope of the free legal services provided to poor women, increase their access to legal services and monitor the impact of such services in regard to ensuring women's access to justice.
- Enact laws to ensure that women are able to seek recovery and wages, ensure their freedom of movement and ensure access to shelter options in cases of abuse

## REFERENCES

- Adukia, R (undated), *A Handbook on Labour Laws of India*.
- Agreement on Social Security between Belgium and India, 3 November 2006.
- Committee on the Rights of the Child (2004), Concluding Observations: India.
- Committee on Economic, Social and Cultural Rights (2008), Concluding Observations: India.
- CEACR (2010), Individual Observation concerning Forced Labour Convention, 1930 (No. 29) - India.
- CEDAW Committee (2000), *Report of the Committee on the Elimination of Discrimination Against Women*.
- CEDAW Committee (2007), Concluding Observations: India, CEDAW 2007 CEDAW/C/IND/CO/3
- CESCR Committee (2008), Concluding Observations: India, E/C.12/IND/CO/5 (CESCR, 2008).
- Global Commission on International Migration (2005), *Migration in the Middle East and the Mediterranean*.
- Human Rights Watch (2009), "The Island of Happiness" – Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi.
- ILO (2008), *Managing International Labour Migration From India: Policies and Perspectives*.
- IOM (2003), *Labour Migration in Asia*.
- The Emigration Act 1983.
- UNIFEM (2005), *Good Practices to Protect Women Migrant Workers*.
- UNIFEM (2005), *Claim and Celebrate Women Migrants' Human Rights through CEDAW*.
- UN Women (2011), *Country Snapshots*.
- UN Women (2011), *Progress of the World's Women: In Pursuit of Justice*.
- UN Department of Economic and Social Affairs (2004), *World Survey on the Role of Women in Development – Women and International Migration*.
- US Department of State (2011), *Trafficking in Persons Report: India*.

## INTERNET

- <http://data.worldbank.org/country/india>.
- <http://www.indiaonlinepages.com/population/india-current-population.html>.
- <http://www.indexmundi.com/nepal/population.html>
- <http://labour.nic.in/pib/PressRelease/RS%20-%20Policy%20Framework%20-%20209.3..pdf>
- <http://wiego.org/wiego/self-employed-women's-association-sewa><http://www.ilo.org/public/english/bureau/inst/download/merchants.pdf>

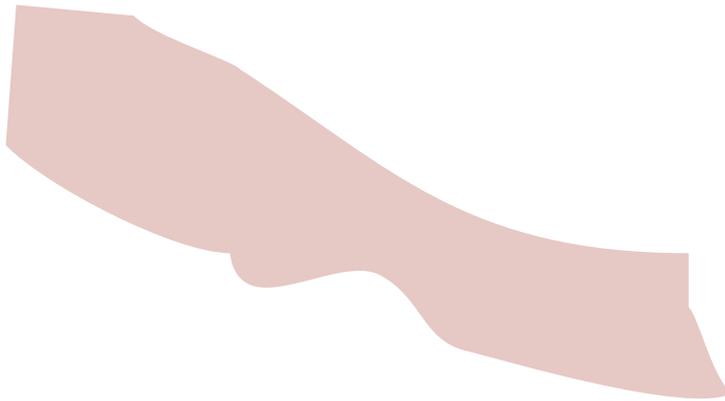


Photo credit: United Nations/Min Zaw



SENDING COUNTRIES: SOUTH ASIA

# Federal Democratic Republic of Nepal



## A. COUNTRY CONTEXT

Nepal is a landlocked country in South Asia bordered to the north by the People’s Republic of China and to the south, east and west by India. The population estimated at 29,890,686<sup>1</sup> is comprised of many different ethnic groups. The official language is Nepali, however a wide variety of other languages are spoken throughout the country. The majority of the population are Hindu (80.6 percent), while 10.7 percent are Buddhist, 4.2 percent Muslim and 3.6 percent Kirant.<sup>2</sup> The country endured 10 years of civil war between 1996 and 2006, which was followed by a peace accord and general election in 2008. The leaders of the main political parties have committed to finalizing the peace process and drafting a new Constitution, however political deadlock has stalled progress.<sup>3</sup>

The decades-long conflict severely inhibited the development of infrastructure and the economy. Today Nepal is one of the poorest countries in the world, with about one-third of its population living below the poverty line. A shortage of economic opportunities has resulted in approximately three-quarters of Nepalis depending on agriculture for their livelihood.<sup>4</sup> Nepal is a low-income country<sup>5</sup> and ranks “low” on the UNDP’s latest human development index.<sup>6</sup> Gross national income was placed at 540 US dollars per capita in 2011.<sup>7</sup>

1 US Central Intelligence Agency, *The World Factbook 2012 - Nepal*, (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>

2 Ibid.

3 International Crisis Group, *Nepal’s Constitution: the Political Impasse*, Press release (Brussels, 27 August 2012). Available from: [www.crisisgroup.org/en/publication-type/media-releases/2012/asia/nepal-nepals-constitution-the-political-impasse.aspx](http://www.crisisgroup.org/en/publication-type/media-releases/2012/asia/nepal-nepals-constitution-the-political-impasse.aspx)

4 US Central Intelligence Agency, *The World Factbook 2012*

5 Available from: <http://data.worldbank.org/country/nepal>

6 Available from: <http://hdrstats.undp.org/en/countries/profiles/NPL.html>

7 Available from: <http://data.worldbank.org/country/nepal>

Human Development Index	Low human development
Stock of migrants from Nepal 2011	7.2 million <sup>8</sup>
Annual growth rate of immigrants (1960-2005)	2%
Share of the population migrating for employment (2011)	24%
Proportion of females among migrant workers (2011)	15% <sup>9</sup>

Nepal is primarily a labour-sending country, with approximately 4 million Nepalese migrants working in India alone, and 3.2 million working in other countries. Poverty, social inequalities, unemployment and underemployment are major push factors driving Nepalis to migrate for work. Foreign labour migration has had a significant impact on the socio-economic fabric of Nepal. Worker remittances are estimated at 209 billion Nepalese rupees per year, roughly 22 percent of gross domestic product, and have helped reduce Nepal's poverty level from 42 percent to 31 percent.<sup>10</sup> However, increased migration for employment has also led to increased vulnerability of the most marginalized groups in Nepal, including women.

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

Nepal has ratified or acceded to seven of the nine core international human rights instruments, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. The government has not ratified the Convention on the Protections of the Rights of All Migrant Workers and Members of their Families (CMW), or the Convention for the Protection of All Persons from Enforced Disappearance (CED). In its recent Concluding Observations on Nepal, the CEDAW Committee noted with satisfaction Nepal's ratification of most of the human rights conventions. It stated however, that the adherence to all nine of the major human rights treaties would "enhance the enjoyment of women of their human rights and fundamental freedoms in all aspects of life," and thus encouraged the government to consider ratifying the CMW and CED.<sup>11</sup>

The government has taken steps to promote and protect the human rights of women. Specifically, in 2007 it established the National Women's Commission (NWC), mandated to: monitor and investigate cases of violence against women; provide legal aid; monitor the state's obligations to reporting to the UN under CEDAW; coordinate with government and other agencies for mainstreaming gender policy in national development; and conduct research to recommend

8 UN Women, *Background page - Nepal*. Available from: <http://migration-unifem-apas.org/nepal/index.html>

9 Ibid.

10 Ibid.

11 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Nepal* (CEDAW/C/NPL/CO/4-5), (Forty-ninth session, 2011), para. 48. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

and monitor reforms.<sup>12</sup> The NWC's Five Year Strategic Plan (2009-2014) highlights substantive equality for women as one of its guiding principles. Other gender-sensitive legislative initiatives have included: the Gender Equality Act of 2006, which amended or repealed a number of civil and criminal laws, such as those related to rape and sexual harassment to promote gender equity; the Human Trafficking and Transportation Control Act in 2007; the 2009 Domestic Violence Act; and a special resolution, passed in 2006, that guarantees women 33 percent of the seats in the Constituent Assembly. These legislative and policy initiatives all represent good gender-sensitive rights-based good practices in line with article 2 of the CEDAW which obligates States parties to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women" and to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Despite these measures, human rights abuses against women, particularly in the form of rape, domestic violence, dowry-related deaths (refers to the occurrences of brides being killed for bringing "insufficient" money and jewels as dowry), sexual harassment, forced labour and forced prostitution remain common. According to experts, "violence against women is one of the major factors responsible for the poor health of women, livelihood insecurity, and inadequate social mobilization".<sup>13</sup> Noting this problem the CEDAW Committee has urged Nepal to give priority attention to addressing discriminatory and harmful practices against women and girls and adopting comprehensive measures aimed at combating violence.<sup>14</sup>

Nepalese women migrating for employment also face multiple human rights abuses. Many have been trafficked to other countries and exploited as domestic workers or prostitutes. Serious indebtedness to recruitment brokers is also common and often leads to debt bondage. Critics charge that while the Government has instituted some measures to protect migrant women from exploitation, many of these initiatives are not effectively funded or implemented and women migrant workers remain vulnerable to abuse.<sup>15</sup> The CEDAW Committee addressed this issue urging the Government to fully implement article 6 of the Convention in part by "implementing the Human Trafficking and Transportation (Control) Act to ensure that perpetrators are punished and victims adequately protected, assisted and provided with shelter."

## C. KEY STAKEHOLDERS

**The Ministry of Labour and Transport Management (MoLTM)** is the focal ministry for overseas employment. Within the MoLTM the Foreign Employment Promotion Board (FEPB)

12 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW – a report to Supplement the Combined Fourth and Fifth Periodic Report Submitted to the CEDAW Committee by the Government of Nepal* (Kathmandu, 26 June 2011). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC\\_Nepal49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC_Nepal49.pdf)

13 US State Department, *Human Rights Report 2011 - Nepal (2011)*. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

14 CEDAW Committee, *Concluding Observations 2011*, paras. 20 and 32(d).

15 Amnesty International, *Briefing to the UN Committee on the Elimination of Discrimination against Women – Nepal*, (Forty-ninth session, 2011), p. 5. Available from: [www.unhcr.org/refworld/docid/4e1719ef2.html](http://www.unhcr.org/refworld/docid/4e1719ef2.html)

has been established to promote the foreign employment business, to make the sector safe, systematic, and decent, and to protect the rights and interests of overseas workers and foreign employment entrepreneurs. The FEPB is chaired by the Labour Minister and includes representatives from the private sector such as recruitment firms, trade unions, and orientation agencies.

**The Migrant Resource Centre (MRC)**, within the FEPB provides counselling and guidance to migrant workers regarding the basic requirements for overseas employment, so that those interested in migrating can make an informed choice. One of the main aims of the centre is to prevent prospective migrant workers from being trafficked and/or cheated by unscrupulous agents, and to put them in a better bargaining position with recruiting agencies.

**The National Women's Commission (NWC)** prepares national policies related to women's rights, analyses the gender-sensitivity of existing policies and laws, and makes recommendations to the government for gender-sensitive policy reform; provides legal and other support to vulnerable women; creates awareness regarding social, cultural, and traditional behaviours that are harmful to women; monitors the implementation of Nepal's obligations under international instruments regarding gender injustice; and recommends ways to make public offices and spaces more gender-friendly.

**Pourakhi** is a non-governmental organization of women migrant workers which aims to ensure respect for the rights of migrant women throughout the entire migration process, including pre-departure and during employment. Activities focus on capacity-building, empowerment, networking, and information dissemination.

**Pravashi Nepali Coordination Committee (PNCC)** is a large network of Nepalese migrant workers across Gulf countries. It aims to promote the rights of migrant workers through advocacy, counselling, lobbying and empowerment of workers. Activities including training, establishment of cooperative banks to improve access to money earned overseas, publication of materials to raise awareness, organization of programmes to bring together stakeholders, and coordination with the Nepalese Government.

**Nepal Association of Foreign Employment Agencies (NAFEA)** is an umbrella organization of 750 recruiting agencies, which aims to ensure the migration process is dignified and professional. To that end it has formulated a Code of Conduct to reduce irregularities of foreign employment. NAFEA also advocates with the government to sign MoUs and bilateral agreements with receiving countries that ensure respect for the rights of migrant workers.

**National Network on Safe Migration** includes more than 26 organizations working together to advocate and monitor action related to the protection of the rights of migrant workers. Activities include efforts to raise extensive awareness on safe migration, and lobby different stakeholders for necessary policy amendments.

## D. RATIFICATION RECORD

The following table illustrates Nepal's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	22 April 1991
ICCPR	14 May 1991 a
ICESCR	14 May 1991 a
ICERD	30 January 1971 a
ILO C29 Forced or Compulsory Labour	3 January 2002
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	11 November 1996
ILO C100 Equal Remuneration	10 June 1976
ILO C105 Abolition of Forced Labour	30 August 2007
ILO C111 Discrimination in Employment	19 Sept 1974
ILO C138 Minimum Age for Employment	30 May 1997
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour.	3 January 2002

## E. COMPLIANCE WITH CEDAW

### DISCRIMINATION

According to Nepal's National Women's Commission, "women in Nepal are discriminated [against] several times over. They are poorer than men with less access to property, income, inheritance and credit and often have little control over their own or overall household earnings. They are less educated and more likely to be engaged in non-skilled work rather

than in better paid professional, technical and management-related jobs. Though women's contribution to agricultural production is above 60 percent, the total land holdings are only 8 percent. Also, most women workers, over 70 percent, are confined to self-employed, unpaid and low-wage informal activities. Only 12 percent of employed women are in the civil service and 1.76 percent are in the judicial service".<sup>16</sup>

While the interim Constitution and several other laws prohibit discrimination based on gender, none provide a definition of what constitutes discrimination. Without such a definition, the laws may be interpreted narrowly to guarantee only formal equality, and thus will not be effective in ensuring substantive equality as is required by the CEDAW. Additionally, Nepal's interim Constitution fails to address both direct and indirect discrimination, it does not explicitly prohibit multiple discrimination, discrimination by association, segregation or harassment, and it only applies to acts of the State, even though CEDAW requires that discrimination by private actors be prohibited as well.<sup>17</sup> In its Concluding Observations the CEDAW Committee stated its concern that the principle of equality between women and men is not embodied in the Constitution and its prohibition of discrimination against women is not in line with article 1 of the Convention. The Committee urged the government to include in the new Constitution provisions ensuring substantive equality, and a definition of discrimination that encompasses both direct and indirect discrimination, and covers both public and private actors.<sup>18</sup>

Discrimination against women in Nepal is also fuelled by a patriarchal system that perpetuates women's subordination. The National Women's Commission has noted that "many women do not question [this system] and to a certain degree believe that men have the right to control their lives and bodies."<sup>19</sup> Regarding this issue the CEDAW Committee observed that "patriarchal attitudes and deep-rooted stereotypes that discriminate against women remain entrenched in the social, cultural, religious, economic, and political institutions and structures of Nepalese society and in the media," and thus urged the government to enact a comprehensive strategy, with concrete goals and timetables, to eliminate such patriarchal attitudes and stereotypes, in accordance with articles 2(f) and 5(a) of the Convention.

Women migrant workers from Nepal also face discrimination throughout the migration process. The 2007 Foreign Employment Act bans discrimination based on gender and includes measures to guarantee women's security and rights when seeking jobs abroad.<sup>20</sup> However, inadequate implementation of the law has meant that women migrant workers continue to suffer from forced labour, exploitation, sexual abuse and harassment, underpayment of wages, excessive work, limitation of mobility, and denial of access to health, education and legal justice.<sup>21</sup> The CEDAW Committee welcomed the adoption of the Foreign Employment

16 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW*, p. 3.

17 Equal Rights Trust, *Parallel report submitted to the 49th Session of the CEDAW Committee in relation to the combined fourth and fifth periodic reports submitted by the Government of Nepal*, (Kathmandu, July 2011), paras. 9, 14, and 20.

18 CEDAW Committee, *General Observations – Nepal, (Forty-ninth session, 2011)*, para. 9. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

19 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW*, p. 3.

20 Migrant Forum in Asia, *Good Practices taken by Asian States to Effectively Supervise Recruitment Agencies* (Quezon City, Philippines, 14 October 2009), p. 11. Available from: [www2.ohchr.org/english/bodies/cmw/docs/DGD/MigranForumAsia.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/DGD/MigranForumAsia.pdf)

21 Women's Rehabilitation Centre Nepal (WOREC), POURAKHI, Youth Action Nepal, and Pravasi, *Shadow Report on Nepal for Consideration During the 49th Session of CEDAW* (n.p., n.d.), p. 3. Available from: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/MFA\\_Nepal49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/MFA_Nepal49.pdf)

Act but raised its concern that: Nepalese women migrant workers are concentrated in the informal sector; they have limited opportunities to receive pre-departure information and skills training; there is a lack of institutional support both from the Government of Nepal and in countries of employment to promote and protect the rights of Nepalese women migrant workers.<sup>22</sup> Additionally, the Government's ban on women under 30 travelling to Gulf countries for work is also discriminatory. The ban was in response to several allegations of Nepalese domestic workers being abused by their employers,<sup>23</sup> however the CEDAW Committee noted in General Recommendation 26 that such bans restrict women's right to migration and should be lifted.<sup>24</sup> To remedy the problems, the Committee urged the Government instead to "(a) investigate the cause of women's migration, create employment or self-employment opportunities for women within the country and ensure women have access to loans; and (b) establish mechanisms to promote safe migration procedures and protect and fulfil women's rights through the migration cycle."

