

SOUTH ASIA

JUDICIAL BAROMETER



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We think it is fitting that this report is dedicated to the millions of migrant workers from South Asia who live precarious lives in order to contribute to the welfare of their families, their communities and their countries. The COVID-19 pandemic shone a light on their vulnerability and the unpreparedness of their respective governments to support them in times of crisis. We hope that this report will contribute towards advancing their interests.

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Preface

The effective legal protection of migrant workers has emerged as a policy priority having substantial social, political and economic implications in South Asia. Labour migration has continued to advance over time, and the challenges that emerged have increased in complexity. Looking at the changing context around the issues of migrant workers, new approaches are needed. These approaches should ensure the advancement of a fair migration agenda and appropriate addressing of the wellbeing of migrant workers along with legal reform that would respond fairly to the interests of countries of destination and origin, to employers, and the employee.

Efficient judicial measures must be grounded in research. For this, evidence-based research on migrant workers in South Asia is of paramount importance. This priority has been frequently discussed at the national, regional and global levels in relation to the Sustainable Development Goals 2030 and Global Compact for Safe, Regular and Orderly Migration.

Further, the need for research with specifically improved data was tinted in the meeting on labour migration at the 106th Session of the International Labour Conference in 2017, in the South Asian Association for Regional Cooperation Plan of Action of Labour Migration, in the Bali Declaration adopted at the 16th ILO Asia and the Pacific Regional Meeting in 2016.

This research report, the South Asia Judicial Barometer, is a vital step in this direction. The report highlights the common thread that intertwines the embroidery of South Asian migration experiences and ties the fates of migrant workers especially on their commodification, understanding the push-pull factors driving migrant workers, lack of laws to protect rights of migrant workers, labyrinths of law and failures to implement existing laws, situation of women migrant workers, access to justice, role of judiciary in South Asia in protecting the rights of migrant workers, re-orienting national perspectives and responses, and migrant workers future after COVID-19 pandemic.

While readers would be able to look at comparative migration developments, access to justice and legal provisions, it should be noted that comparing legal provisions between countries remains a challenge because of the different political, social, economic policies and practices at national level.

FORUM-ASIA hopes that the report will invite national, sub-regional, regional and international discourse on labour migration policies and programmes in countries of origin and receiving countries for migrant workers. We hope that this report suggests future legal cooperation on addressing the issues of migrant workers to enable migrant workers to enjoy decent, dignified and respected working conditions as per the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

We have been privileged to collaborate with the Law and Society Trust (LST) in Sri Lanka on this endeavor and would like to express our gratitude to all colleagues at LST who have worked hard to produce this report. We are delighted that, LST, as an active member of FORUM-ASIA, has collaborated to strengthen the advocacy and

campaign efforts for decent and safe working conditions for migrant workers' rights in South Asia.

As an umbrella organisation, FORUM-ASIA is humbled to be at the forefront of advocacy towards strengthening the rights of migrant workers, with governments, international institutions and National Human Rights Institutions. With the publication of this research, it is equally important for us to entrust ourselves for the effective advocacy for the strengthening of independent judiciaries, access to justice for migrant workers, and transparent and accountable governance in order to ensure human rights for migrant workers.

Shamini Darshni Kaliemuthu

Executive Director

FORUM-ASIA

INTRODUCTION

Migrant Workers in South Asia: A Review of The Challenges Faced and The Legal Protections Available

*Sakuntala Kadirgamar**

The South Asia Judicial Barometer 2019 focuses on migrant workers as they play a defining and vital, yet under-appreciated role in the economies of the South Asian countries studied in this report. With the exception of the Maldives, which is largely a migrant-receiving country, India, Pakistan, Nepal, Bangladesh, and Sri Lanka are classified as migrant-originating countries. The remittances sent home by these migrant workers make a significant contribution to their respective national economies. The economy of the Maldives, especially the tourist and construction sectors, depend almost entirely on migrant workers. The economic liberalisation of South Asian economies and the global economy has created a hunger for cheap and mobile labour and migrant workers readily fill this void. Gunawardena, in Chapter 6, refers to migrant workers as a “hyper-exploited workforce” and a “structural feature of Sri Lanka’s post-liberalisation economy.”