## POLICY MEASURES

The Government has enacted several labour and migration policies that incorporate gender and human rights perspectives. For example, the 2005 Labour and Employment Policy stipulates that the State must internalize international commitments and standards of promoting gender equality in all matters related to employment and labour rights. Additionally, the 2006 Labour Migration Policy aims to promote cooperation with members of the South Asian Association for Regional Cooperation (SAARC), and destination countries, in order to develop a joint perspective and strategy to protect the rights of migrant workers. The policy provides for "effective supervision and management at international borders and points of departure in order to control human trafficking and informal migration" and "enables the Nepalese labour sector to organize and streamline its plans according to the basic guidelines provided by the ILO [International Labour Organization]."<sup>25</sup> These policies are good gender-sensitive rights-based practices in line with the CEDAW Committee's General Recommendation 26, which urges governments to: formulate policies on the basis of equality and non-discrimination; regulate all aspects of migration to facilitate access for women migrant workers to work opportunities abroad; promote safe migration; and ensure the protection of the rights of women migrant workers.<sup>26</sup>

Other policies, however, infringe upon the rights of women migrants. For example, the Government has discouraged women from migrating for work to the Gulf countries, especially as domestic workers. The government's policy is to provide permission only in those cases where the Nepalese embassy of the destination country approves. This is in response to widespread allegations of abuse experienced by Nepalese women employed as domestic

22 CEDAW Committee, *Concluding Observations 2011*, paras. 33-34.

23 Human Rights Watch, "Nepal: Protect, Don't Ban Young Women Migrating to Gulf", (New York, 14 August 2012). Available from: [www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf](http://www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf)

24 CEDAW Committee, *General recommendation No. 26*, para. 24(a).

25 International Labour Organization and UNDP, *HIV and Mobility in South Asia (Bangkok, 2010)*, p. 104. Available from: [http://asia-pacific.undp.org/practices/hiv/avids/documents/HIV\\_and\\_Mobility\\_in\\_South\\_Asia\\_web.pdf](http://asia-pacific.undp.org/practices/hiv/avids/documents/HIV_and_Mobility_in_South_Asia_web.pdf)

26 CEDAW Committee, *General recommendation No. 26*, para. 23(a).

help. However, instead of protecting women, the Government's refusals to grant permission have led women to use informal channels and illegal agents/brokers to migrate for work. According to the Ministry of Labour and Transport Management, up to 90 percent of the women working in Gulf countries are undocumented, which means they did not receive mandatory pre-departure training, do not have access to many benefits of the Foreign Employment Act, and have limited access to support from formal protection mechanisms within the country destination, as well as in Nepal.<sup>27</sup> Policies effectively banning domestic workers (the majority of whom are women) from employment in certain countries are discriminatory and contradict General Recommendation 26, which urges States parties to the CEDAW to repeal discriminatory restrictions on women's migration. Instead the Government should continue to enter into bilateral agreements with receiving countries, and focus on promoting safe migration and an enabling work environment for women.

The Government's policies requiring prospective migrant workers to undergo mandatory HIV/AIDS testing before their departure and/or during work tenure also violate women migrant workers' human rights. According to the Forum for Women Law and Development, an advocacy group, "in many cases, women migrant workers are not consulted, and their test results are shared either with their recruiters or their employer. Additionally, they face forced termination of their employment and/or deportation from the country of employment because of their HIV status. However, there are limited interventions to provide alternative employment opportunity for those tested positive."

Furthermore, the group notes, "there are no policies to address the issues of confidentiality, compensation, stigma and discrimination related to women migrant workers and HIV/AIDS."<sup>28</sup> General Recommendation 26 states that "all required pre-departure HIV/AIDS testing or pre-departure health examinations must be respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization."<sup>29</sup>

## TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, "Nepalese women and girls are subjected to sex trafficking in Nepal, India, and the Middle East, and also are subjected to forced labour in Nepal and India as domestic servants, beggars, factory workers, mine workers, and in the adult entertainment industry." Many women use labour brokers and recruitment agencies to secure legitimate employment, but subsequently are trafficked and face conditions of forced labour, including withholding of passports, restrictions on movement, non payment of wages, threats, deprivation of food and sleep, and physical or sexual abuse.<sup>30</sup>

27 WOREC, POURAKHI, Youth Action Nepal, and Pravasi, *Shadow Report on Nepal*, p.66.

28 *Ibid*, p. 68.

29 CEDAW Committee, *General recommendation No. 26*, para. 24(d).

30 US State Department, *Trafficking in Persons Report 2012 – Nepal (2012)*, p. 260-261. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

## PROSECUTION

Nepal's 2007 Human Trafficking and Transportation Control Act prohibits trafficking in persons, including the selling of human beings and forced prostitution, and prescribes penalties from 10 to 20 years' imprisonment.<sup>31</sup> Additionally, because fraudulent recruitment significantly increases the risk of trafficking, the Foreign Employment Act criminalizes the sending of migrant workers abroad based on fraudulent claims of conditions or employment, or without ensuring proper documentation.<sup>32</sup> The passage of these laws are in compliance with article 6 of the CEDAW, which obligates governments to take all appropriate measures, including legislation, to suppress trafficking in women and exploitation of prostitution of women. Despite strict penalties however, complicity by government officials in trafficking-related offenses remains problematic. A culture of impunity for politically connected perpetrators results in few investigations, prosecutions, or convictions of government officials for complicity in trafficking. Failure to prosecute trafficking offenders is in violation of the CEDAW, and specifically General Recommendation 26, which states that governments "should take active measures to prevent prosecute and punish all migration-related human rights violations that occur under their jurisdiction, whether perpetrated by public authorities or private actors."<sup>33</sup>

## PROTECTION

The government recently developed two policy initiatives designed to provide better protection to victims of trafficking, including the National Minimum Standards for Victim Care, and the Standard Operating Procedures for shelter homes. Additionally, the Ministry of Women, Children, and Social Welfare (MWCSW) partially funds eight NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault. These represent good, gender-sensitive, rights-based practices in line with the CEDAW Committee's General Recommendation 19, which states that governments should ensure protective measures for victims of gender-based violence including counselling, rehabilitation and support services.<sup>34</sup>

While these efforts are laudable, many migrant workers who are trafficking victims have experienced difficulty in seeking support from the Department of Foreign Employment, the Foreign Employment Promotion Board, and Nepalese diplomatic missions in destination countries. Additionally, because Nepal has no formal system for proactively identifying victims among high-risk persons, some victims are penalized for acts committed as a result of being trafficked. For those victims who are identified, the government does not routinely encourage them to participate in investigations against their traffickers.<sup>35</sup> The failure to ensure victims receive the necessary support to seek redress is in violation of General Recommendation 26 which states that governments "must properly train and supervise

31 US State Department, *Trafficking in Persons Report 2012*, p. 261.

32 *Ibid.*, p. 262.

33 CEDAW Committee, *General recommendation No. 26*.

34 CEDAW Committee, *General recommendation No. 19 on violence against women*, (UN Doc A/47/38 at 1, 1993), (Eleventh session, 1992), para. 24(t)(iii). Available from: [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19)

35 US State Department, *Trafficking in Persons Report 2012*, p. 261.

their diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protections should include quality support services available to women migrants.”<sup>36</sup> In its Concluding Observations the CEDAW Committee also urged Nepal to address this problem by “providing information and training with respect to anti-trafficking legislation to the judiciary, law enforcement officials, immigration and border police, and social workers in all parts of the country”.<sup>37</sup>

## PREVENTION

In August 2011, the National Committee for Controlling Human Trafficking established a secretariat and the Government appointed a coordinator under the oversight of a joint secretary. Additionally, in March 2012, the Government endorsed the National Plan of Action on Trafficking. These initiatives will help to guide efforts at preventing trafficking. Other prevention efforts include: radio programmes sponsored by the Foreign Employment Promotion Board that promote awareness about safe migration; promotion and celebration of anti-trafficking day each September; and anti-trafficking training for all Nepalese military troops and police assigned to international peacekeeping forces. These efforts comply with article 6 of the CEDAW, which obligates governments to take all appropriate measures to suppress trafficking. In its Concluding Observations, the CEDAW Committee welcomed the adoption of the national plan of action against trafficking. However, it also noted its concern about the lack of specific data on trafficking in women and girls and called upon the government to fully implement article 6 of the Convention by, among other things, “collecting and analyzing data on all aspects of trafficking and prostitution, disaggregated by age, sex and country of origin, in order to identify trends.”<sup>38</sup>

## EMPLOYMENT

According to the Government, the majority of women in Nepal are employed in the informal sector working in agriculture, or domestic help or care-giving jobs.<sup>39</sup> Although the Interim Constitution guarantees equal remuneration for men and women, overall, women earn about three-quarters of what men earn both in agricultural and non-agricultural sectors. With respect to the formal sector, studies have shown appalling working conditions in certain industries where women predominate, such as carpet and garment manufacturing.<sup>40</sup> The failure of the State to adequately address these inequalities is in violation of article 11 of the CEDAW, which obligates governments to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular ... the right to equal remuneration, including

36 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

37 CEDAW Committee, *Concluding Observations 2011*, para. 21(g).

38 *Ibid.*, para. 22(a).

39 Nepal, *Combined Fourth and Fifth periodic Report of State Party to the CEDAW Committee* (Kathmandu, 9 November 2010), para. 132.

40 Forum for Women Law and Development, *Shadow Report on the Fourth and Fifth Periodic Report of the Government of Nepal on CEDAW*, (Kathmandu, 2011), p. 37.

benefits ... and the right to protection of health and safety in working conditions.” The CEDAW Committee highlighted these problems in its most recent Concluding Observations on Nepal. It expressed its concern about “the high proportion of women in the informal sector, and the widespread prevalence of sexual harassment in the workplace.” To remedy these problems and better protect the rights of women it urged the government to better regulate the informal sector and ensure that women are not exploited, and also enact and ensure effective implementation of the draft law on sexual harassment in the workplace.<sup>41</sup>

Gender-based discrimination and inequity, combined with widespread poverty, have pushed increasing numbers of women to seek employment in the international market. Official statistics show that 11,007 Nepalese women emigrated in 2008, a sizeable increase from the 316 women migrants reported for 2007. Additionally, a UNDP report has noted that “for every documented female migrant leaving Nepal, an equal number of undocumented female migrants are likely travelling on cheap flights to foreign countries through irregular channels via major cities in India or through Bangladesh. Circumventing the undeclared ban of the Government of Nepal on female migration, especially to Gulf countries and Malaysia, is the likely reason for this significant increase in undocumented migration.”<sup>42</sup>

The new Foreign Employment Act 2064/(2007) was enacted in order to address some of these problems by ensuring the safety of overseas employment, managing the migration process, and protecting the rights and welfare of migrant workers. The Act is a gender-sensitive rights-based good practice in that it incorporates provisions to eliminate gender discrimination and, among other things, obligates the State to: provide mandatory gender-sensitive rights-based pre-departure orientation sessions; ensure women migrant workers are reimbursed for pre-departure orientation fees; establish a welfare fund to promote education and health of the families of women migrant workers and returnees; establish a fund to compensate the families of deceased or disabled migrant workers and those that have been sent back due to the economic crisis; provide insurance coverage in cases of death; and compensate migrant workers in cases of injury and disability or compensate the family of deceased migrant workers.<sup>43</sup>

Other provisions of the Act regulate the licensing of recruitment agencies, the recruitment processes, and include provisions for redress. In addition, pursuant to the Foreign Employment Regulations of 2008, Labour Attachés have been deployed in six countries that have significant numbers of Nepalese migrants, to provide advice and better protection of workers’ rights. Countries with such attachés are Kuwait, Republic of Korea, Qatar, Saudi Arab, Malaysia and the United Arab Emirates (UAE).<sup>44</sup> The Labour Attaché serving in the UAE is a woman.

Despite these initiatives however, Nepalese migrant workers, and women in particular continue to be subjected to abuse and exploitation. According to a report by Amnesty International, “measures adopted by the Nepalese government in the name of protecting women from

41 CEDAW Committee, *Concluding Observations 2011*, paras. 29-30.

42 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p.96.

43 Forum for Women Law and Development, *Shadow Report*, p.68-69.

44 Asia Foundation, *As Demand for Migrant Labour Grows Opportunities for Women Emerge, but Risks Prevail* (San Francisco, 7 March 2012). Available from: <http://asiafoundation.org/in-asia/2012/03/07/as-demand-for-migrant-labor-grows-opportunities-for-women-emerge-but-risks-prevail/>

the risk of such exploitation have failed. Legislative provisions prohibiting exploitation and regulating the recruitment of migrant labour from Nepal are not effectively implemented.”<sup>45</sup> The report highlights the situation of migrant domestic workers in particular, and notes that despite regulations, many Nepalese women searching for work opportunities become seriously indebted to brokers and recruitment firms, and are forced to work in conditions that are considerably different from those originally promised to them. Many women report exhausting workloads where they are forced to cook, clean, wash clothes, iron and take care of children for 12-21 hours per day, while being provided with inadequate food and having wages withheld or reduced. Some are also subjected to verbal and physical abuse from their employers.<sup>46</sup> The CEDAW Committee has urged the Government to address these issues by focusing on (1) decreasing the number of undocumented workers, (2) ensuring more effective pre-departure information and skills training, (3) improving protections for women working in informal sectors, and (4) providing better institutional support both in Nepal and in countries of employment to promote and protect the rights of women migrating for work.<sup>47</sup>

## RECRUITMENT AGENCIES

Those seeking employment abroad typically use either recruitment agencies or individual brokers to assist them in securing a job and travelling to the destination country. As of 2011, there were 924 officially licensed recruitment agencies, many of which are located in Kathmandu, and some of which have branch offices at the district level. The Department of Foreign Employment (DFE) is mandated with ensuring that all advertising by recruitment firms is informative and meets ethical standards and firms found to be in violation can be fined up to 100,000 rupees. Despite this, many firms’ advertisements exaggerate salaries, benefits and working conditions. Additionally, firms often publicize much lower placement fees than those actually charged to prospective workers. Sub-agents working at the village level often refer would-be migrant workers to agents at the district level who in turn refer the worker to a recruitment firm in the capital. Each agent receives a commission per migrant recruited. The law requires a deposit for a sub-agent to receive an official licence, but few bother with registration. There are thousands of sub-agents operating in Nepal, but reports show that in 2011, fewer than 10 were registered with the DFE.<sup>48</sup>

Sub-agents are prohibited from charging prospective workers fees, however, this is common practice. Additionally, recruitment firms are prohibited from charging more than the maximum fees dictated by the law, but overcharging is common practice. A migrant workers’ advocacy forum has found that “the placement fee charged to the migrant worker depends on his/her financial status. In the case of migrant workers who have worked abroad in the past, they have a higher capacity to bargain, which allows them to negotiate for lower fees. Many prospective

45 Amnesty International, *Briefing to the UN Committee*, p. 5.

46 Ibid, p. 6.

47 CEDAW Committee, *Concluding Observations 2011*, para. 33.

48 Migrant Forum in Asia, *Labour Recruitment to the UAE, Gaps Between Policy and Practice in Sri Lanka, Nepal, Bangladesh and the Philippines* (Quezon City, Philippines, January 2011), pp. 20-21. Available from: [www.mfasia.org/resources/information-a-educational-materials/321-labour-recruitment-to-the-uae-gaps-between-policy-practice-in-sri-lanka-nepal-bangladesh-and-the-philippines](http://www.mfasia.org/resources/information-a-educational-materials/321-labour-recruitment-to-the-uae-gaps-between-policy-practice-in-sri-lanka-nepal-bangladesh-and-the-philippines)

migrants are forced to take out a loan from the bank with an interest rate of 5 percent. The prospective worker is bound to the agent, as the agent often keeps the passport of the migrant worker until the date of departure. As the migrant worker does not receive a receipt from the agent, it is difficult to lodge a formal complaint if a problem arises. Agreements are kept orally.”<sup>49</sup>

In General Recommendation 26, the CEDAW Committee urged governments to “adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers” and “implement accreditation programmes to ensure good practices among recruitment agencies.”<sup>50</sup> In its Concluding Observations for Nepal, the Committee noted the problems with unethical recruitment practices and called upon the Government to “prosecute and punish persons engaged in illegal recruitment processes” and “provide assistance for migrant women in seeking redress.”

To remedy some of these problems the Nepal Association of Foreign Employment Agencies has established a Code of Conduct that encourages members to practise fair and transparent recruitment processes and holds agencies accountable for the protection of migrant workers.<sup>51</sup> Among other things, the Code states that prospective migrant workers should: receive clear explanations of expenses such as service and air charges; should not be sent to do jobs that will adversely affect their health or where they will be discriminated against; and should be given required training before being sent on assignment. Importantly, the Code also states that there shall be no discrimination against women in the selection of workers and that preference should be given to women in job placement.<sup>52</sup> This is a good gender-sensitive rights-based practice in line with article 11 of the CEDAW, which affords women the right to equality in the field of employment, and in line with article 4, which encourages the use of special measures to ensure de facto equality for women.

## REGIONAL AND BILATERAL AGREEMENTS

To combat trafficking at the regional level, in 2002 the South Asian Association for Regional Cooperation (SAARC) member states adopted the Convention on Preventing and Combating Trafficking of Women and Children for Prostitution. All seven SAARC states, including Nepal, have signed and ratified this convention.<sup>53</sup> Nepal has also signed bilateral labour agreements with Qatar, Republic of Korea, UAE, Bahrain, and Japan, and is engaging with discussions with Oman, Lebanon and Malaysia regarding agreements with those countries.<sup>54</sup> In general these agreements stipulate rights and obligations for recruitment agencies, job seekers and employers, and aim to ensure transparency in pay, benefits, selection processes, remittance

49 Migrant Forum in Asia, *Labour Recruitment to the UAE*, p. 22.

50 CEDAW Committee, *General recommendation No. 26*, para. 24(c).

51 UN Women, *UN Women in Action – Nepal* (webpage, u.d.). Available from: [www.migration-unifem-apas.org/nepal/UNIFEM\\_in\\_Action.html](http://www.migration-unifem-apas.org/nepal/UNIFEM_in_Action.html)

52 Nepal Association of Foreign Employment Agencies (NAFEA), *Code of Conduct, Kathmandu*, (9 November 2005). Available from: <http://www.nafea.org.np/index.php?linkId=35>

53 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p. 104.

54 Centre for the Study of Labour and Mobility, *Migration in Nepal*, (webpage, n.d.). Available from: [www.ceslam.org/index.php?pageName=content&contentId=148](http://www.ceslam.org/index.php?pageName=content&contentId=148)

repatriation procedures, and minimum qualifications. The agreements also prohibit certain actions such as: demanding exorbitant fees from workers, providing false information about working conditions, and misleading workers about required qualifications and experience, regulations, and wages.<sup>55</sup> These agreements are examples of good rights-based practices in line with the CEDAW Committee's recommendation that Nepal "sign bilateral agreements with countries of employment with adequate provisions ensuring the security of women migrant workers."<sup>56</sup>

However, according to migrant worker advocates, the Government must do more to ensure these agreements conform to international human rights and labour standards, and to ensure that they are effectively implemented. Specifically, States parties to the agreements must cooperate to better regulate recruitment and employment processes and put in place mechanisms to punish those found to violate the human rights of women migrant workers.<sup>57</sup> The CEDAW Committee noted the urgency of this and urged the government to "establish mechanisms in the country of destination to deal with the violation of the rights of women migrant workers during employment."<sup>58</sup>

## EQUALITY BEFORE THE LAW – WOMEN'S ACCESS TO JUSTICE

The Foreign Employment Act 2007 contains provisions for redress in cases where laws related to migration for employment are violated. Penalties include fines and imprisonment for violation of recruitment agency licensing requirements (article 43), for sending minors abroad for employment (article 45), and for sending migrants to a country that is not approved by the Government of Nepal (article 46). Chapter 10 sets out the procedure for investigation and inquiry, which includes a one-year statute of limitations on filing the claim (article 60), that runs from the date of return of the migrant worker to Nepal. Chapter 11 provides for the establishment of a three-member Foreign Employment Tribunal, chaired by the Judge of Appellate Court (article 64), and with a right to appeal decisions to the Supreme Court (article 66).

Chapter 12 specifies that, in order to help resolve problems encountered by Nepalese migrants working abroad, the Government must appoint labour Attachés to those countries where 5,000 or more workers have been sent for foreign employment. According to the Act, the Labour Attachés are mandated to assist in the resolution of disputes that arise between migrant workers and their employers (article 68). These are good rights-based practices in line with General Recommendation 26 that urge governments to ensure legal sanctions for breaches of the law by recruitment agencies and to ensure the availability of legal assistance in connection with migration for work.<sup>59</sup>

55 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p. 105.

56 CEDAW Committee, *Concluding Observations 2011*, para. 34(d).

57 Forum for Women Law and Development, *Shadow Report*, pp. 67-68.

58 CEDAW Committee, *Concluding Observations 2011*, para. 34(d).

59 CEDAW Committee, *General recommendation No. 26*, para. 24(c)(i) and 24(f).

However, many Nepalis are employed through informal processes, and thus do not have binding contracts with their employer specifying the terms and conditions of work. Additionally, because the majority of Nepalese women migrant workers are employed in informal and unregulated sectors such as domestic work, they generally are not protected by labour laws. These obstacles, combined with a lack of awareness about their rights, make it difficult to access justice mechanisms and seek remedies for rights violation.<sup>60</sup> The CEDAW Committee noted its concern about the large numbers of undocumented Nepalese women migrant workers and their concentration in the informal sector. It urged the Government to “establish mechanisms to promote safe migration procedures and protect and fulfil women’s rights throughout the migration cycle” and “provide assistance for migrant women who are seeking redress.”<sup>61</sup>

The government has made some efforts to increase access to justice for returning women migrant workers. For example, it worked with UN women to initiate an enterprise development scheme to support the reintegration of returnee women migrant workers who had suffered as a result of irregular migration.<sup>62</sup> Additionally, the government provides free legal aid services to victims of fraud related to foreign employment, and in cases of trafficking, sexual exploitation, and domestic violence.<sup>63</sup> Also, pursuant to a Supreme Court order, the Government has established safe homes in Saudi Arabia, Qatar, Kuwait and the UAE to provide protection to victims of trafficking. In its Concluding Observations, the CEDAW Committee has acknowledged Nepal’s progress in promoting access to justice for women, commenting on that fact that the judiciary has rendered a number of gender-sensitive decisions which have contributed to enhancing the status of women and protecting their rights.<sup>64</sup>

## ANALYSIS AND CONCLUSIONS

Nepal’s low economic growth rates and high levels of unemployment have left many Nepalis with no choice but to migrate for work. Labour migration has become one of the defining features of Nepal’s economy and society, and increasing numbers of women are joining the ranks of Nepalis emigrating for employment. Consequently the Government has enacted several laws and policies, and undertaken several initiatives, designed to promote and protect the human rights of migrant workers, including women, including: Ratification of seven of the nine core international human rights instruments, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol.

- The National Commission on Women’s Five Year Strategic Plan (2009-2014) highlights substantive equality for women as one of its guiding principles.

60 Forum for Women Law and Development, *Shadow Report*, pp. 68.

61 CEDAW Committee, *Concluding Observations 2011*, paras. 34(b) & (e).

62 Global Migration Group, *Gender Sensitive Remittances, Savings and Investment Schemes* (webpage, n.d.). Available from: [www.globalmigrationgroup.org/en/remittances-policy-and-programme-experiences](http://www.globalmigrationgroup.org/en/remittances-policy-and-programme-experiences)

63 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Nepal* (CEDAW/C/NPL/CO/3), (Thirtieth session, 2004), para. 192. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

64 CEDAW Committee, *Concluding Observations 2004*.

- The Gender Equality Act of 2006 amended or repealed a number of civil and criminal laws, including those related to rape and sexual harassment.
- The Domestic Violence Act of 2009.
- Passage of a 2006 resolution guaranteeing women 33 percent of the seats in the Parliament/Constituent Assembly.
- The 2007 Foreign Employment Act bans discrimination based on gender and includes measures to guarantee women's security and rights when seeking jobs abroad. The Act also provides for legal sanctions for breaches of the law by recruitment agencies and provides for the availability of legal assistance in connection with migration for work.
- The 2005 Labour and Employment Policy stipulates that the State must internalize international commitments and standards of promoting gender equality in all matters related to employment and labour rights.
- The 2006 Labour Migration Policy provides for supervision and management at international borders and points of departure in order to control human trafficking and informal migration.
- The 2007 Human Trafficking and Transportation Control Act prohibits trafficking in persons, prescribing penalties from 10 to 20 years' imprisonment, and criminalizes the sending abroad of migrant workers by individuals or agencies based on fraudulent claims or without ensuring proper documentation.
- Development of the National Minimum Standards for Victim Care and Standard Operating Procedures for shelter homes (for victims of trafficking and abuse).
- The Ministry of Women, Children, and Social Welfare (MWCSW) partially funds eight NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault.
- The Government established a National Committee for Controlling Human Trafficking and endorsed the National Plan of Action on Trafficking.
- Labour Attachés have been deployed in six countries that have significant numbers of Nepalese migrants, in order to provide advice and better protections of workers' rights.
- The Nepal Association of Foreign Employment Agencies has established a Code of Conduct that encourages members to practice fair and transparent recruitment processes and makes agencies accountable for the protection of migrant workers. The Code also states that there shall be no discrimination against women in the selection of workers and that preference should be given to women in job placement.
- Nepal joined neighbouring countries in ratifying the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution.
- The Government has signed bilateral labour agreements with Qatar, Republic of Korea, UAE, Bahrain, and Japan, and is engaging with discussions with Oman, Lebanon and Malaysia regarding agreements with those countries.
- The government has worked with UN Women to initiate an enterprise development scheme to support the reintegration of returnee women migrant workers who have suffered as a result of irregular migration.
- Free legal aid services are provided to victims of fraud related to foreign employment, and in cases of trafficking, sexual exploitation, abortion, and domestic violence.
- The judiciary has issued a number of gender-sensitive decisions which have contributed to enhancing the status of women and protecting their rights.

These are all positive developments, however despite these efforts, in most communities women continue to be governed by patriarchal traditions, and women's rights are often poorly

enforced. Human rights abuses against women, particularly in the form of rape, domestic violence, dowry-related deaths, sexual harassment, forced labour and forced prostitution remain common. Nepalese women migrating for employment often face additional human rights abuses including trafficking, exploitation and debt bondage. While the Government has instituted some measures to protect migrant women from exploitation, many of these initiatives are not effectively funded or implemented. In order to address these problems, legislative reform must continue and enforcement mechanisms must be improved to ensure migrant women's human rights are protected.

## RECOMMENDATIONS

- Ratify the Convention on the Protections of the Rights of All Migrant Workers and Members of their Families and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.
- Give priority attention to addressing discriminatory and harmful practices against women and girls and adopt comprehensive measures aimed at combating violence against women.
- Amend the draft law on the National Human Rights Commission with a view to achieving full compliance with the Paris Principles.
- Amend all remaining discriminatory legislation.
- Take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the right to equal remuneration, including benefits and the right to protection of health and safety in working conditions.
- Better regulate the informal sector and ensure that women are not exploited.
- Enact and ensure effective implementation of the draft law on sexual harassment in the workplace.
- Fully implement the Human Trafficking and Transportation (Control) Act to ensure that perpetrators are punished and victims adequately protected, assisted and provided with shelter.
- Enact employment initiatives to reduce the number of women workers who are confined to self-employed, unpaid and low-wage informal activities.
- Ensure women have access to loans.
- Include in the new Constitution provisions ensuring substantive equality, and a definition of discrimination that encompasses both direct and indirect discrimination, and covers both public and private actors.
- Enact a comprehensive strategy, with concrete goals and timetables, to eliminate patriarchal attitudes and gender stereotypes.
- Investigate and document the cause of women's migration.
- Develop bilateral agreements and memorandums of understanding with all of the countries to which Nepalese women migrate in search of work, and ensure that such agreements fully reflect women's human rights and are in conformity with CEDAW.
- Regulate all aspects of migration to facilitate access for women migrant workers to work opportunities abroad, promote safe migration and ensure the protection of the rights of women migrant workers.
- Repeal discriminatory restrictions on women's migration, such as those that discourage

women from migrating for work to the Gulf countries, and instead focus on ways to promote safe migration and an enabling work environment for women.

- Ensure that all required pre-departure HIV/AIDS testing or pre-departure health examinations are respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.
- Take active measures to prevent, prosecute and punish all migration-related human rights violations whether perpetrated by public authorities or private actors.
- Properly train and supervise diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protections should include quality support services available to women migrants.
- Provide information and training with respect to anti-trafficking legislation to the judiciary, law enforcement officials, immigration and border police, and social workers in all parts of the country.
- Establish a formal system of proactively identifying victims of trafficking among high-risk persons.
- Collect and analyse data on all aspects of trafficking and prostitution, disaggregated by age, sex and country of origin, in order to identify trends.
- Increase efforts to decrease the number of undocumented Nepalis migrating for work.
- Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation; including: recommended contents of labour contracts; legal rights and entitlements in countries of employment; procedures for invoking formal and informal redress mechanisms; processes to obtain information about employers; cultural conditions in countries of destination; stress management; first aid and emergency measures, including emergency telephone numbers of home embassy, and services; information about safety in transit, including airport and airline orientations; and information on general and reproductive health, including HIV/AIDS prevention. Such training programmes should be targeted at women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women.
- Improve protection for women working in informal sectors.
- Provide better institutional support both in Nepal and in countries of employment to promote and protect the rights of women migrating for work, including those who used informal means to migrate.
- Adopt regulations and design more stringent monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers.
- Implement accreditation programmes to ensure good practices among recruitment agencies.
- Prosecute and punish persons engaged in illegal recruitment processes and provide assistance for migrant women in seeking redress.
- Establish mechanisms in the country of destination to deal with the violation of the rights of women migrant workers during employment.
- Develop a confidential and safe system of filing complaints and facilitate access to justice for victims of violence, employment discrimination and exploitation and sexual harassment.

## REFERENCES

- Amnesty International, *UPR: Nepal – an opportunity to translate recommendations into action*, AI Index: ASA 31/001/2011, 18 January 2011.
- Bhadra, C. (2008), *International labour Migration of Nepalese Women: the Impact of their Remittances on Poverty Reduction*, Asia Pacific Research and Training Network on Trade, Working Paper Series No. 44.
- CEDAW Committee (2011), *Report of the Committee on the Elimination of Discrimination Against Women: Nepal*, CEDAW/C/NPL/CO/4-5.
- CEDAW Committee (2004), *Report of the Committee on the Elimination of Discrimination Against Women: Nepal*.
- CEDAW Committee, General Recommendation 26 on Women Migrant Workers.
- Committee on the Elimination of Discrimination Against Women (2008), *General recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R.
- The Foreign Employment Act 2007 (Act 26 of 2064). Foreign Employment Regulations 2008, Rule 48.
- UNIFEM (2005), *Claim and Celebrate Women Migrants' Human Rights Through CEDAW*.
- UN Women Country Office, Nepal, 2011.
- UN Women (2011), *Country Snapshots*.
- US Department of State (2011), *Trafficking in Persons Report: Nepal*.

## INTERNET

- [www.adb.org/documents/books/ado/2011/ado2011-nep.pdf](http://www.adb.org/documents/books/ado/2011/ado2011-nep.pdf)
- [http://www.colomboprocess.org/index.php?option=com\\_content&view=article&id=49&Itemid=66](http://www.colomboprocess.org/index.php?option=com_content&view=article&id=49&Itemid=66)
- [www.nepal.iom.int/index.php?option=com\\_content&view=article&id=32&Itemid=38&lang=en](http://www.nepal.iom.int/index.php?option=com_content&view=article&id=32&Itemid=38&lang=en)
- <http://www.migrationinformation.org/USfocus/display.cfm?ID=277>
- [http://www.trueknowledge.com/q/population\\_of\\_nepal\\_2011](http://www.trueknowledge.com/q/population_of_nepal_2011)
- <http://en.worldstat.info/Asia/Nepal>
- [http://www.indexmundi.com/nepal/economy\\_profile.html](http://www.indexmundi.com/nepal/economy_profile.html)
- [http://en.wikipedia.org/wiki/Human\\_rights\\_in\\_Nepal](http://en.wikipedia.org/wiki/Human_rights_in_Nepal)
- [www.ilo.org](http://www.ilo.org)
- [www.unwomen.org](http://www.unwomen.org)



Photo credit: United Nations/Rauf Alamsyah

## CHAPTER 3

# BEST PRACTICES

# 1. Pre-Departure

## A. ENACT GENDER-SENSITIVE, RIGHTS-BASED LEGISLATION IN COUNTRIES OF ORIGIN

Discrimination, poverty and unemployment are three driving factors behind women's migration for employment. Strong laws and policies prohibiting gender discrimination and promoting substantive gender equality are key to improving women's lives and making migration a choice rather than a necessity. There are many examples of gender-sensitive rights-based legislation and policies in countries of origin covered in this study.

For example, Bangladesh has reformed its legislation on violence against women, equal pay, maternity leave and parliamentary quotas, which have helped to reduce gender-based discrimination. The Bangladesh Labour Law of 2006 specifically prohibits discrimination against women. The Government adopted the National Women Advancement Policy in 2011, which accords women equal political and economic rights as men through benefits like social security, as well as ensuring the enactment of laws to reduce violence against women, and catering to their health and nutrition needs.

Cambodia's Constitution calls for the abolition of all forms of discrimination against women, and the Penal Code punishes those that refuse to provide employment opportunities or give property or services to anyone based on their gender. The Labour Law also provides robust protections for women employed in the formal sector including: a maximum 48-hour work week; prohibition of a seven-day work week; prohibition of sexual harassment; prohibition of termination due to pregnancy; allocation of 90 days of paid maternity leave; breastfeeding breaks; and provision of a nursing room and day-care centres in the workplace, or reimbursement for day-care expenses. Several policy measures have also been initiated to uphold the legal, political and social rights of women, including: gender-responsive planning and budgeting; affirmative action to increase women's political participation; and educational programmes that promote the principle of equality between men and women in private and public life.

Lao People's Democratic Republic has enacted the Law on the Development and Protection of Women, which prohibits all forms of discrimination against women and aims to ensure that women have equal opportunities to participate in development. Additionally, the Ministry of Education has established a curriculum for teaching gender equality in schools.

The principle of gender equality is enshrined in the Constitution of the Philippines, and the government adopted a Magna Carta for Women, which translates key principles of CEDAW into national law. Additionally, domestic workers, who are mainly women, are explicitly included in the Labour Code, and thus are covered by provisions related to minimum wage and health care. The Philippines is also the second country in the world to ratify the International Labour Organization Convention No. 189 on Decent Work for Domestic Workers, which enshrines core protections for local and migrant domestic workers and which will enter into force in 2013, after which the government is obligated to enforce it under national law.

Indonesia's Constitution and Law No. 39/1999 on human rights prohibits direct and indirect discrimination on the basis of race, sex, religion, political opinion, national and social origin. Additionally, a newly drafted Act Concerning Gender Equality and Equity places a positive duty on the State to achieve gender equality, makes discrimination by both public and private actors unlawful in politics, law, government, and education, and implies that substantive equality must be achieved in the areas of public, political and international life. The government also passed a Reproductive Rights Act which recognizes the right of female rape victims to decide on the fate of their pregnancies and guarantees women's right to be free from violence.

The Constitution of India provides for the fundamental right to gender equality and non-discrimination, includes a specific enabling provision on affirmative action, and ensures that one-third of the seats in local government are reserved for women. Supreme Court decisions have also resulted in CEDAW's integration into domestic law. Additionally: 2009 amendments to the Criminal Procedure Code have strengthened procedural safeguards with respect to crimes against women; the 2010 Law on Protection of Women Against Sexual Harassment at the Workplace covers all workplaces across the organized and informal sectors; the Domestic Workers Welfare and Social Security Act (2010) requires registered contracts between employees and employers; specified working hours; paid holidays; protection against harassment; social security; and access to benefits. As this publication was going to print, an Equal Opportunity Commission Bill was being debated. Also, as part of the 2012-2017 National Plan, a Working Group on Women's Agency and Empowerment has been created to oversee gender issues and ensure the fulfilment of women's rights.