* Sakuntala Kadirgamar is the Executive Director of the Law & Society Trust, Sri Lanka.

While most of the attention relating to migrant workers focuses on the migrant workers who go overseas, in countries such as India, Pakistan, Nepal, and Bangladesh, and to a lesser extent Sri Lanka, there are significant numbers of internal migrants - the people who leave their rural homes to work in the big cities on special construction projects or in labour intensive sectors such as mines, brick kilns or industrial zones. While internal migrants remain in their own countries, are theoretically protected by their labour laws and constitutional rights, and do not suffer the challenges of being in an alien country, they too are subjected to difficult working and living conditions and exploitation. Many internal migrants work in the informal sector which is not regulated. Furthermore, countries such as India, Pakistan, Nepal, and Sri Lanka are characterised by their linguistic diversity, and internal migrants, albeit in their own countries, may find themselves in alien and inhospitable terrain, away from the safety nets of their own families and communities. A landmark case in India¹ highlighted the chronic vulnerability of internal migrants due to the failures of the national government to provide “teeth and claws” to beneficial legislation such as the Interstate Migrant Act, thus delaying justice for interstate migrants.

Despite South Asia’s dependence on migrant workers, only Bangladesh and Sri Lanka have acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The popular destinations for migrant workers include the Gulf States and the Republic of Korea and they have not signed the convention either. Thus, migrant workers do not benefit from the overarching protection of this international convention and there is no obligation to develop specific, migrant worker-friendly legislation.

¹ *People’s Union for Democratic Rights and Others v. Union of India & Others*, 91 also called the *Asiad Workers’ Case*.

The study highlights the common threads that weave the tapestry of South Asian labour migration experiences and tie the fates of these migrant workers. These include:

Understanding the push-pull factors driving migrant workers

As the common threads that weave the tapestry of South Asian labour migration include poverty and the lack of meaningful, sustainable employment opportunities in their home towns or home countries, the promise of wages that are higher than those offered in their home towns or in their developing economies are strong push-pull factors driving migration. The evidence that governments are not making meaningful efforts to provide them with better alternatives by supporting their skill development or introducing systems that will improve working conditions and career pathways creates additional incentives for migration. There is also the increased phenomenon of irregular migration induced by climate change and the resulting floods, cyclones, and river bank erosions. While many migrants start this journey believing that it will be a short interregnum in their working lives, they may end up spending the greater part of their working lives overseas and have reduced prospects of reintegrating in the domestic labour force. Remarkably, the economies of South Asia are built upon the understanding that remittances will bolster foreign exchange reserves seemingly in perpetuity and few measures are taken to reorient their economies to absorb their own growing pool of labour.

The commodification of migrant workers

In South Asia, the contributions of migrant workers are documented in the national plans and revenue statements of account. The net contributions of migrant workers to their respective national economies (in the case of overseas migrants) and to the rural economies (in the case of internal migrants) are well recognised.

The remittances of migrant workers provide the basis for framing of national budgets and yet measures to improve the lives and livelihoods and the security of migrant workers rarely feature in national plans or through legislation that is accompanied by enforceable mechanisms. Sikder points out in Chapter 1 the efforts of successive governments in Bangladesh to streamline the recruitment process, explore and consolidate labour markets, and to encourage the quicker inflows of remittances and the better utilisation of those resources, yet the Bangladeshi migrant workers remain the most vulnerable sections of the country's labour market.

Migrant workers export their labour and in effect contribute to export earnings. In Bangladesh, 40.86 percent of the total export earnings are attributed to the remittances of migrant workers and this is used to pay a considerable portion of import payments and bolster internal reserves. However, this is not matched by investments in improving their welfare. Ghimire reinforces this point in the case study on Nepal (Chapter 4), stating that the fate of migrant workers does not receive attention in local level politics or in bilateral diplomacy and few resources are invested in the bodies established to manage and monitor migrant labour. Increasingly, migrant labour in South Asia is viewed as a commodity that is exported to generate revenue, in ways similar to cash crops that are exported overseas.