In Nepal, the 2005 Labour and Employment Policy stipulates that the State must abide by international commitments and standards of promoting gender equality in all matters related to employment and labour rights. Additionally, the Gender Equality Act of 2006 amended or repealed a number of civil and criminal laws to make them more gender sensitive, including those related to rape and sexual harassment. Other legislative and policy initiatives include the passage of The Domestic Violence Act in 2009; the enactment of a 2006 resolution guaranteeing women 33 per cent of the seats in the Parliament/Constituent Assembly; and the Five Year Strategic Plan of the National Commission on Women (2009-2014) which highlights substantive equality for women as one of its guiding principles.

Thailand has drafted a Promotion of Opportunity and Equality Act to promote gender equality and in 2007 passed the Protection of Victims of Domestic Violence Act, which provides for the protection and rehabilitation of victims. The government has also assigned a high-ranking

official as Chief Gender Equality Officer and appointed a Gender Focal Point to promote gender equality in every ministry and department. Temporary special measures have also been taken to achieve gender balance in the National Human Rights Commission and the Village and Urban Fund Committee.

## B. ENFORCE GENDER-SENSITIVE AND RIGHTS-BASED LABOUR MIGRATION POLICIES

In its General Recommendation 26, the CEDAW Committee noted the importance of comprehensive gender-sensitive and rights-based labour migration policies. The following are examples from countries of origin that have enacted such policies.

In Bangladesh the Ministry of Expatriate Welfare and Overseas Employment (MoEWOE) has enacted policies on female migration to teach specialized skills and rights awareness to migrant women. Additionally, a Wage Earners' Welfare Fund has been established in order to provide financial assistance to women and men migrant workers facing difficulties overseas.

Lao People's Democratic Republic's Strategic Plan (2011–2020) for workforce development includes the protection of outgoing Laotian women migrant workers and incoming migrant workers employed in Lao People's Democratic Republic, and has established health projects targeting migrants and mobile populations that focus on HIV prevention and other communicable diseases. The Department of Labour Protection of the Lao Federation of Trade Unions also helps to resolve conflicts between workers and recruitment agencies, and organizes workshops and education campaigns on the realities of migration.

In Nepal the 2007 Foreign Employment Act bans gender-based discrimination and includes measures to guarantee women's security and rights when seeking jobs abroad. The Act also provides for legal sanctions for breaches of the law by recruitment agencies and provides for the availability of legal assistance in connection with labour migration.

The Philippines' Migrant Workers and Overseas Filipinos Act of 1995 includes provisions relating to: the promotion and development of foreign employment; regulation and management of recruitment, placement and labour migration flows; and welfare and protection of migrant workers and their families. The Act also penalizes illegal recruitment and provides a list of services available to Filipino migrant workers including issuance of travel advisories, information dissemination, counselling and legal services, welfare assistance including medical and hospitalization services, repatriation and orientation for returned workers. The Law also states that the government "shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The Government of the Philippines has also issued guidelines regarding the deployment of domestic workers which include policies aimed at improving working conditions such as: upgrading workers' skills; providing country-specific culture and language orientation courses; enacting protective mechanisms at the job sites; obliging employers to

pay deployment costs; and increasing the minimum salary to a level commensurate with workers' acquired competencies.

In Indonesia, Regulation No. 4/2008 requires a review of regulations in migration destination countries that have not signed a memorandum of understanding (MoU) with Indonesia. Additionally, a Domestic Worker Roadmap 2017 has been created to encourage receiving countries to recognize domestic workers as formal workers and grant them necessary rights. The Government also enacted a new policy lowering placement fees for migrant domestic workers from an average cost of 3,000 dollars to between 800 and 1,600 dollars, and giving migrant domestic workers the option of taking bank loans to pay fees rather than be indebted to their employer. There have been several efforts to simplify the migration process, for instance through: the establishment of one-stop shops, with all relevant services available "under one roof" at embarkation and disembarkation gates; decentralization of the permit process and reorganization at the provincial level; and issuance of passports in the regions - with a maximum three-day processing time. Additionally, it is exploring a "live-out system" of housing Indonesian migrant domestic workers in dormitories instead of having them live with their employers, and has established a new database and national worker biometric identity card system which distributes cards to migrant workers.

India's Emigration Act of 1983 has provisions for examining employment contracts to ensure that the terms and conditions are neither discriminatory nor exploitative and that the provisions for travel, wages and working and living conditions are in conformity with the prescribed norms. The policy also sets certain requirements for licensing recruitment agencies, including limits on the recruitment fees that may be charged to prospective workers. The Pravasi Bharatiya Bima Yojana (the Overseas Indian Insurance Scheme), which covers emigrant workers, includes: emergency care including cashless hospitalization care; maternity benefits; legal expenses related to employment; and death benefits. "Smart cards" have been distributed to first-time migrant workers, which contain important details related to their travel documents, work contracts, and insurance.

## C. ENSURE MIGRANT WORKERS ENTER INTO AN EMPLOYMENT CONTRACT BEFORE DEPARTURE

Written contracts between recruitment agencies, migrant workers and employers are crucial to protecting workers' rights and provide a means for redress when terms are violated. Some countries of origin require signed contracts before permitting workers to migrate for employment. Others have taken the additional step of requiring that contracts reflect minimum labour standards and are written in local languages.

Lao People's Democratic Republic requires contracts between Laotian workers, recruitment agencies, and employers as a pre-requisite for legal migration. In Cambodia, Sub-decree 190 requires that contracts between agencies and workers are written in the Khmer language and must specify working conditions, job status, types of work to be done, and benefits.

Indonesia's Regulation No. 4/2008 requires assurance that employment contracts contain articles that protect labour migrants, and the Government recently enacted a policy requiring that employment agencies specify in all contracts that domestic workers may not clean outside of windows or hang laundry from high rise apartments, after a spate of injuries and deaths resulting from this dangerous practice. Under Philippine law, all prospective migrant workers and recruiters must enter into contracts that are legally enforceable. Once hired, all workers are required to sign an Overseas Employment Contract with their employer, which must be approved by the Philippine Overseas Employment Agency (POEA) before they can be deployed for work abroad. At a minimum, contracts must provide for: guaranteed wages for regular working hours; free transportation to and from the workplace or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; and fair or authorized causes for termination of employment.

## D. REGULATE AND MONITOR RECRUITMENT AGENCIES

It is essential to monitor recruitment agencies and employers to protect migrant women. According to the CEDAW Committee's General Recommendation 26, States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers. Many of the countries of origin in this study have made efforts to better regulate agencies participating in the recruitment of migrant workers. Lao People's Democratic Republic has issued a Decree on Employment Services to regulate domestic and overseas employment processes. In Bangladesh, Emigration Ordinance 1982: regulates the licensing of recruitment agencies, provides redress, including the forfeiture of security deposit for misconduct by recruitment agencies, which may be paid to an affected person; and penalizes those agencies who fraudulently induce workers to emigrate. Cambodia's Sub-decree 190 requires that recruitment agencies are periodically inspected by the Ministry of Labour, which has resulted in owners, staff members, and managers from licensed labour recruitment agencies being convicted for trafficking-related offences. The Government has also cooperated with Cambodia's recruitment agency association and UN Women to produce a pre-departure training manual and a code of conduct for recruitment agencies.

The Philippines Overseas Employment Agency (POEA) controls overseas employment by: limiting participation to qualified employers, workers, and recruitment agencies; governing the recruitment process and setting minimum employment standards; regularly inspecting recruitment agencies; and maintaining a system of adjudication to ensure compliance with regulations. According to these regulations, if an employer violates any provision(s) of the employment contract, the worker can apply for legal assistance from the recruitment agency. In such cases, the agencies are liable jointly and severally with the foreign employer.

Indonesia's Regulation No. 4/2008 requires the accreditation of private recruitment agencies. Provisions of Law No. 39/2004 require placement agencies to provide a draft placement

agreement, a draft employment contract, and a worker demand letter from employers, before they can be issued a permit to operate. Indonesia also requires that placement firms have representatives in the countries where Indonesian workers are recruited, enrol overseas workers in an insurance programmes, and bear all costs in the recruitment process (with the exception of identity document processing, health and psychological examination, training and competence certificates). Recruitment firms may receive sanctions, including the revocation of their licence, if they are found to be: recruiting without a permit; sending migrant workers abroad with insufficient documents; placing excessive costs on labour migrants; or failing to provide pre-departure briefings.

In a strong instance of self-regulation, the Nepal Association of Foreign Employment Agencies has established a Code of Conduct that encourages members to practice fair and transparent recruitment processes and makes agencies accountable for the protection of migrant workers. The Code also prohibits discrimination based on gender in the selection of workers and states that preference should be given to women in job placement.

## E. RAISE AWARENESS OF WOMEN MIGRANT WORKERS' HUMAN RIGHTS AND THE RISKS ASSOCIATED WITH MIGRATION

The CEDAW Committee encourages awareness-raising activities that highlight the costs and benefits of migration, as well as women migrant workers' rights. The Committee also encourages the media, information and communication sectors to contribute to awareness-raising such as the contributions that women migrant workers make to the economy, and their vulnerability to exploitation and discrimination. Countries of origin included in this study have initiated diverse and effective awareness-raising activities on migrant women's rights.

In Bangladesh, resource centres supported by the Government and UN Women have provided comprehensive information, resources and training to prospective migrant women, and the government and international donors organized a month-long road campaign to highlight trafficking and other crimes against women. The campaign also educated communities about how to assist trafficked persons and reintegrate them into their communities. Cambodia launched "safe migration" education campaigns in several provinces, as well as on radio and television, in order to raise awareness of trafficking. In Lao People's Democratic Republic, the Lao Women's Union's "safe migration" initiatives have included financial-literacy training and rights awareness programmes. In India public awareness-raising initiatives were launched through radio talk shows, press conferences and safe migration awareness campaigns. India's Awareness Generation Project for Rural and Poor Women, implemented by the Central Social Welfare Board, supports campaigns to educate women about their rights and provide them with legal aid.

In Indonesia, training materials developed by the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) for migrating workers cover the

following topics: “(i) terms of deployment and work contract (including rights and obligations of labour migrants and their employers); (ii) laws (including criminal laws), regulations and customs of destination countries; (iii) arrival and departure procedures; (iv) the role of Indonesian diplomatic missions vis-à-vis Indonesian labour migrants and how to access assistance; (v) insurance claims; (vi) safe banking and remittances channels; (vii) health tips; (viii) awareness raising of certain issues, such as trafficking in persons and drugs; (ix) self-confidence coaching to deal with culture shock, stress, loneliness, and professional issues; and (x) procedures for returning home.”

## F. GENERATE ECONOMIC OPPORTUNITIES FOR POTENTIAL WOMEN MIGRANT WORKERS IN COUNTRIES OF ORIGIN

Skills training and income-generation activities can provide alternative livelihoods to women and girls who might otherwise be trafficked, smuggled, or subjected to abuse and exploitation when migrating for work, including via undocumented channels. The CEDAW Committee has repeatedly encouraged States parties to take a coherent, comprehensive approach to addressing the root causes of women’s migration, including by creating of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or unemployment. Some countries of origin covered in this report have made notable efforts to improve the skills and economic opportunities of women at risk of trafficking and economic exploitation.

For example, the Perspective Plan for Bangladesh (the Government’s development plan for the period 2010-2020) aims to: “give women their rightful share in skills development training both at home and abroad, and improve professional excellence.” The plan also states the goal of “enhanc[ing] the economic participation rate of women from 29 per cent to at least 40 per cent by 2021.” In Cambodia, the National Strategic Development Plan (NSDP) includes several priority actions, “aimed at reducing gender-based discrimination in the labour market and encouraging greater entry by women into higher level jobs.” Additionally, the Gender Mainstreaming Action Plans implemented within the Ministry of Commerce and the Ministry of Industry, Mines and Energy include: “building the capacity, skills and confidence of women in the informal economy; increasing women’s access to microfinance; promoting registration of businesses owned by women; and increasing women’s access to information, trade and services.

In India, the Karnataka State Industrial Investment and Development Corporation have begun a programme to train women in handloom weaving. A total of 4,500 women and girls have thus secured employment, a quarter of whom are children of Devdasis (women traditionally “dedicated” to a temple and later subjected to sexual exploitation). With the help of such schemes, the cycle of trafficking is broken and the children of Devdasis have a safe, sustainable alternative livelihood source.

## G. ACCELERATE EFFORTS TO PREVENT TRAFFICKING

Article 6 of CEDAW obligates States parties to “take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.” The CEDAW Committee’s General Recommendation 19 on Violence against Women also notes that poverty and unemployment often leads women from poorer countries to migrate to richer countries for work, which can increase women’s vulnerability to trafficking and other forms of exploitation such as sex tourism. All of the countries in this study have recognized that these practices are incompatible with women’s equal enjoyment of rights, and have undertaken measures to decrease women migrant workers’ risk of trafficking and to provide services to victims.

For example, Bangladesh passed the Human Trafficking Deterrence and Suppression Act in 2012, prohibiting and punishing all forms of human trafficking, and enacted a National Plan of Action for Combating Human Trafficking for 2012-2014, which provides for implementation of the new anti-trafficking law, raising awareness about trafficking of women and children, and improving oversight of the migrant labour recruitment process.

Cambodia enacted the Law on the Suppression of Human Trafficking and Sexual Exploitation and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking, including guidelines to improve victim treatment and protection, and training for officials on the use of these standards. It has also created systematic procedures for identifying and protecting victims of trafficking, as well as negotiating agreements with Viet Nam and Thailand regarding identification of trafficking victims and repatriation, and implementing policies that afford trafficking victims the right to seek legal action against their traffickers and encourage them to assist in investigations.

In Lao People’s Democratic Republic, article 134 of the Lao Penal Code prescribes penalties ranging from five years to life imprisonment for human trafficking offences. Additionally, the Government has: established a National Steering Committee on the Fight Against Human Trafficking; created a Regional Plan of Action II on trafficking; negotiated a Memorandum of Understanding with Thailand on bilateral cooperation on trafficking; and established temporary shelters for women and children victims of trafficking.

In the Philippines, the Government has undertaken significant anti-trafficking efforts, including: passing the 2003 Anti-Trafficking in Persons Act, which prohibits sex and labour trafficking; conducting anti-trafficking training sessions with thousands of law enforcement officials; increasing the number of designated trafficking prosecutors from 36 to 58 individuals; the operation of 42 temporary shelters; an anti-trafficking hotline; and a Recovery and Reintegration programme for Trafficked Persons which has provided skills training, shelter, legal advice, and financial assistance to thousands of trafficking victims. Further, screening mechanisms for signs of trafficking for prospective migrant workers have been improved; media programmes have been introduced to educate the public about the dangers of trafficking; anti-trafficking information has been made a part of pre-employment orientations for migrant workers; the POEA has distributed nearly 100,000 pieces of printed material

about trafficking and illegal recruitment; and the community education programmes of the Commission on Filipinos Overseas (CFO) has reached over 50,000 people.

Indonesia has also boosted efforts to protect migrant women from trafficking, including: passing an immigration law in 2011 that provides for up to two years' imprisonment for officials found guilty of aiding and abetting human trafficking or people-smuggling; drafting of a National Action Plan on the Elimination of Trafficking in Persons (2009-2014); issuing Guidelines for Law Enforcement regarding the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases; operating 172 shelters and trauma clinics at the provincial and district level, and 306 Women and Child Service Units in police stations across the country, which provide emergency protection and medical services to victims of violence and trafficking; conducting anti-trafficking in persons campaigns delivered via conferences, radio, newspapers, billboards, pamphlets, school programmes, and neighbourhood meetings; issuing Ministerial Decree No. 9/2011 on Early Warning TIP Indicators to branch offices and NGOs who provide support to trafficking victims; publishing a training manual on "Recovery, Return and Reintegration" for trafficking victim care providers; training anti-trafficking front-line workers from government agencies and non-governmental organizations on how to support victims of trafficking who are required to be criminal witnesses; creating telephone and postal hotlines to report suspected trafficking cases; collecting data from various provinces regarding the place of origin of trafficked women, the motives for seeking employment which results in women being trafficked, jobs into which women are trafficked and the nature of the exploitation which experienced by trafficked women.

India has passed the Immoral Traffic Prevention Act (ITPA), which prohibits sex trafficking; established Anti Human Trafficking Units (AHTUs) in police departments throughout the country; created a scorecard system with AHTUs that aims to improve available trafficking data; established a dedicated federal anti-trafficking unit in January 2012, staffed by police officers with nationwide investigative authority; developed standard operating procedures to assist in identifying trafficking victims and refer them to protection services; created bi-monthly ministerial meetings, including anti-trafficking officers from state governments to coordinate on trafficking prevention efforts; and launched "Ujjawala" (A New Dawn of Light), a programme focused on the prevention of trafficking as well as rescuing, rehabilitating and re-integrating victims.

In Nepal, the 2006 Labour Migration Policy provides for supervision and management at international borders and departure points in order to control human trafficking and irregular migration; the 2007 Human Trafficking and Transportation Control Act prohibits trafficking in persons, prescribing penalties ranging from 10 to 20 years' imprisonment, and criminalizes acts of individuals or agencies that send migrant workers abroad by making fraudulent claims or without ensuring proper documentation; and the Government has established a National Committee for Controlling Human Trafficking and endorsed the National Plan of Action on Trafficking.

## 2. Onsite

### A. INCLUDE WOMEN MIGRANT WORKERS EMPLOYED IN THE INFORMAL ECONOMY IN DESTINATION-COUNTRY LABOUR LAWS

In General Recommendation 26 the CEDAW Committee emphasizes that destination countries must uphold the rights of women migrant workers. Specifically, the Committee notes that receiving countries “should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate. In particular, they should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes, and holiday and vacation leave regulations.”

There are some strong examples where countries in this study have afforded legal protection to women migrant workers, including those working in the informal economy. In Hong Kong, Employment Ordinance (Chapter 57), applies to all workers including migrant workers and domestic workers employed in the informal economy. It provides important benefits such as: one weekly day of rest; public holidays; annual leave; one month’s notice for termination, or one month’s pay in lieu of notice; payment of wages; and defined – and limited - allowable deductions by employers. Female migrant workers are also entitled to 10 weeks’ paid maternity leave subject to certain conditions, and Employment Agency Regulations prohibit more than 10 per cent of any migrant worker’s monthly salary constituting a recruitment fee. Finally, since the employment of all women migrant workers is clearly covered by the law, disputes between employer and worker can be taken to the Hong Kong Labour Department, and if the dispute cannot be conciliated, the Department will recommend resolving the matter in the Labour Court.