Indeed, the Amnesty International Report on Nepal captures this succinctly with the phrase, “Turning People into Profits.”²

In Chapter 2, Godavarthi references the Indian Supreme Court’s landmark judgment that addressed the appalling labour conditions of construction workers, the failures of the national and State governments to implement constitutional protections and even legislation enacted under the constitution. The courts obligated the State to implement the various social welfare measures and labour laws that it had passed, to protect the rights of vulnerable workers.³

In the case of India, there is an impressive network of laws to regulate and protect interstate workers, building and other construction workers, and unorganised workers and to provide social security for unorganised workers. However, these networks of laws constitute a legal labyrinth and they have been plagued by poor implementation. In the Indian case, committed non-governmental organisations (NGOs) have undertaken strategic litigation to push for the rights of migrant workers but these remedies are costly and time consuming and not available to all. Although the landmark case of the Asia workers was a victory for migrant workers, accessing the judicial process is a long and arduous process and is not one that is readily available to all workers. Furthermore, the judicial process is generally accessed as the culmination of extreme and unbearable exploitation and suffering on the part of the migrant workers.

² Amnesty International, *Turning People into Profits: Abusive Recruitment, Trafficking and forced Labour of Nepali Migrant Workers*, AI London, 2017, available at: <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>

³ See *Supreme Court of India, National Campaign Committee for ... v. Union of India* (19 March, 2018) and *Supreme Court of India, Bandhua Mukti Morcha v. Union of India & Others* (16 December, 1983).

Furthermore, litigation is not an option where the violations have taken place overseas, unless the governments themselves take up these issues with the migrant receiving countries. India's pool of internal migrants is varied and includes, for instance, unskilled workers employed in brick kilns and construction sites, semi-skilled workers in the diamond polishing industry, and white-collar workers in Special Economic Zones.

The varied experiences demonstrate that unregulated migration has led to a variety of challenges as well as unmet expectations. India is a source of migration from neighbouring countries such as Nepal and Bangladesh and even China and also exports considerable numbers of migrant labourers overseas. India has demonstrated a commitment to streamline and rationalise its complex and unwieldy labour codes and while that is welcomed, labour rights activists are concerned that it may undermine the hard-won reforms. Migrant workers struggle to be recognised on par with other workers and call for the portability of social security benefits and this remains a challenge. In the case of Pakistan too, the lack of a coherent approach was found to short-change migrant workers. Efforts to strengthen provincial autonomy, generally viewed as a positive move, has left the migrant workers in limbo as labour is a subject matter devolved to the provinces but the provincial labour policies make no reference to migrant workers. Both the studies from India and Pakistan reference the non-portability of benefits and welfare measures in times of crisis, as they do not have documentation to establish residency.

Migrant workers from the Philippines have since won some gains of government support through their organised lobbies and pressures. A number of State agencies are listed with specific roles in supporting or monitoring migration.

However, such gains are yet to be seen in South Asia. Migrant workers in South Asia cannot vote in elections when they are overseas and even in the case of returnee migrants and internal migrants, they have difficulties in getting registered in their places of work and thereby securing the documentation required to establish permanent residency.

Migrant workers require steadfast champions within their national administrations who take the time and effort to understand their experiences and their needs.

Lack of laws, labyrinths of laws and failures to implement existing laws

Unskilled migrant workers will not know which laws will give them legal protection in the event that they are not paid, suffer abusive work and living conditions or are subject to harassment and even violence and bodily harm. Their families will also not understand the legal frameworks that give them redress. Where migrant workers depend on employers to support their continued presence in the host country, the option of complaining against their employers does not exist.

It is the responsibility of the migrant sending State and the migrant receiving States to ensure that they are guided by international legal standards, that they have appropriate national legislation in place and that the laws may be implemented through a credible regulatory framework. This includes the establishment of meaningful penalties for non-compliance or violations of the laws.

Where migration is managed by non-State agencies such as manpower agencies that are themselves not regulated, the challenges for the migrants may begin from that moment they approach the manpower agency.

Lack of preparedness at the beginning of the journey

As Sikder notes in Chapter 1, many migrants, especially first-time migrants, know little about the country they are going to, the working conditions that exist in that country and the full terms of their employment and their rights. They are in haste to start work and earn an income and the recruitment agencies are in haste to collect their commissions for enabling the migration process. Thus, little investment is made in briefing and preparing the migrants for their journey.

Although States recognise that they should control and monitor the migration process, this is best done if the State has full information of where the migrants will be working and the terms and conditions of their employment. However, the countries in South Asia are unable to manage this process. They rely on recruitment agencies or domestic middlemen at home and the results in terms of protecting migrant workers' terms and conditions of employment and their safety are very mixed. The recruitment agencies do not ensure proper health checks for the workers or a screening process. Neither do they have an adequate orientation programme to brief workers on what they may expect in the countries that they are going to, how to deal with emergencies, and what support they may expect from their embassies. In fact, many of the studies point to the minimal support provided by the embassies and the need for the governments to enter into bilateral agreements with the receiving countries to better protect the rights of their workers.⁴

⁴ Bilateral Agreements and Memoranda of Understanding for the Promotion and Protection of the Rights of Migrant Workers and Members of their Families Policy Brief No. 10, Migrant Forum in Asia, Winter 2014. https://mfasia.org/migrantforumasia/wp-content/2015/06/policybrief_bilaterals_winter2014.pdf

The agencies should have the ability and responsibility to track the migrant workers but they rarely invest in such procedures.⁵

The challenges of poverty push potential migrants to take the difficult decisions to relocate from their homes and endure prolonged separation from their families. Besides these challenges, they face additional challenges at every step of the journey.

Scoping the pitfalls: Inadequate services

The recruitment agencies and middlemen receive commissions and are more interested in closing the deal than in securing the best deal for each worker. Many workers sign contracts that they do not understand or they are offered terms and conditions of employment that are not honoured and they are unable to enforce them.

Migrant workers are not protected in many of the receiving countries, as those countries have not signed the protective international conventions. Furthermore, the migrant labour force does not have the possibility of organising through unions and where migrant labour receives any support, it is often through non-governmental organisations. However, the attitudes of migrant sending countries towards NGOs and human rights organisations are not always positive, as their advocacy and highlighting of violations are seen to disrupt the flows of labour and thereby remittances.

⁵ Protecting the Rights of Migrants Workers: A Shared Responsibility. International Labour Office, Geneva, 2009.

When the egregious nature of violations comes to light through the media, the embassies may intervene. But the embassies themselves are not supported to undertake the extensive monitoring of the status of their migrant workers that is ideally required. Investing in labour diplomacy and bilateral agreements between labour-sending countries and labour-receiving countries remains a critical need. India has established a Ministry of Overseas Indian Affairs and has demonstrated readiness to enter into agreements with Gulf countries but smaller countries in the region have been unable or unwilling to follow such a course.

Women migrant workers

Many South Asian countries adopt “protectionist” measures in relation to women migrant workers that are not adequately thought through and consequently leave women workers more vulnerable to exploitation. For instance, Sri Lanka and Nepal have introduced, at various times, blanket prohibitions on females from leaving as migrant workers on the grounds that their young families will be neglected, or that they will be vulnerable to sexual exploitation. There may be requirements for the women to get the permission of their husbands or fathers, thus denying the agency of women. It also leaves the women no option but to use informal processes to migrate, leaving them extremely vulnerable in the hands of traffickers.

In the Maldives, there are sharp distinctions between expatriate workers (in managerial and administrative positions) and migrant workers (engaged in manual labour and domestic work). Furthermore, as domestic workers are fragmented and work in the private sector, i.e., in homes, they are not documented in the national statistics and the contributions of domestic workers to the Maldivian economy are not captured.

As Ismail further notes in Chapter 3, domestic workers are largely female and consequently the contributions of women migrant workers to the Maldivian economy are under recognised. Gunawardena reinforces this point in the Sri Lanka study, writing that because of “the micro-scale of the workplace and the nature of work, domestic work often performed by migrant workers makes them ‘invisible.’” He points out that, paradoxically, women domestic workers are stigmatised in the wider society for working overseas as domestic workers although the State and their families derive substantial income and foreign exchange.