In 2009, Jordan became the first Arab country to include domestic workers under the protections of its Labour Code. The new regulations require employers to: pay domestic

workers' salaries into a bank account; limit their working hours; provide a weekly day of rest; provide medical insurance; and provide 14 days of medical leave, in addition to 14 days of annual leave.

## B. ENFORCE STANDARD CONTRACTS TO BE USED BY ALL EMPLOYERS AND EMPLOYMENT AGENCIES WHEN HIRING WOMEN MIGRANT WORKERS

The CEDAW Committee emphasizes that States parties must ensure that contracts for women migrant workers are legally valid. It is critical that such contracts are fully in line with national labour laws and international standards - and are legally enforceable. One way of assuring this is by developing a government-approved standard or model contract and stipulating that all employers and migrant worker use such contract during the hiring process.

Jordan is an excellent example of this good practice in action. In 2003, the Ministry of Labour instituted a "Special Working Contract for Non-Jordanian Domestic Workers," which must be used by employers when hiring domestic workers, and is required for securing visas and work permits. The contract details the rights and responsibilities of both parties, including: responsibility of the employer to bear the costs of the worker's travel, work and residence permits; timely payment of wages; right of the worker to terminate the contract without notice, if the aforementioned costs are not borne by the employer and wage payments are delayed; payment of wages directly to the worker (unless indicated otherwise by the worker in writing), with signed receipts maintained by both parties; adequate shelter, clothing, food, and health care; right to life and accident insurance with equal contributions from the employer and worker; a weekly holiday, and bonus at the end of contract of the equivalent of 15 days' wages; and the reiteration that both parties treat one another with respect and dignity, and that treatment of women migrant workers be in compliance with international human rights standards.

The United Arab Emirates (UAE) also mandates the use of standard employment contracts for domestic workers that specify: the duration of contract; salary; accommodation; healthcare; repatriation costs; arrangements for settlement of disputes; recruitment fees; adequate breaks; paid vacation; and methods for coordinating with concerned embassies.

A standard domestic worker contract ("Employment Contract for a Domestic Helper Recruited Abroad") was also developed by Hong Kong SAR, which is required before the Administration issues a work visa. The standard contract reflects the rights of migrant workers as detailed in the Employment Ordinance and is the only legally enforceable contract for domestic workers in Hong Kong SAR's Labour Courts.

## C. CREATE MOUS BETWEEN COUNTRIES OF ORIGIN AND COUNTRIES OF EMPLOYMENT

In General Recommendation 26, the CEDAW Committee recommends that States parties who are receiving and transit countries should enter into bilateral or regional agreements or memorandums of understanding (MoUs) aimed at protecting the rights of women migrant workers. Bilateral MoUs between countries of origin and countries of destination generally promote more effective migration management.

Good practice dictates however, that these MoUs should: include provisions for ensuring that all legal migrant workers are covered under labour laws; dictate clear steps for recruitment, entry into the country, and departure from the country after the contract term is completed; provide necessary support for the social welfare and health of migrant workers; ensure incentives for the voluntary return to the country of origin after a contract is completed; and set out a binding mechanism for resolving disputes between the two countries.

Thailand has signed MoUs concerning intergovernmental cooperation on migration with neighbouring countries including Cambodia, Lao People's Democratic Republic and Myanmar. The MoUs include provisions for registering migrant workers, providing them with temporary residence cards and giving them the freedom to leave abusive employers and participate in mainstream society. A Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong, has also been signed by Thailand, Cambodia, China, Lao People's Democratic Republic, Myanmar, and Viet Nam.

The UAE has entered into MoUs with most of the labour sending countries covered in this study including Nepal, Bangladesh, Indonesia, the Philippines, Thailand and India. Various provisions of these agreements aim to better regulate and control recruitment firms in the UAE, ensure that firms do not cheat migrant workers, and ensure that working conditions offered by the agencies are adhered to when workers arrive in the UAE and begin their jobs.

Bahrain has also entered into bilateral MoUs with Nepal, the Philippines, Bangladesh and India with the aim of better facilitating manpower recruitment, ensuring the safety and protection of migrants, and guaranteeing a minimum standard of treatment during employment.

## D. ENSURE WOMEN MIGRANT WORKERS' ACCESS TO JUSTICE MECHANISMS.

The CEDAW Committee has urged States parties to ensure that women migrant workers, both documented and undocumented, are able to access adequate remedies when their rights are violated. Specific recommendations include ensuring mechanisms are in place for lodging

complaints regarding discrimination and abuse in the workplace. Accessibility is a particularly important issue for domestic workers who are hidden behind the walls of employers' homes.

Examples of good practice in this area include initiatives taken by Jordan's Ministry of Social Welfare and Family Protection, which has established a hotline to receive calls from migrant domestic workers alleging abusive treatment, including physical and sexual harassment. Similarly, Hong Kong SAR's Department of Labour has set up a Labour Law Enquiry Hotline that receives complaints from migrant domestic workers about unlawful treatment. The Government of Singapore also operates a free hotline that migrant domestic workers can call to obtain information on their rights and on the procedure for changing employers.

Bahrain established a complaint hotline for migrant workers as well as centres within the Supreme Council of Women, with offices in all governorates, to receive and act on women's complaints. Additionally, Ministry of Labour has a policy to review the records of complaints or disputes filed against employers before approving their applications to employ migrant domestic workers.

In Singapore, the Government also operates a hotline for domestic workers to seek assistance and report ill-treatment or exploitation. The Ministry of Manpower offers dispute resolution services for all employees, foreign or local, and the Foreign Workers Unit of the Ministry provides free advisory and mediation services to foreign workers who experience problems with employers. Claims may be referred to the Labour Court for adjudication where agreement cannot be reached.

## E. COVER LEGAL COSTS THROUGH INITIATIVES INCLUDING LEGAL AID AND DIPLOMATIC AND CONSULAR ASSISTANCE

The CEDAW Committee emphasizes that States parties that are origin countries should train and supervise their diplomatic staff to protect the rights of citizens working abroad. Such protection should include quality support services available to women migrants, including legal aid when needed. Additionally, the governments of receiving countries should ensure that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid.

Countries engaging in good practices in this area include: the Philippines, which pays the legal costs for citizens who file cases alleging abuse in court, and operates temporary shelters for victims fleeing abusive employers in 20 Philippine embassies or consulates, where women can stay temporarily while their cases are investigated and until can be repatriated. Bahrain, appoints lawyers to work on behalf of migrant domestic workers when contract disputes cannot be resolved and must be taken to court. Bangladesh trains the

labour attaches of embassies and government officials in receiving countries to ensure they are sensitive to the needs of migrant women, and operates a government-run shelter in Saudi Arabia for Bangladeshi women fleeing abusive employers. The Government of India also supports shelters in diplomatic missions in the Middle East to provide services including medical care and legal assistance to Indian migrant workers, and the Government of Nepal has established safe homes in Saudi Arabia, Qatar, Kuwait and UAE to provide protection to victims of trafficking.

## F. INITIATE PERIODIC REGISTRATION OPPORTUNITIES FOR WORKERS AND COMPULSORY REGISTRATION FOR EMPLOYERS

Thailand has successfully employed this good practice by registering millions of irregular migrants from Myanmar, Cambodia, and Lao People's Democratic Republic. The registration initiatives have included all categories of workers, including domestic workers, and provided them with one year of legal status in Thailand. Employers who wished to hire migrant workers were also required to register with the Ministry of Labour. Both initial registration processes were free. Employers and migrant workers were then mandated to take further steps to formalize the hiring process, and workers then received a legal work permit from the Ministry of Labour.

## F. UTILIZE THE MEDIA AND OTHER MEANS TO RAISE AWARENESS OF MIGRANT WORKERS' RIGHTS

As stated earlier, the CEDAW General Recommendation No. 26 suggests that States parties use the media and other means of communication to raise awareness about migration issues, including women migrant workers' contributions to the economy, their vulnerability to exploitation and discrimination, and the various sites at which exploitation occurs. Some of the receiving countries in this study have made good efforts in this area.

Bahrain, for instance, distributes brochures on workers' rights at airports, health centres, and foreign embassies and has undertaken media campaigns to educate vulnerable populations about trafficking risks. Singapore's Ministry of Manpower published an information guide advising employers on proper treatment of domestic workers and informing them of the penalties for physical assault and forced confinement. Thailand, in 2011, distributed around 150,000 leaflets in migrant workers' languages that educate workers on their rights and their employers' obligations to them. Additionally in Thailand,

community radio programming, presented in migrant workers' languages, has been successful at informing migrant workers about their rights, laws, regulations, and other matters. The UAE has also established a website to raise awareness about trafficking, and initiated anti-trafficking information and education campaigns within the country and with origin-country embassies.

## L. UPHOLD MIGRANT WOMEN'S RIGHT TO FREEDOM OF ASSOCIATION

The right to organize and freely associate is especially important for guaranteeing migrant workers' labour protections are upheld, and the CEDAW Committee notes that States parties should enshrine this freedom and others for women migrant workers under constitutional and civil law and labour codes, so that they enjoy the same rights and protection afforded to all workers in the country. In an example of a best practice, the law in Hong Kong SAR officially recognizes migrant workers' unions and protects the rights of their members. For example, a union member whose contract is terminated by her employer due to her involvement in union activities is protected under the labour law. An employer found guilty of the offence can be fined 200,000 Hong Kong dollars. A union can also bring cases to international attention by lodging complaints with the International Labour Organization (ILO). In Hong Kong SAR, unions of migrant domestic workers and other migrant workers have collaborated with general trade unions like the Hong Kong Confederation of Trade Unions (HKCTU) on issues such as wage cuts and maternity protection. The government also regularly invites migrant workers' associations and coalitions to provide feedback on policies and regulations affecting migrant workers.

# 3. Upon Return

## A. IMPLEMENT PROGRAMMES THAT PROVIDE SHELTER, LEGAL AND SOCIAL SERVICES TO MIGRANT WOMEN WHO HAVE EXPERIENCED ABUSE

In General Recommendation 26 the CEDAW Committee urges States parties to provide comprehensive socio-economic, psychological and legal services to facilitate the reintegration of women migrant workers who have returned home. Sending countries have enforced several good practices that help to facilitate women's return and support those who have been exploited and abused.

In Bangladesh, as mentioned earlier, resource centres, supported by the Government and UN Women, conduct rehabilitation programmes for returnee migrant women. Additionally, the Government of Bangladesh operates nine homes and a one-stop crisis centre that provide legal, medical, and psychiatric services to women who have been victims of violence, including trafficking. In Indonesia, the Government has a training manual on "Recovery, Return and Reintegration" for trafficking-victim care providers, and operates 172 shelters and trauma clinics at the provincial and district level, as well as 306 Women and Child Service Units in police stations nationwide, which provide emergency protection and medical services to victims of violence and trafficking.

Lao People's Democratic Republic operates Migrant Worker Resource Centres that provide return migrants and members of their families with information, counselling and support services. Nepal's Ministry of Women, Children, and Social Welfare (MWCSW) partially funds eight NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault. Finally, the Philippines operates a Return and Reintegration programme, which acts as a clearinghouse and consolidator of information and programme packages aimed at facilitating the reintegration of returning migrant workers into mainstream Philippine social

and economic life. The Government also operates a Recovery and Reintegration programme for Trafficked Persons which has provided shelter, skills training, legal advice, and financial assistance to thousands of trafficking victims.

## **B. SUPPORT SAVINGS MOBILIZATION AND PRODUCTIVE INVESTMENT OF REMITTANCES TO MAXIMIZE THE DEVELOPMENT IMPACT OF MIGRATION**

The CEDAW Committee emphasizes the importance of safeguarding remittances earned by women migrant workers. The Committee has urged States parties to provide information and assistance to women so that they are better able to participate in savings schemes and access formal financial institutions to send money home.

Countries of origin have developed some innovative practices to help women migrant workers maximize the financial benefits of migration, to harness their own development and to break the chains of poverty and unemployment that in turn propel the cycle of repeated migration for work. For example, the Asian Migration Centre in Hong Kong SAR organizes and trains women migrant workers to participate in group savings and collective decision-making, and to make sustainable alternative investments in their home countries. Bangladesh supports programmes to encourage remittances through official channels. The Government of Bangladesh has even launched a new bank dedicated to providing services for migrant workers such as soft loans, improved processes for transferring remittances, and loans upon return to the country. Likewise, Indonesia has initiated banking schemes to help migrant workers save money or make use of micro-loans to start small businesses when they return to Indonesia.

# References

- Ali S. Zaghal and Arda Freij-Dergarabedian, "Migration-Related Institutions and Policies in Jordan", with the Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM), CARIM-AS 2004/04, San Domenico di Fiesole, Italy, 2004. Available from: [www.carim.org/Publications/CARIM-AS04\\_04-Dergarabedian-Zaghal.pdf](http://www.carim.org/Publications/CARIM-AS04_04-Dergarabedian-Zaghal.pdf)
- Amnesty International, Amnesty International Report 2010 - Jordan, London, 28 May 2010. Available from: [www.unhcr.org/refworld/country,AMNESTY,JOR,4c03a81fc,0.html](http://www.unhcr.org/refworld/country,AMNESTY,JOR,4c03a81fc,0.html)
- Amnesty International, Amnesty International Report 2011 - Lao, London, 2011. Available from: [www.amnesty.org/en/region/laos/report-2011](http://www.amnesty.org/en/region/laos/report-2011)
- Amnesty International, Briefing to the UN Committee on the Elimination of Discrimination against Women – Nepal, London, Forty-ninth session, 2011. Available from: [www.unhcr.org/refworld/docid/4e1719ef2.html](http://www.unhcr.org/refworld/docid/4e1719ef2.html)
- Amnesty International, Isolated and Abused: Women Migrant Domestic Workers in Jordan, London, 30 October 2008. Available from: [www.amnesty.org/en/news-and-updates/report/isolated-and-abused-women-migrant-domestic-workers-jordan-20081030](http://www.amnesty.org/en/news-and-updates/report/isolated-and-abused-women-migrant-domestic-workers-jordan-20081030)
- Amnesty International, Parliament must make domestic workers a priority in 2012, London, Press release February 12 2012. Available from: [www.amnesty.org/fr/library/asset/ASA21/005/2012/en/78611219-1442-40b4-b1a5-b881130b3356/asa210052012en.html](http://www.amnesty.org/fr/library/asset/ASA21/005/2012/en/78611219-1442-40b4-b1a5-b881130b3356/asa210052012en.html)
- Andy Hall, Mahidol Migration centre, "Thai Health Care Leaves Migrant Workers in Cold", Mizzima, 30 May 2012. Available from: [www.mizzima.com/edop/commentary/7221-thai-health-care-leaves-foreign-workers-in-cold.html](http://www.mizzima.com/edop/commentary/7221-thai-health-care-leaves-foreign-workers-in-cold.html)
- Andy Hall, Mahidol Migration centre, Low Skilled Migration and Thailand: Prospects for 2011, Bangkok, 1 July 2011. Available from: [www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC\\_3\\_DGD2011.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/DGD/MMC_3_DGD2011.pdf)
- ASEAN Secretariat, Country Report of the ASEAN Assessment on the Social Impact of the Global Financial Crisis: Lao PDR, Jakarta, 2009. Available from: [www.aseansec.org/publications/ARCR/LaoPDR.pdf](http://www.aseansec.org/publications/ARCR/LaoPDR.pdf)
- Asia Foundation, As Demand for Migrant Labour Grows Opportunities for Women Emerge, but Risks Prevail, San Francisco, 7 March 2012. Available from: <http://asiafoundation.org/in-asia/2012/03/07/as-demand-for-migrant-labor-grows-opportunities-for-women-emerge-but-risks-prevail/>
- Asia Foundation, Cambodia's labour Migration - , Analysis of the Legal Framework, San Francisco, April 2011. Available from: <http://asiafoundation.org/resources/pdfs/LegalFrameworkLabourTrafficking.pdf>
- Asia Regional Trafficking in Persons Project (ARTIP), Trafficking in Persons and the Criminal Justice Sector: Country profiles, Webpage. Available from: [www.artipproject.org/artip-tip-cjs/tip-country-profiles.html](http://www.artipproject.org/artip-tip-cjs/tip-country-profiles.html)
- Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and CARAM Asia, The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee, Manama, 2008. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIABahrain42.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIABahrain42.pdf)
- Bahrain Medical Bulletin, Manama, Vol 33, no 1, March 2011. Available from: [www.bahrainmedicalbulletin.com/march\\_2011/Medical\\_News.pdf](http://www.bahrainmedicalbulletin.com/march_2011/Medical_News.pdf)
- Bangladesh, Planning Commission, General Economics Division, Outline Perspective Plan of Bangladesh, 2010-2021, Dhaka,
- Bangladesh, Planning Commission, General Economics Division, The Millennium Development Goals Progress Report 2011, Dhaka, February 2012,
- Brenda S.A. Yeoh and Weiqiang Lin, National University of Singapore, "Rapid Growth in Singapore's Immigrant Population Brings Policy Challenges", Migration Policy Institute, Singapore, April 2012. Available from: [www.migrationinformation.org/feature/print.cfm?ID=887](http://www.migrationinformation.org/feature/print.cfm?ID=887)