Some positive initiatives have been taken to support women migrants such as the measures taken by the government of Bangladesh to establish welfare desks at the airports to support outgoing and returning migrants and establishing shelter homes in some receiving countries such as Saudi Arabia, Oman, and South Korea to support female migrant workers. However, the countries exporting migrant labour should do more to understand the push-pull factors that motivate women to migrate as workers and the challenges they face in order to design appropriate policy and legislative interventions.

Access to justice

Many of the countries sending migrant workers overseas do have constitutional provisions protecting labour rights, guaranteeing equality, and due process and they may recognise the rights of their citizens to health, livelihoods, and human security. However, they are rarely translated into laws and policies that have a direct and positive bearing on the lives of migrant workers. Internal migrant workers largely work in the informal sector and so remain unprotected by these laws. Parliamentary representatives do not provide sustained oversight on migrant workers as they are not part of their constituency or voting bloc. The workers themselves are poor and illiterate and are unable to fight for their rights when they face a crisis.

Furthermore, most crises occur when they are in a foreign land or away from their support base and so accessing legal remedies is challenging. When migrants are detained in their receiving country, the conditions are appalling and the justice system is conducted in languages they do not understand and by procedures they cannot comprehend. The embassies are the only line of defence but they have limited resources to invest in each case. They also appear to fear transforming these cases into diplomatic incidents that may impact the continued flow of migrant labour.

The case study from the Maldives highlights the experiences of migrant workers who are imprisoned in the Maldives and the numbers of unexpected deaths and unsolved murders of migrant workers that are causes of grave concern.

Role of South Asian judiciaries in protecting the rights of migrant workers

It is beyond the capacities of migrant workers to turn to their national judiciaries for redress. Court proceedings are long-drawn out and expensive and when resorted to, they take place at the end of a journey of abuse and exploitation and the harm that befalls migrant workers. However, some South Asian countries, especially India and Nepal, have seen landmark judicial decisions taken as a result of public interest litigation filed on behalf of migrant workers by NGOs.

These include the Supreme Court of India's ruling on applying the benefits of the Interstate Migrant Worker Regulation Act to the Asia workers and the Supreme Court of Nepal's "show-cause" notice to the government asking why Nepalis working in India are not included in the "foreign employment" category, and not treated on par with other Nepalis working elsewhere.

The courts in Nepal have also directed the government to appoint labour attachés in countries that have more than 5,000 Nepali workers, to provide for Nepalis overseas the prerequisites of citizenship such as voting rights, and to ensure the effective implementation of its 'Free Visa, Free Ticket' policy. These are instances of strong and beneficial judicial interventions. These are exceptional judicial interventions but are not the practical mechanisms that will provide urgent redress to vulnerable workers.

In many South Asian countries, the National Human Rights Commissions (NHRC) and alternative dispute resolution mechanisms are established to play a role in setting standards and providing relief to migrant workers.

Reorienting national perspectives and responses

Protecting migrant workers clearly requires multipronged and multilevel actions by multiple stakeholders. Clearly the governments of South Asian countries must reflect on the causes that drive migration and if they intend to make their countries dependent on remittances or endeavour to diversify the sources of national revenue, at a minimum must ensure that the migrant workers can improve their skill sets so they are not trapped in an unending cycle of providing unskilled labour for low wages. The migration process requires more oversight and monitoring of the recruitment procedure by regulating and or consolidating the recruitment agencies in order to better monitor them and hold them accountable. Governments too must recognise that they owe a duty of care to their citizens that extend to them when they are working overseas. Investing in bilateral agreements with migrant receiving countries and establishing social safety net programmes for migrant workers are particularly important.

Having said this, we are aware that the migrant sending countries do not control the ecosystem around migration, especially the laws, policies, and attitudes prevailing in host countries.

The trade union movements have weakened in many countries, notably Sri Lanka, which historically had strong unions and, in any event, they are unable to support workers who migrate overseas. NGOs have filled this gap and have been strategic in using the media and public interest litigation to shine a spotlight on the plight of migrant workers. NGOs and governments should work together to conduct trainings for recruitment agencies on how to best support migrant workers and also to prepare migrants prior to their going abroad. The migrant workers should know what support they can receive from their embassies and how to respond to emergencies.

South Asian governments should ratify the International Convention on the Protection of Migrant Workers and their Families and pass appropriate legislation to implement the protections recognised by the convention. The South Asian countries are networked through SAARC and should endeavour to work as a bloc to protect their workers' rights. South Asian governments have depended on the remittances of unskilled migrant workers, but a greater investment in skills development will enhance their earning capacities and also increase their value and bargaining power in the workplace.

More needs to be done to reintegrate migrant workers into the domestic economy so that they can use their skills and experiences and initiative to advance their domestic economies and are not obliged to continue with the cycle of work as migrant labour.

While migrant workers servicing construction industries and the domestic and service sectors are dismissed as being “unskilled” workers, they could and should also be regarded as entrepreneurial, courageous risk-takers who were willing to venture into unknown and uncharted terrain.

Migrant workers and COVID-19: What is the future for migrant workers?

Gig economies, casual work and contract work have become the norm and migrant workers are situated in the vortex of this turbulent world of work. However, the full extent of the vulnerabilities of migrant workers and the attitudes of their respective governments were laid bare during the COVID-19 pandemic. Although this study began before the outbreak of the pandemic, it is published while the world is in the throes of it. The migrant workers were among the most vulnerable casualties of the pandemic. They became encumbrances to their host nations who viewed them as carriers and spreaders of the virus and they posed challenges to their national governments as economic burdens as they sought repatriation.

The pandemic also shone a light on the living conditions of migrant workers - corralled into overcrowded and unsanitary dormitories, making the spread of the virus inevitable and rapid.

Furthermore, the inability of the migrant workers to return to their places of employment and provide a continuous flow of remittances has thrown the economies of South Asia into a tailspin. Their savings capacities are low as they remit most of their wages and so maintaining themselves during lockdowns and paying for their repatriation was challenging.

The policy measures taken by the governments to respond to the pandemic failed to consider the conditions of the migrant workers. Expecting migrant workers to “stay at home” when they had no homes, shutting down transport that prevented internal migrants from returning home, failing to recognise that daily-paid workers had no capacity to feed themselves or their families if they did not receive their daily wage, are evidences of government indifference and lack of understanding.⁶

It took a painfully long time for governments to respond to their plight and the visual scenes of migrants “walking back” the thousands of miles that separated them from their home and scavenging for food on the way are etched in our collective consciousness.⁷

So are the scenes of migrant workers camped outside their embassies, pleading to be sent back to their home countries as they “can’t stay and can’t leave.”⁸

Some courts have redeemed faith in the judiciary as the most appropriate and likely institution to uphold the human rights of migrant workers by responding to the social crisis.

⁶ Abhushyant Kidangoor, “Modi’s Hasty Coronavirus Lockdown of India Leaves Many Fearful for What Comes Next,” 31 March 2020, <https://time.com/5812394/india-coronavirus-lockdown-modi/>

⁷ Geeta Pandey, “Coronavirus in India: Desperate Migrant Workers Trapped in Lockdown,” BBC News, Delhi, 22 April 2020, <https://www.bbc.com/news/world-asia-india-52360757>

⁸ ”TRAPPED AND ABANDONED. The plight of Sri Lankan migrant workers stranded abroad,” 1 June 2020, <http://www.dailymirror.lk/news-features/TRAPPED-AND-ABANDONED/131-190017>

The Supreme Court of Nepal issued an interim order to the government to use the foreign employment welfare fund to repatriate Nepali workers living abroad in highly vulnerable conditions. The order is expected to provide relief for tens of thousands of migrant workers who have been stranded in several countries due to the COVID-19 pandemic and are unable to finance the costs of chartered airfares to fly back home.