- Cambodia, Combined Fourth and Fifth Periodic Reports of Cambodia to the CEDAW Committee, Phnom Penh, 11 August 2011,
- Cambodia Committee for Women (CAMBOW) and Cambodian NGO Committee on CEDAW, Implementation of the Convention on the Elimination of All Forms of Discrimination against Women In Cambodia, Phnom Penh, 2010. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOSubmission\\_Cambodia56.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOSubmission_Cambodia56.pdf)
- Cambodia, Ministry of Labour and Vocational Training, and the International Labour Organization, Policy on Labour Migration for Cambodia, Phnom Penh, 2005. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_145704.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_145704.pdf)
- Cambodian Working Group for Domestic Workers (CWGDW), Cambodia's Ban on Domestic Workers to Malaysia is an Opportunity for Change to Protect the Rights of Migrant Workers, Phnom Penh, 12 February 2012. Available from: <http://atnc.asia/wp/2012/02/cambodias-ban-on-domestic-worker/>
- CARAM Asia, APWLD NGO Consultation with the UN Special Rapporteur on Violence Against Women, Kuala Lumpur, 2007,
- CARAM Asia, Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia, Kuala Lumpur, 2011,
- CEDAW, CEDAW in Action in Southeast Asia, Lao PDR CEDAW Implementation, New York. Available from: [http://cedaw-seasia.org/lao\\_cedaw\\_implementation.html](http://cedaw-seasia.org/lao_cedaw_implementation.html)
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Bangladesh, CEDAW/C/BGD/CO/7, Forty-eighth session, 2011. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women - Lao PDR, CEDAW/C/LAO/CO/7, 2009. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women - Nepal, CEDAW/C/NPL/CO/4-5, Forty-ninth session, 2011. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Bahrain, CEDAW/BHR/CO/2, Forty-second session, 2008. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Cambodia, CEDAW/C/KHM/CO/3, Thirty-fourth session, 2006. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – India, CEDAW/C/IND/CO/3, Thirty-seventh session, 2007. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Indonesia, CEDAW/C/IDN/CO/6-7, Fifty-second session, 2012. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Jordan, CEDAW/C/JOR/CO/5, Fifty-first session, 2012. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Philippines, Thirty-sixth session, 2006. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Singapore, CEDAW/C/SGP/CO/4/Rev.1, Forty-ninth session, 2011. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – Thailand, CEDAW/C/THA/CO/5, Thirty-fourth session, 2006. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women – United Arab Emirates, CEDAW/C/ARE/CO/1, Forty-fifth session, 2010. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>
- CEDAW Committee, General Observations – Nepal, Forty-ninth session, 2011. Available from: <http://www2.ohchr.org/english/bodies/cedaw/>

- CEDAW Committee, General recommendation No. 19 on violence against women, CEDAW, UN Doc A/47/38 at 1 (1993), Eleventh session, 1992, violence against women . Available from: [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19)
- CEDAW Committee, General recommendation No. 26 on women migrant workers, CEDAW, CEDAW/C/2009/WP.1/R, UN Doc A/64/38 at 15 (2008), Forty-second session, 2008, Women Migrant Workers. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)
- Centre for Non Traditional Security Studies, *The Domestic Workers Convention 2011: Implications for migrant domestic workers in Southeast Asia*, Insight, Singapore, April 2012,
- Centre for the Study of Labour and Mobility, Webpage: *Migration in Nepal*, Kathmandu. Available from: [www.ceslam.org/index.php?pageName=content&contentId=148](http://www.ceslam.org/index.php?pageName=content&contentId=148)
- Christoph Wilcke, Researcher, Middle East & North Africa division, Human Rights Watch, "Migrant Domestic Workers in Jordan: Where There's a Will, There's a Way", Huffington Post, Washington DC, 12 October 2011,
- Committee For Asian Women (CAW), *Thailand: the Tribulation of Migrant Workers*, Bangkok, 13 December 2011. Available from: [www.cawinfo.org/wordpress/?page\\_id=16#intro](http://www.cawinfo.org/wordpress/?page_id=16#intro)
- David McKenzie, *Distortions in the International Migrant labour Market: Evidence from Filipino Migration and Wage Responses to Destination Country Economic Shocks*, Development Research Group, World Bank, WPS6041, Washington DC, February 2012. Available from: [http://econ.worldbank.org/external/default/main?pagePK=64165259&piPK=64165421&theSitePK=469382&menuPK=64166093&entityID=000158349\\_20120420130542](http://econ.worldbank.org/external/default/main?pagePK=64165259&piPK=64165421&theSitePK=469382&menuPK=64166093&entityID=000158349_20120420130542)
- Democratic Voice of Burma, "Thais Protest Burma Migrant Driving Licenses", Yangon, July 2010,
- Dewan Kordinator, *Note of Women's Solidarity on the Situation of Women Migrant Workers Protection 2010*, Jakarta, 2010. Available from: <http://dk-insufa.info/en/opinion/331-catatan-solidaritas-perempuan-sp-atas-situasi-perlindungan-buruh-migran-perempuan-2010>
- Dilip Ratha, Sanket Mohapatra, and Ani Silwal, *Migration and Remittances Unit*, World Bank, *Migration and Remittances Factbook*, Washington DC. Available from: [www.worldbank.org/prospects/migrationandremittances/](http://www.worldbank.org/prospects/migrationandremittances/)
- Dovelyn Rannveig Agunias, *Running in Circles: Progress and Challenges in Regulating Recruitment of Filipino and Sri Lankan labour Migrants to Jordan*, Migration Policy Institute, Washington DC, US, Singapore, July 2011. Available from: [www.migrationpolicy.org/pubs/JordanCorridor-Labor-2011.pdf](http://www.migrationpolicy.org/pubs/JordanCorridor-Labor-2011.pdf)
- Dr Chanvit Tharathep, Senior advisor to the Ministry of Public Health, *Migrants Health in Thailand*, Bangkok. Available from: [www.gfmd.org/documents/switzerland/moldova/gfmd\\_swiss11\\_moldova\\_presentation\\_s3-03b-Thailand-Tharathep.pdf](http://www.gfmd.org/documents/switzerland/moldova/gfmd_swiss11_moldova_presentation_s3-03b-Thailand-Tharathep.pdf)
- Dunya Ahmed Abdulla Ahmed, "Bahrain", in *Progress Amidst Resistance - Women's Rights in the Middle East and North Africa*, Sanja Kelly and Julia Breslin, eds, (Freedom House, Plymouth, United Kingdom, 2010). Available from: [http://www.freedomhouse.org/sites/default/files/inline\\_images/Bahrain.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Bahrain.pdf)
- Equal Rights Trust, *Parallel report submitted to the 49th Session of the CEDAW Committee in relation to the combined fourth and fifth periodic reports submitted by the Government of Nepal*, Kathmandu, July 2011,
- Fair Wage Network, *The minimum wage increase in Jordan from 1st of February 2012*, Manama, 31 December 2011. Available from: [www.fair-wage.com/en/fair-wage-observatory/new-legal-provisions/109-the-minimum-wage-increase-in-jordan-from-1st-of-february-2012.html](http://www.fair-wage.com/en/fair-wage-observatory/new-legal-provisions/109-the-minimum-wage-increase-in-jordan-from-1st-of-february-2012.html)
- Forum for Women Law and Development, *Shadow Report on the Fourth and Fifth Periodic Report of the Government of Nepal on CEDAW*, Kathmandu, 2011,
- Friends of Women Workers Association, "Migrant Women Workers in Jordan: The Cases of Runaways", "at 18?", Amman, n.d.,
- Georgetown University School of Foreign Service in Qatar, centre for International and Regional Studies, "Bahrain's Decision to Repeal the 'Kafala' System", Qatar, n.d.. Available from: <http://cirs.georgetown.edu/events/conferences/104124.html>
- Glenda Ramirez, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, UN Women, (Manila, 2008). Available from: [http://www.icgmd.info/sessions/session\\_2\\_2/pps\\_glenda\\_ramirez.pps](http://www.icgmd.info/sessions/session_2_2/pps_glenda_ramirez.pps)
- Global Commission on International Migration, *Migration in the Middle East and Mediterranean*, Manila, 2005,
- Global Migration Group, Webpage: *Gender Sensitive Remittances, Savings and Investment Schemes*, Kathmandu. Available from: [www.globalmigrationgroup.org/en/remittances-policy-and-programme-experiences](http://www.globalmigrationgroup.org/en/remittances-policy-and-programme-experiences)
- HOME and SMS and VIVA WANITA, *Shadow Report to 52nd Session of the Committee on Elimination of Discrimination against Women – Indonesia*, Jakarta, July 2012,

- HOME and TWC2, Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore, Singapore, 2010. Available from: <http://twc2.org.sg/2011/06/19/justice-delayed-justice-denied-2010/>
- Hong Kong Human Rights Monitor, The Second Periodic Report on the Hong Kong Special Administrative Region of the People's Republic of China in light of the Convention on the Elimination of All Forms of Discrimination against Women, , Kay Lam Chi Yan, Hong Kong, 2006.
- Hong Kong SAR, Department of Labour, Guidebook for the Employment of Domestic Helpers from Abroad, Hong Kong.
- Human Rights and Development Foundation, UPR Submission, Summary on Human Rights Situation of Migrant Workers in Thailand, Bangkok, 2010.
- Human Rights Council, Compilation Report for the Universal Periodical Review - Bahrain, A/HRC/WG.6/1/BHR/2, Geneva, 2008.
- Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Geneva, Seventeenth session, 2011.
- Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants - Mission to Indonesia, Geneva, Fourth session, 2007.
- Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants - Mission to the Philippines, Geneva, 2002.
- Human Rights Council, Report of the Working Group on the Universal Periodic Review - Lao PDR, Geneva, Fifteenth session, June 2010.
- Human Rights Council, Report of the Working Group on the Universal Periodic Review - Singapore, Geneva, Eighteenth session, July 2011.
- Statement by Sigma Huda, Special Rapporteur of the United Nations Commission on Human Rights on trafficking in persons, especially women and children, UN Press Release, Geneva, November 2006. Available from: [www.unhcr.ch/hurricane/hurricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument](http://www.unhcr.ch/hurricane/hurricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument)
- Human Rights Watch, Bahrain, Universal Periodic Review, Submission by Human Rights Watch, New York. Available from: [www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain](http://www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain)
- Human Rights Watch, Cambodia: New Regulation Short-Changes Domestic Workers, New York, 30 August 2011.
- Human Rights Watch, Country Summary – Singapore, New York, January 2012.
- Human Rights Watch, Domestic Workers to Get Weekly Day of Rest, New York, March 2012.
- Human Rights Watch, From the Crocodile to the Tiger: Abuse of Migrant Workers in Thailand, New York, 2010.
- Human Rights Watch, Jordan – Abused Domestic Workers Stranded, New York, 8 April 2011. Available from: [www.hrw.org/news/2011/04/08/jordan-abused-domestic-workers-stranded](http://www.hrw.org/news/2011/04/08/jordan-abused-domestic-workers-stranded)
- Human Rights Watch, Maid To Order – Ending Abuses against Migrant Workers in Singapore, New York, 2005. Available from: [www.hrw.org/sites/default/files/reports/singapore1205wcover.pdf](http://www.hrw.org/sites/default/files/reports/singapore1205wcover.pdf)
- Human Rights Watch, Nepal: Protect, Don't Ban Young Women Migrating to Gulf, New York, 14 August 2012. Available from: [www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf](http://www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf)
- Human Rights Watch, Singapore: UPR Outcome, Webpage, New York, 5 October 2011. Available from: [www.hrw.org/news/2011/10/05/singapore-upr-outcome](http://www.hrw.org/news/2011/10/05/singapore-upr-outcome)
- Human Rights Watch, Slow Movement: Protection of Migrants' Rights in 2009, New York, 2009.
- Human Rights Watch, Slow Reform, Protection of Migrant Domestic Workers in Asia and the Middle East, New York, 2010. Available from: [www.hrw.org/sites/default/files/reports/wrd0410webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/wrd0410webwcover_0.pdf)
- Human Rights Watch, Thailand: Southern Insurgents Bomb Nightspots, New York, 2011. Available from: [www.hrw.org/news/2011/09/20/thailand-southern-insurgents-bomb-nightspots](http://www.hrw.org/news/2011/09/20/thailand-southern-insurgents-bomb-nightspots)
- Human Rights Watch, The Island of Happiness, Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi, New York, 2009. Available from: [www.hrw.org/sites/default/files/reports/uae0509webwcover\\_4.pdf](http://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf)
- Human Rights Watch, UAE: Proposed Law to Benefit Domestic Workers, New York, 11 May 2012. Available from: [www.hrw.org/news/2012/05/11/uae-proposed-law-benefit-domestic-workers](http://www.hrw.org/news/2012/05/11/uae-proposed-law-benefit-domestic-workers)
- Human Rights Watch, UAE: Saadiyat Workers Better Protected but Gaps Remain, New York, 21 March 2012. Available from: [www.hrw.org/news/2012/03/21/uae-saadiyat-workers-better-protected-gaps-remain](http://www.hrw.org/news/2012/03/21/uae-saadiyat-workers-better-protected-gaps-remain)
- Human Rights Watch, UAE: Stepped-Up Harassment of Rights Defenders, New York, 26 January 2011.
- Human Rights Watch, Will I Get My Dues ... Before I Die?, Harm to Women from Bangladesh's Discriminatory Law on Marriage, Separation and Divorce, New York, 2012.
- Human Rights Watch, World Report 2011 – United Arab Emirates, New York, 2011. Available from: [www.hrw.org/world-report-2011/united-arab-emirates](http://www.hrw.org/world-report-2011/united-arab-emirates)

- Human Rights Watch, World Report 2012 - Bangladesh, New York. Available from: [www.hrw.org/world-report-2012/world-report-2012-bangladesh](http://www.hrw.org/world-report-2012/world-report-2012-bangladesh)
- Human Rights Watch, World Report 2012 – Cambodia, New York, 2012. Available from: [www.hrw.org/world-report-2012/world-report-2012-cambodia](http://www.hrw.org/world-report-2012/world-report-2012-cambodia)
- Human Rights Watch, World Report 2012 – Singapore, New York, 2012. Available from: [www.hrw.org/world-report-2012/world-report-2012-singapore](http://www.hrw.org/world-report-2012/world-report-2012-singapore)
- Human Rights Watch, World Report 2012 – United Arab Emirates, New York, 2012. Available from: [www.hrw.org/world-report-2012/united-arab-emirates](http://www.hrw.org/world-report-2012/united-arab-emirates)
- ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2010 Individual Observation concerning the Right to Organize and Collective Bargaining Convention – Jordan, Geneva. Available from: [http://ec.europa.eu/world/enp/pdf/progress2009/sec09\\_517\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2009/sec09_517_en.pdf)
- India, Combined Fourth and Fifth Periodic Reports of India to the CEDAW Committee, New Delhi, 11 September 2012. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5_en.pdf)
- India National Commission for Women, Annual Report 2009-2010, New Delhi. Available from: [http://ncw.nic.in/AnnualReports/200910/Annual\\_Report\\_2009-10\\_English\\_Full.pdf](http://ncw.nic.in/AnnualReports/200910/Annual_Report_2009-10_English_Full.pdf)
- India, Ministry of Overseas Indian Affairs, Salient Features of PBBY, New Delhi. Available from: [http://moia.gov.in/pdf/p\\_b\\_b\\_ywef\\_%201\\_4\\_8.pdf](http://moia.gov.in/pdf/p_b_b_ywef_%201_4_8.pdf)
- Indian Ministry of Women and Child Development, Draft Report to CEDAW Committee, 20 November 2011. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>
- Indonesia, Combined Sixth and Seventh Periodic Report of Indonesia to the CEDAW Committee, Jakarta, 7 January 2011,
- Indonesia National Commission on Violence against Women, National Human Rights Institution Independent Report – Regarding the Implementation of the CEDAW in Indonesia, 2007-2011, Jakarta, 8 October 2011,
- Institute for Human Rights and Business, Bangladeshi Migrant Workers – Responsible Recruitment, Responsible Return, London, June 2011. Available from: [www.ihrb.org/pdf/June\\_2011\\_IHRB\\_Business\\_and\\_Migration\\_Roundtable\\_3\\_Report.pdf](http://www.ihrb.org/pdf/June_2011_IHRB_Business_and_Migration_Roundtable_3_Report.pdf)
- International Crisis Group, Nepal's Constitution: the Political Impasse, Press release, Brussels, 27 August 2012. Available from: [www.crisisgroup.org/en/publication-type/media-releases/2012/asia/nepal-nepals-constitution-the-political-impasse.aspx](http://www.crisisgroup.org/en/publication-type/media-releases/2012/asia/nepal-nepals-constitution-the-political-impasse.aspx)
- International Journal of Not-for-profit Law, Legal Framework of NGOs in Cambodia, April 2011. Available from: [www.icnl.org/research/journal/vol13iss1/art\\_1.htm](http://www.icnl.org/research/journal/vol13iss1/art_1.htm)
- International Labour Organization, Cambodian Domestic Workers in Malaysia, Challenges in Labour Migration Policy, and Potential Mechanisms for Protection, Geneva, 15 January 2012,
- International Labour Organization, Decent Work Country programme (2006 – 2009) – Bangladesh, Geneva, 2008. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf)
- International Labour Organization, Decent Work Country programme (2010-2013) - Kingdom of Bahrain, Geneva, n.d.. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf)
- International Labour Organization, Decent Work Country programme (2011-2015) – Lao PDR, Geneva, 2011. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/laos.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/laos.pdf)
- International Labour Organization, Decent Work Country programme (2012-2015) – Jordan, Geneva, 9 March 2012. Available from: [www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf](http://www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf)
- International Labour Organization, Decent Work for Domestic Workers, Geneva, Ninety-ninth session, 2010. Available from: [www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf)
- International Labour Organization, Domestic Work Policy Brief: Remuneration in Domestic Work, Geneva, 2011. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_155654.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155654.pdf)
- International Labour Organization, Domestic Workers in Thailand – their situation, challenges, and the way forward, Geneva, 2010. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_120274.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_120274.pdf)
- International Labour Organization, Gender and Migration in the Arab States, The Case of Domestic Workers, Geneva, 2009. Available from: [www.academia.edu/855502/Gender\\_and\\_Migration\\_in\\_Arab\\_States](http://www.academia.edu/855502/Gender_and_Migration_in_Arab_States)

- The\_case\_of\_domestic\_workers
- International Organization for Migration, Labour Migration from Indonesia - An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East, Geneva, 2010. Available from: [www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf)
- International Labour Organization, Labour Migration in India, a Review of Issues, Policies and Practices, Geneva, 2011. Available from: [www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf](http://www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf)
- International Labour Organization, National Legislation and Policies against Child Labour in India, Geneva. Available from: [www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/india/national.htm](http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/india/national.htm)
- International Labour Organization, Promoting Decent Work for Foreign Migrants, ILO/Japan Regional Project on Managing Cross-Border Movement of Labour in Southeast Asia, Geneva, 2011. Available from: [www.ilo.org/wcmsp5/groups/public/@asia/@qro-bangkok/documents/publication/wcms\\_151565.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@qro-bangkok/documents/publication/wcms_151565.pdf)
- International Labour Organization, Review of Labour Migration Management, Policies and Legal Framework in Cambodia, Geneva, May 2009. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_106497.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_106497.pdf)
- International Labour Organization, The Economic Contribution of Migrant Workers to Thailand: Towards Policy Development, Geneva, 2007,
- International Labour Organization, The Mekong Challenge: An Honest Broker – Improving Cross-border Recruitment Practices for the Benefit of Government, Workers and Employers, Geneva, 2008,
- International Labour Organization, The Special Working Contract for Non-Jordanian Domestic Workers, Geneva, 2003. Available from: [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=28](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=28)
- International Labour Organization, Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation (TRIANGLE Project), Geneva. Available from: [www.ilo.org/asia/whatwedo/projects/WCMS\\_145664/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm)
- International Labour Organization, Webpage: NORMLEX - Information System on International Labour Standards, Geneva. Available from: [www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm)
- International Labour Organization, Women Migrant Workers in Bahrain, International Migration Papers, No. 1, Geneva, No. 1, 2002. Available from: [www.ilo.org/public/english/protection/migrant/download/imp/imp47e.pdf](http://www.ilo.org/public/english/protection/migrant/download/imp/imp47e.pdf)
- International Labour Organization and UNDP, HIV and Mobility in South Asia, Geneva, 2010. Available from: [http://asia-pacific.undp.org/practices/hivaid/docs/HIV\\_and\\_Mobility\\_in\\_South\\_Asia\\_web.pdf](http://asia-pacific.undp.org/practices/hivaid/docs/HIV_and_Mobility_in_South_Asia_web.pdf)
- International Labour Organization Sub-regional Office for South Asia, Managing International Labour Migration from India: Policies and Perspectives, Geneva, October 2008. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_123412.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_123412.pdf)
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Frequently asked questions: Foreign domestic helpers, Geneva. Available from: [www.immd.gov.hk/ehhtml/faq\\_fdh.htm](http://www.immd.gov.hk/ehhtml/faq_fdh.htm)
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Geneva, 2010 Bahrain (ratification: 2000),
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning Forced Labour Convention, 1930 (No. 29) - India, Geneva, 2010,
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Jordan (ratification: 1998), Geneva, 2011,
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning the Worst Forms of Child Labour Convention, 1999 – United Arab Emirates, No. 182, Geneva, 2010,
- International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning the Worst Forms of Child Labour Convention, 1999 - Jordan, Geneva, 2011,
- International Organization for Migration, Gender and Migration, Geneva. Available from: [www.ihrb.org/pdf/](http://www.ihrb.org/pdf/)

- June\_2011\_IHRB\_Business\_and\_Migration\_Roundtable\_3\_Report.pdf
- International Organization for Migration, Labour Migration in Asia – Protection of Migrant Workers, Support Service and Enhancing Development Benefits, Geneva, Geneva, 2003. Available from: [www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/labour\\_migration\\_asia.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/labour_migration_asia.pdf)
- International Organization for Migration, Migrant Information Note Issue #12, Geneva, August 2011. Available from: [www.scribd.com/doc/61533801/Thailand-IOM-Migrant-Info-Note-No-12-August-en](http://www.scribd.com/doc/61533801/Thailand-IOM-Migrant-Info-Note-No-12-August-en)
- International Organization for Migration, Thailand Migration Report 2011, Geneva, 2011. Available from: [www.un.or.th/documents/TMR-2011.pdf](http://www.un.or.th/documents/TMR-2011.pdf)
- International Organization for Migration, Webpage: Migration Facts and Figures, Geneva. Available from: [www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en](http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en)
- International Organization for Migration and the Migration Policy Institute, Asian Labour Migrants and Health: Exploring Policy Routes, Geneva, June 2011. Available from: [www.migrationpolicy.org/pubs/MigrationandHealth.pdf](http://www.migrationpolicy.org/pubs/MigrationandHealth.pdf)
- International Organization for Migration and the Migration Policy Institute, Strengthening Pre-Departure Orientation programmes in Indonesia, Nepal and the Philippines, Geneva, September 2012,
- International Women’s Rights Action Watch, CEDAW Knowledge Resource, Kuala Lumpur. Available from: [www.iwraw-ap.org/convention/equality.htm](http://www.iwraw-ap.org/convention/equality.htm)
- Jean D’Cunha, Claim and Celebrate Women Migrants’ Human Rights through CEDAW, UNIFEM, New York, 2005,
- Joint United Nations Initiative on Mobility and HIV in Southeast Asia (JUNIMA), Homepage. Available from: [www.junima.org/?q=node/12](http://www.junima.org/?q=node/12)
- Jordanian ministry of labour, Report on the status of migrant workers in the qualified industrial zones, Manama, May 2006. Available from: [www.carim.org/public/polsocetexts/PS2JOR005\\_EN.pdf](http://www.carim.org/public/polsocetexts/PS2JOR005_EN.pdf)
- Jordanian ministry of labour and UNIFEM, Domestic Workers Project Booklet, Manama, n.d.,
- Lao People’s Democratic Republic, Lao penal code, Vientiane, 2005. Available from: [www.na.gov.la/docs/eng/laws/pub\\_adm/Penal%20\(2005\)%20Eng.pdf](http://www.na.gov.la/docs/eng/laws/pub_adm/Penal%20(2005)%20Eng.pdf)
- Lao Women’s Union, Promotion and Protection of Lao Women’s Rights, Vientiane, 2009. Available from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU\\_UPR\\_LAO\\_S08\\_2010\\_LaoWomensUnion.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU_UPR_LAO_S08_2010_LaoWomensUnion.pdf)
- LICADHO, Comments on the Sub Decree on ‘the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies’, Phnom Penh, August 2011,
- Mafiwasta and International Federation for Human Rights (FIDH), UAE, ‘Universal Periodic Review, Stakeholders’ Report’ submissions by NGOs, Abu Dhabi, 2008,
- Mahidol Migration centre, Experiences of Myanmar Migrant Workers in Thailand with the MOU Import Process, Bangkok, 2012,
- Masum Momaya , The United Arab Emirates: Women’s Rights in Progress?, Association for Women in Development (AWID), Toronto, 25 March 2010. Available from: [www.awid.org/eng/Library/The-United-Arab-Emirates-Women-s-Rights-in-Progress](http://www.awid.org/eng/Library/The-United-Arab-Emirates-Women-s-Rights-in-Progress)
- Mathew Rullo, “An Abhorrent Trail of Abuse”, Phnom Penh Post, Phnom Penh, 24 January 2014. Available from: [www.phnompenhpost.com/plans/form](http://www.phnompenhpost.com/plans/form)
- Maxwell Stamp Ltd, Study on the International Demand for Semi-skilled and Skilled Bangladeshi Workers, Prepared for IOM’s TVET Reform Project, Dhaka, April 2010,
- Megha Shree, “Victimization of Indian Female Migrant Workers in Gulf Countries”, Proceedings of the First International Conference of South Asian Society of Criminology and Victimology (SASCV), Tirunelveli, India, 2010,
- Migrant Forum in Asia, CEDAW and the Female Labour Migrants of Bangladesh, Quezon City, Philippines, 2010,
- Migrant Forum in Asia, Good Practices taken by Asian States to Effectively Supervise Recruitment Agencies, Quezon City, Philippines, 14 October 2009,
- Migrant Forum in Asia, Labour Recruitment to the UAE, Gaps Between Policy and Practice in Sri Lanka, Nepal, Bangladesh and the Philippines, Quezon City, Philippines, January 2011. Available from: [www.mfasia.org/resources/information-a-educational-materials/321-labour-recruitment-to-the-uae-gaps-between-policy-practice-in-sri-lanka-nepal-bangladesh-and-the-philippines](http://www.mfasia.org/resources/information-a-educational-materials/321-labour-recruitment-to-the-uae-gaps-between-policy-practice-in-sri-lanka-nepal-bangladesh-and-the-philippines)
- Migrant Forum in Asia, Resources on Indian Labour Migration, Quezon City, Philippines. Available from: [www.mfasia.org/india/429-resources-on-indian-labor-migration](http://www.mfasia.org/india/429-resources-on-indian-labor-migration)
- Migrant Forum in Asia, Women Migrant Workers in the UAE: Not Quite in the Portrait, NGO Submission to

- 45th Session of CEDAW Committee, p. 4, Quezon City, Philippines, 2010,
- Migrant Rights, Increase in Registered Cases of Abuse of Indonesian Maids in Abu Dhabi, 2010. Available from: [www.migrant-rights.org/2010/04/02/increase-in-registered-cases-of-abuse-of-indonesian-maids-in-abu-dhabi/](http://www.migrant-rights.org/2010/04/02/increase-in-registered-cases-of-abuse-of-indonesian-maids-in-abu-dhabi/)
- Migration News, Vol. 19 No. 2, GCC Migrants, University of California at Davis, April 2012. Available from: [http://migration.ucdavis.edu/mn/comments.php?id=3759\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/comments.php?id=3759_0_3_0)
- Migration Policy Institute (MPI), Managing Temporary Migration: Lessons from the Philippine Model, Singapore, October 2008. Available from: [www.migrationpolicy.org/pubs/Insight\\_POEA\\_Oct07.pdf](http://www.migrationpolicy.org/pubs/Insight_POEA_Oct07.pdf)
- Mohammed Abbas, Poverty drives migrant Indian workers in Bahrain to suicide, Bahrain centre for Human Rights (2012). Available from: [www.bahrainrights.org/en/node/1288](http://www.bahrainrights.org/en/node/1288)
- National Women's Commission of Nepal, Nepal's Implementation Status of the CEDAW – a report to Supplement the Combined Fourth and Fifth Periodic Report Submitted to the CEDAW Committee by the Government of Nepal, Kathmandu, 26 June 2011. Available from: [www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC\\_Nepal49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC_Nepal49.pdf)
- Nazli Kibria, Returning International Labour Migrants from Bangladesh, The Experience and Effects of Deportation, The Inter-University Committee on International Migration, The Rosemarie Rogers Working Paper Series, no. 28, July 2004. Available from: <http://web.mit.edu/cis/www/migration/publications.html#rrwps>
- Nepal, Combined Fourth and Fifth Periodic Reports of Nepal to the CEDAW Committee, Kathmandu, 9 November 2010,
- Nepal Association of Foreign Employment Agencies NAFEA, Nepal Association of Foreign Employment Agencies (NAFEA) Code of Conduct, Kathmandu, 9 November 2005,
- Nepal India Chamber of Commerce and Industry newsflash, South Asia Agrees on Minimum Wage for Housemaids, Kathmandu, 28 June 2012,
- Newsletter of Al Tamimi & Company advocates, Amendments to the Jordanian Labour Law, Manama, Issue 236 December 2010 / January 2011. Available from: <http://altamimi.newsweaver.ie/Newsletter/1q5wiprfuvm90wdis92cbz>
- Office of the High Commissioner for Human Rights, Annual Report of OHCHR and the Secretary General on National Institutions for the Promotion and Protection of Human Rights, Paras. 9 & 40., Geneva, 1 May 2012,
- Office of the High Commissioner for Human Rights, Compilation Prepared by OHCHR for Human Rights Council – Lao, A/HRC/WG.6/8/LAO/2, Geneva, 2010. Available from: [www.upr-info.org/IMG/pdf/A\\_HRC\\_WG-6\\_8\\_LAO\\_2.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_WG-6_8_LAO_2.pdf)
- Office of the High Commissioner for Human Rights, Women in the United Arab Emirates: A Portrait of Progress, Geneva. Available from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR\\_UAE\\_ANNEX3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/UPR_UAE_ANNEX3_E.pdf)
- Office of the National Human Rights Commission of Thailand, Homepage, Bangkok, Webpage. Available from: [www.nhrc.or.th/2012/wb/en/contentpage.php?id=2&menu\\_id=1&groupID=1&subID=2](http://www.nhrc.or.th/2012/wb/en/contentpage.php?id=2&menu_id=1&groupID=1&subID=2)
- One World Global Justice On-line, International Migration Guide. Available from: <http://uk.oneworld.net/guides/migration?gclid=CM30wuGjo6wCFaWL4godS3OK2g>
- Op ed., "Domestics get a break", Bangkok Post, Bangkok, 14 November 2012. Available from: <http://bangkokpost.com/opinion/opinion/320278/domestic-help-given-a-break>
- Overseas Foreign Workers' Guide (OFWG), OFWs Can Work in Lebanon and Jordan, Deployment Ban Lifted, Manila, 23 October 2012. Available from: [www.ofwguide.com/article\\_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html](http://www.ofwguide.com/article_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html)
- Overseas Foreign Workers' Guide (OFWG), POEA Rules and Regulations on Recruitment and Employment, Manila. Available from: [www.ofwguide.com/poea\\_rules\\_recruitment\\_employment.php#gotohear](http://www.ofwguide.com/poea_rules_recruitment_employment.php#gotohear)
- Peggy Lee and Carole Petersen, "Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers", 29, Centre for Comparative and Public Law Occasional Paper No. 16, Hong Kong, 2006,
- Philip C. Tubeza, "PH to Ban OFW Deployment to 15 Countries", Philippine Daily Inquirer, Manila, 3 July 2012. Available from: <http://globalnation.inquirer.net/42739/ph-to-ban-ofw-deployment-to-15-countries>
- Philippine Commission on Women, Philippine Magna Carta of Women: the "Bill of Rights" of Filipino Women, Manila. Available from: [www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf](http://www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf)
- Philippine Institute for Development Studies, "Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes", Manila, July 2011. Available from: <http://dirp4.pids.gov>

- ph/ris/dps/pidsdps1112.pdf
- Rakhee Timothy and S.K. Sasikumar, UN Women and the V.V. Giri National Labour Institute, Migration of Women Workers from South Asia to the Gulf, New Delhi, 2012. Available from: [www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/](http://www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/)
- Raks Thai Foundation and others, A Joint Submission on Migrant Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review, Bangkok, October 2011. Available from: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS4-JointSubmission4-eng.pdf>
- Shakti Vahini Social Research Initiative, Action Against Recruiting Agents, New Delhi, 12 August 2011. Available from: <http://equalityindia.wordpress.com/category/ministry-of-overseas-indian-affairs/>
- Simel Esim (ILO) and Carole Kerbage (ESCWA), The Situation of Migrant Domestic Workers in Arab States – a Legislative Overview, Bangkok. Available from: [www.unescap.org/sdd/meetings/beirut-June2011/Esim-ESCWA-situation-female-workers-vulnerable-sectors.pdf](http://www.unescap.org/sdd/meetings/beirut-June2011/Esim-ESCWA-situation-female-workers-vulnerable-sectors.pdf)
- Singapore, Employment Agencies Act (Chapter 92), Singapore, 2011. Available from: [www.mom.gov.sg/Documents/foreign-manpower/Employment%20Agencies/EA%20Rules.pdf](http://www.mom.gov.sg/Documents/foreign-manpower/Employment%20Agencies/EA%20Rules.pdf)
- Singapore, Employment of Foreign Manpower Act (Chapter 91A), S 569/2012, Singapore, 2012. Available from: [www.mom.gov.sg/Documents/services-forms/passes/WSPassConditions.pdf](http://www.mom.gov.sg/Documents/services-forms/passes/WSPassConditions.pdf)
- Singapore, Singapore Statements to UN General Assembly, Singapore, July 2011. Available from: [www.un.org/News/Press/docs/2011/wom1875.doc.htm](http://www.un.org/News/Press/docs/2011/wom1875.doc.htm)
- Singapore, Department of Statistics, Yearbook of Statistics Singapore, Singapore, 2010. Available from: [www.singstat.gov.sg/pubn/reference/yos10/yos2010.pdf](http://www.singstat.gov.sg/pubn/reference/yos10/yos2010.pdf)
- Singapore, Ministry of Manpower, Foreign Manpower Management Division, Singapore, Webpage. Available from: [www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/foreign-manpower-management-division.aspx](http://www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/foreign-manpower-management-division.aspx)
- Singapore, Ministry of Manpower, Medical requirements for Work Permit (Foreign Domestic Worker), Singapore, Webpage. Available from: [www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/inform-mom/Pages/medical-examination.aspx](http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/inform-mom/Pages/medical-examination.aspx)
- Singapore, Ministry of Manpower, The Employment Act: Who it covers, Singapore, Webpage. Available from: [www.mom.gov.sg/employment-practices/employment-rights-conditions/employment-act/Pages/default.aspx](http://www.mom.gov.sg/employment-practices/employment-rights-conditions/employment-act/Pages/default.aspx)
- Solidarity centre, A Voice for Migrant Workers in Jordan's Export Factories, Manama, Undated. Available from: [www.solidaritycenter.org/content.asp?contentid=627](http://www.solidaritycenter.org/content.asp?contentid=627)
- Soman Baby, Wage Woes for Maids, Bahrain centre for Human Rights, (2006). Available from: [www.bahrainrights.org/en/node/433](http://www.bahrainrights.org/en/node/433)
- Stefanie Grant, Global Commission on International Migration, International Migration and Human Rights, Geneva, September 2005. Available from: [www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/tp/TP7.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP7.pdf)
- Steinmeyer, Vanessa, ESCAP programme Officer, oral comments at Experts' Group Meeting, Bangkok, 18 October 2011.
- Thailand, Ministry of Labour, Department of Employment, Office of Foreign Workers Administration, Working of Alian Act, B.E. 2551 (2008), Bangkok, 2008. Available from: <http://wp.doe.go.th/sites/eng/index.html>
- The Philippines, House Bill No. 4683, Republic of the Philippines, House of Representatives, Fifteenth Congress, Manila, First regular session, 2011. Available from: [www.congress.gov.ph/download/basic\\_15/HB04683.pdf](http://www.congress.gov.ph/download/basic_15/HB04683.pdf)
- The Philippines, Republic Act No. 10022, An Act Amending Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995, Manila, Third regular session, 27 July 2009. Available from: [www.lawphil.net/statutes/repacts/ra2010/ra\\_10022\\_2010.html](http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html)
- The Philippines, Republic Act No. 1790 "An Act Providing for the Magna Carta of Women", Section 2, Manila, 2008. Available from: [www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html)
- The Philippines, The 1987 Constitution of Republic of the Philippines, Manila,
- The Philippines, Webpage: Lawmaker pushes for passage of women legislations, Manila, Press release, June 2011. Available from: [www.congress.gov.ph/press/details.php?pressid=5143](http://www.congress.gov.ph/press/details.php?pressid=5143)
- The Philippines, Embassy in Singapore, Accreditation Requirements for Employment Agencies, Manila, Webpage. Available from: [www.philippine-embassy.org.sg/labor/employment-agency/](http://www.philippine-embassy.org.sg/labor/employment-agency/)
- The Philippines, Office of the President, Commission on Filipinos Overseas, Return and Reintegration programme, Manila. Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article](http://www.cfo.gov.ph/index.php?option=com_content&view=article)

- &id=1361:return-and-reintegrate&catid=145&Itemid=866
- The Philippines, Office of the President, Commission on Filipinos Overseas, Webpage: About Us, Manila.
- The Philippines, Office of the President, Commission on Filipinos Overseas, Webpage: Frequently asked questions – statistics, Manila. Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858)
- The Philippines, Philippine Overseas Employment Administration (POAC), Household Service Worker Protection and Welfare Enhancement Reform Package, Manila, 2007.
- Transient Workers Count Too (TWC2), Fact Sheet: Foreign Domestic Workers in Singapore (Basic Statistics), Webpage, Singapore. Available from: <http://twc2.org.sg/2011/11/16/fact-sheet-foreign-domestic-workers-in-singapore-basic-statistics/>
- Transient Workers Count Too (TWC2), Indonesian Government Changes Maid Hiring Fee Structure, Singapore, 7 April 2012. Available from: <http://twc2.org.sg/2012/04/07/indonesian-government-changes-maid-hiring-fee-structure/>
- UN Inter-Agency Project on Human Trafficking (UNIAP), Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia, Bangkok, 2011.
- UN Women, Asia Pacific and Arab States Regional programme on Empowering Women Migrant Workers in Asia, Bangkok. Available from: [www.migration-unifem-apas.org/india/index.html](http://www.migration-unifem-apas.org/india/index.html)
- UN Women, Background page - Nepal. Available from: [www.migration-unifem-apas.org/nepal/index.html](http://www.migration-unifem-apas.org/nepal/index.html)
- UN Women, Factsheet – Thailand. Available from: [www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf](http://www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf)
- UN Women, UN Women in India, n.d.. Available from: [www.unwomensouthasia.org/assets/unw\\_electronic.pdf](http://www.unwomensouthasia.org/assets/unw_electronic.pdf)
- UN Women, Webpage: UN Women in Action – Nepal. Available from: [www.migration-unifem-apas.org/nepal/UNIFEM\\_in\\_Action.html](http://www.migration-unifem-apas.org/nepal/UNIFEM_in_Action.html)
- UN Women South Asia, Empowering Women Migrant Workers in Bangladesh, New Delhi, 2012. Available from: [www.unwomensouthasia.org/2012/un-women-in-bangladesh-empowers-the-woman-migrant/](http://www.unwomensouthasia.org/2012/un-women-in-bangladesh-empowers-the-woman-migrant/)
- UNDP, A Situation Analysis Report on Poverty and Hunger (MDG 1), Needs Assessment and Costing 2010-2015, Bangladesh. Available from: [www.undp.org.bd/projects/prodocs/PRS\\_MDG/Situation%20analysis\\_poverty%20and%20Hunger.pdf](http://www.undp.org.bd/projects/prodocs/PRS_MDG/Situation%20analysis_poverty%20and%20Hunger.pdf)
- UNDP, Grim Prospects for HIV Positive, At-Risk Migrants in South Asia, 30 November 2010. Available from: [www.undp.org/content/undp/en/home/presscenter/pressreleases/2010/11/30/undp-report-grim-prospects-for-departed-hiv-positive-migrants-in-south-asia.html](http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2010/11/30/undp-report-grim-prospects-for-departed-hiv-positive-migrants-in-south-asia.html)
- UNDP, Human Development Report 2009 – Indonesia, 2009.
- UNDP, Human Development Report 2011 – Lao People’s Democratic Republic. Available from: [www.worldbank.org/en/country/lao/overview](http://www.worldbank.org/en/country/lao/overview)
- UNDP, In Laos, Community Radio Gives a Voice to Ethnic Groups, Governance success story, 20 April 2010. Available from: <http://web.undp.org/asia/SuccessStories/Governance/LAO-Apr2010.html>
- UNDP, International Human Development Indicators – Philippines. Available from: <http://hdrstats.undp.org/en/countries/profiles/PHL.html>
- UNDP, International Human Development Indicators – Singapore. Available from: <http://hdrstats.undp.org/en/countries/profiles/SGP.html>
- UNDP, International Human Development Indicators – Thailand, Webpage. Available from: <http://hdrstats.undp.org/en/countries/profiles/THA.html>
- UNDP, Webpage: UNDP in India, n.d.. Available from: [www.undp.org/content/india/en/home/countryinfo/](http://www.undp.org/content/india/en/home/countryinfo/)
- UNICEF, Convention on the Rights of the Child. Available from: [www.unicef.org/crc/](http://www.unicef.org/crc/)
- UNIFEM, Cambodian Women Migrant Workers, Finding from a Migration Mapping Study, 2006.
- UNIFEM, CEDAW Success Stories – Egypt and Jordan. Available from: [www.unifem.org/cedaw30/success\\_stories/index.html#egypt](http://www.unifem.org/cedaw30/success_stories/index.html#egypt)
- UNIFEM, Claim and Celebrate Women Migrants’ Human Rights through CEDAW, p. 23, briefing paper, 2005.
- UNIFEM, Empowering Women Migrant Workers in Asia, A Briefing Kit – Migration as a Human Rights Issue, n.d.. Available from: [www.unwomensouthasia.org/projects/migrant/Briefing%20kit%20files.htm](http://www.unwomensouthasia.org/projects/migrant/Briefing%20kit%20files.htm)
- UNIFEM, Gender Equality Laws - Global Good Practice and a Review of Five Southeast Asian Countries, 2010.
- UNIFEM, Good Practices from Bangladesh: NGO partnership BOMSA. Available from: [www.migration-unifem-apas.org/docs/Good\\_practice\\_BOMSA.pdf](http://www.migration-unifem-apas.org/docs/Good_practice_BOMSA.pdf)
- UNIFEM, Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment, 2005. Available from: [www.unwomensouthasia.org/projects/migrant/Docs/](http://www.unwomensouthasia.org/projects/migrant/Docs/)

- GdPracticesReportWebPubV1.pdf
- UNIFEM, Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100) Jordan (ratification: 1966), 2010,
- UNIFEM, Legal Protection for Migrant Domestic Workers in Asia and the Arab States, 2008,
- UNIFEM Lao, Gender Concerns in Migration in Lao PDR: Migration Mapping Study- A Review of Trends, Policy and programme Initiatives, 2007,
- United Nations Department of Economic and Social Affairs, 2004 World Survey on the Role of Women in Development: Women and International Migration, A/59/287/Add.1, ST/ESA/294, New York, 2006. Available from: [www.un.org/womenwatch/daw/public/WorldSurvey2004-Women&Migration.pdf](http://www.un.org/womenwatch/daw/public/WorldSurvey2004-Women&Migration.pdf)
- US Central Intelligence Agency (CIA), The World Factbook 2011 – Thailand, 2011. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>
- US Central Intelligence Agency (CIA), The World Factbook 2012 - Nepal, 2012. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>
- US Central Intelligence Agency (CIA), The World Factbook 2012 – India, 2012. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
- US Central Intelligence Agency (CIA), The World Factbook 2012 – Indonesia, 2012. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
- US Central Intelligence Agency (CIA), The World Factbook 2012 – Philippines, 2012. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
- US Central Intelligence Agency (CIA), The World Factbook 2012 – UAE , 2012. Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
- US State Department, Human Rights Report 2010 - Hong Kong SAR, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- US State Department, Human Rights Report 2010 - Jordan, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- US State Department, Human Rights Report 2010 – Bahrain, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- US State Department, Human Rights Report 2010 – Bahrain, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- US State Department, Human Rights Report 2010 – United Arab Emirates, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- US State Department, Human Rights Report 2011 - Jordan, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 - Laos, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 - Nepal, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 - Singapore, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Bahrain, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Bahrain, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Cambodia, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – India, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Philippines, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Thailand, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – Thailand, 2011. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Human Rights Report 2011 – United Arab Emirates, pp 18-20, 2011. Available from:

- [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)
- US State Department, Trafficking in Persons Report 2010 – Singapore, 2010. Available from: [www.state.gov/j/tip/rls/tiprpt/index.htm](http://www.state.gov/j/tip/rls/tiprpt/index.htm)
- US State Department, Trafficking in Persons Report 2012, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Bahrain, 2012. Available from: [http://bahrain.usembassy.gov/news\\_from\\_washington/bahrain-trafficking-in-persons-report.html](http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html)
- US State Department, Trafficking in Persons Report 2012 – Bangladesh, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Cambodia, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – India, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Indonesia, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Jordan, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/192367.htm](http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm)
- US State Department, Trafficking in Persons Report 2012 – Lao, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Nepal, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Philippines, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Singapore, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – Thailand, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- US State Department, Trafficking in Persons Report 2012 – United Arab Emirates, 2012. Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)
- War on Want, Restricted Rights, Migrant Women Workers in Cambodia, Thailand and Malaysia, May 2012, WOREC, POURAKHI, Youth Action Nepal, and Pravasi, Shadow Report on Nepal for Consideration During the 49th Session of CEDAW,
- Working Group on the Universal Periodic Review, Jordanian national report to the Human Rights Council, 2009,
- World Bank, Data page - Nepal. Available from: <http://data.worldbank.org/country/nepal>
- World Bank, Data page – Philippines. Available from: <http://data.worldbank.org/country/philippines>
- World Bank, Data page – Singapore. Available from: <http://data.worldbank.org/country/singapore>
- World Bank, Data page – Thailand, Webpage. Available from: <http://data.worldbank.org/country/thailand>
- World Bank, Factsheet - Thailand, 2011. Available from: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Thailand.pdf>
- World Bank, Lao PDR: Talking Economics, 5 April 2012. Available from: [www.worldbank.org/en/news/feature/2012/04/05/lao-pdr-talking-economics](http://www.worldbank.org/en/news/feature/2012/04/05/lao-pdr-talking-economics)
- World Bank, Reproductive Health at a Glance – Lao PDR, 2011. Available from: <http://siteresources.worldbank.org/INTPRH/Resources/376374-1303736328719/LAOhealth41811web.pdf>
- World Bank, Towards Gender Equality in East Asia and the Pacific, 2012,
- World Congress III against sexual exploitation of children and adolescents, India Country Report - To prevent and combat trafficking commercial and sexual exploitation of women and children, November 2008. Available from: [www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf](http://www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf)
- World Economic Forum, The Global Gender Gap Report 2011, 2011. Available from: [www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2011.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf)
- World Economic Forum, The Global Gender Gap Report 2012, 2012. Available from: [www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2012.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf)

- "Government to Allow Pregnant Migrant Workers to Give Birth Here", The Nation, Bangkok, 24 July 2012. Available from: [www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html](http://www.nationmultimedia.com/national/Govt-to-allow-pregnant-migrant-workers-to-give-bir-30186800.html)
- , "HM King Hamad Issues Law 15/2011", Bahrain News Agency, Manama, 16 June 2011. Available from: <http://bna.bh/portal/en/news/461096>
- , "Hong Kong Court Overturns Case", Voice of America. Available from: [www.voanews.com/content/hong-kong-court-overturns-case-granting-foreign-maids-residency-144645995/180641.html](http://www.voanews.com/content/hong-kong-court-overturns-case-granting-foreign-maids-residency-144645995/180641.html)
- , "Indonesia Scores in Fight for Women Migrant Workers' Protection", Jakarta Post, Jakarta, 24 November 2011,
- , "Laos Looks to Toughen Response to Human Trafficking", Vientiane Times, Vientiane, 20 September 2011. Available from: [www.unodc.org/laopdr/en/stories/laos-looks-to-toughen-response-to-human-trafficking.html](http://www.unodc.org/laopdr/en/stories/laos-looks-to-toughen-response-to-human-trafficking.html)
- , Child Domestic Workers, National Domestic Workers Movement. Available from: [http://ndwm.org/?page\\_id=239](http://ndwm.org/?page_id=239)
- , Human Rights Report 2010 – Singapore, Washington DC, US, 2010. Available from: [www.state.gov/j/drl/rls/hrrpt/2010/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm)
- , Private Employment Agencies – New Regulation UAE, Global Forum on Migration and Development,
- , Report of the Special Rapporteur on Migration to the UN Economic and Social Council, E/CN.4/2004/76, 12 January 2004,
- , Universal Periodic Review – Bahrain,
- , UPR compilation report - People's Republic of China (including Hong Kong and Macao Special Administrative Regions), A/HRC/WG.6/4/CHN/2, 2009,
- , UPR stakeholder report - People's Republic of China (including Hong Kong and Macao Special Administrative Regions), A/HRC/WG.6/4/CHN/3, 2009,
- . Available from: [www.un.int/wcm/content/site/uae/cache/offonce/home/pid/19817](http://www.un.int/wcm/content/site/uae/cache/offonce/home/pid/19817)
- . Available from: <http://data.worldbank.org/country/bahrain>
- . Available from: <http://data.worldbank.org/country/united-arab-emirates>
- . Available from: <http://data.worldbank.org/country/united-arab-emirates>
- . Available from: <http://hdrstats.undp.org/en/countries/profiles/ARE.html>
- . Available from: <http://hdrstats.undp.org/en/countries/profiles/BHR.html>
- . Available from: [www.abudhabi.ae/egovPoolPortal\\_WAR/appmanager/ADeGP/Citizen?\\_nfpb=true&\\_pageLabel=p20160&lang=en](http://www.abudhabi.ae/egovPoolPortal_WAR/appmanager/ADeGP/Citizen?_nfpb=true&_pageLabel=p20160&lang=en)
- . Available from: [www.abudhabi.ae/egovPoolPortal\\_WAR/appmanager/ADeGP/Citizen?\\_nfpb=true&\\_pageLabel=p20160&lang=en&did=20180](http://www.abudhabi.ae/egovPoolPortal_WAR/appmanager/ADeGP/Citizen?_nfpb=true&_pageLabel=p20160&lang=en&did=20180)
- . Available from: [www.abudhabi.ae/egovPoolPortal\\_WAR/appmanager/ADeGP/Citizen?\\_nfpb=true&\\_pageLabel=p20160&lang=en&did=20180](http://www.abudhabi.ae/egovPoolPortal_WAR/appmanager/ADeGP/Citizen?_nfpb=true&_pageLabel=p20160&lang=en&did=20180)
- . Available from: [www.bahrainrights.org/en/node/3692](http://www.bahrainrights.org/en/node/3692)
- . Available from: [www.caramasia.org/reports/FDWlegislationAsia.pdf](http://www.caramasia.org/reports/FDWlegislationAsia.pdf)
- . Available from: [www.census2010.gov.bh/results\\_en.php](http://www.census2010.gov.bh/results_en.php)
- . Available from: [www.dubaifaqs.com/united-arab-emirates.php](http://www.dubaifaqs.com/united-arab-emirates.php)
- . Available from: [www.echr.org.uk/](http://www.echr.org.uk/)
- . Available from: [www.echr.org.uk/?page\\_id=345](http://www.echr.org.uk/?page_id=345)
- . Available from: [www.gwu.ae/About.aspx?Lang=AR&SectionID=8&RefID=62](http://www.gwu.ae/About.aspx?Lang=AR&SectionID=8&RefID=62)
- . Available from: [www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf)
- . Available from: [www.migranteuae.org/3/index.php?option=com\\_content&view=article&id=45&Itemid=49](http://www.migranteuae.org/3/index.php?option=com_content&view=article&id=45&Itemid=49)
- . Available from: [www.mofa.gov.ae/mofa\\_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx](http://www.mofa.gov.ae/mofa_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx)
- . Available from: [www.state.gov/documents/organization/186633.pdf](http://www.state.gov/documents/organization/186633.pdf)
- . Available from: [www.uae-embassy.org/uae/energy](http://www.uae-embassy.org/uae/energy)
- . Available from: [www.uae-embassy.org/uae/women-in-the-uae](http://www.uae-embassy.org/uae/women-in-the-uae)
- . Available from: [www.labour.gov.hk/eng/public/sld/WhatIWknow.pdf](http://www.labour.gov.hk/eng/public/sld/WhatIWknow.pdf)
- . Available from: [www.labour.gov.hk/eng/public/wcp/FDHguide.pdf](http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf)
- . Available from: [www.state.gov/j/tip/rls/tiprpt/2012/192367.htm](http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm)
- , [http://moia.gov.in/writereaddata/pdf/Annual\\_Report\\_2010-2011.pdf](http://moia.gov.in/writereaddata/pdf/Annual_Report_2010-2011.pdf),



[www.unwomen.org](http://www.unwomen.org)  
[www.facebook.com/unwomen](https://www.facebook.com/unwomen)  
[www.twitter.com/un\\_women](https://www.twitter.com/un_women)  
[www.youtube.com/unwomen](https://www.youtube.com/unwomen)  
[www.flickr.com/unwomen](https://www.flickr.com/unwomen)



United Nations Entity for Gender Equality  
and the Empowerment of Women