The court ordered the government to immediately rescue the Nepalis who have gone for foreign employment with labour permits, by a “judicious utilisation” of the welfare funds to which they have made contributions. According to the court, the Foreign Employment Act, 2007 clearly stipulates the criteria for mobilising the fund, explicitly taking into reference the situation of ‘return and repatriation’ of Nepali migrant workers as one of the conditions for mobilising the welfare fund.⁹

In India, civil liberties activists filed public interest litigation, seeking payment of wages to migrant labourers and daily wage earners who had been left with no avenues of income owing to the coronavirus-induced lockdown. The petitioners contended that rather than putting the liability of payment of wages to the workers on the private sector that was also in distress, the governments at the centre and in the states should make the payments from the exchequer. The petitioners noted that private industries might not be able to fulfil the directives of the Centre to continue with the payment of wages as many of them are on the verge of closure because of the economic crisis triggered by the pandemic.

⁹ Ram Kumar Kamat, “Nepal: Supreme Court Orders Government to Protect the Health Needs of Migrant Workers Living Abroad,” *The Himalayan Times*, 15 April 2020. <https://www.business-humanrights.org/en/nepal-supreme-court-orders-govt-to-protect-the-health-needs-of-migrant-workers-living-abroad>

However, the Supreme Court of India noted that it could not “supplant” the government’s wisdom on providing succour to lakhs of migrant labourers across the country, hit hard by the lockdown. Referring to the complaint by the petitioners that the quality of the food supplied at the shelter homes was inedible, the courts observed that this is not something the court can monitor, that they are not experts, and as such do not intend to interfere with what the government is doing without knowing what it is all about.

According to the court, the question of quality of food and other living conditions was a disputable fact that could be better addressed by the government.

The court went on to query why the migrant labourers required wages when their food was being taken care of by the authorities. The court was indifferent to the fact that the workers’ families also lived on the margins and depended on their wages for daily survival.¹⁰

The COVID-19 pandemic has disrupted South Asia’s economies and demonstrated how unprepared governments are to deal with such a crisis.

However, the crisis does not only relate to finances and repatriation capacities - it also relates to an attitude of mind and unless the humanity and value of migrant workers are reclaimed, South Asia will fall short of a variety of the sustainable development goals it has pledged to meet.

¹⁰ “If Meals are Given...: Supreme Court’s Query,” *The Telegraph online*, 7 April 2020, New Delhi <https://www.telegraphindia.com/india/if-meals-are-given-why-do-they-require-wages-supreme-courts-query-during-coronavirus-lockdown/cid/1762977>

The authors have studied the myriad issues relating to migrant workers over time and are deeply cognisant of the challenges faced by migrant workers along every step of their journeys. They are aware of the gaps in the protection and support measures available to migrant workers, including the inadequacy of laws and policies safeguarding their rights and the inaccessibility of practical support mechanisms, especially during times of crisis.

The writers of each chapter have looked into the feeble capacities plaguing government programmes aimed at protecting migrant workers, a result in part of the attitudes of governments and workforce recruiting agencies towards migrant workers. They have largely referenced published materials, newspaper reports, journals and other secondary resources, but they have also brought their own perspectives, gleaned from their own experiences of working on issues faced by migrant workers to bear on this study.

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People’s Union for Democratic Rights and Others v. Union of India & Others, 91 also called the *Asiad Workers’ Case*

I

INTERNATIONAL LABOUR MIGRATION FROM BANGLADESH: RISK, PROTECTION AND POLICY

*Mohammad Jalal Uddin Sikder**

Introduction

Migration within and beyond the territory that now constitutes Bangladesh has historically been an important livelihood strategy for many of its people.¹¹ The statistics report covering the last ten years suggests that each year, on average, around 576,500 Bangladeshis migrate overseas to engage in long- and short-term employment in order to better their livelihoods.

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¹¹ Rozana Rashid and J. U. Mohammad Sikder, *Choosing a Life: Remittances and Youth Aspirations in Bangladeshi Villages*, Brighton: Migration out of Poverty RPC, University of Sussex, 2016; Mohammad Jalal Uddin Sikder, Vaughan Higgins, and Peter Harry Ballis, *Remittance Income and Social Resilience among Migrant Households in Rural Bangladesh* (New York: Palgrave Macmillan, 2017); Tasneem Siddiqui, Marina Sultana, Rabeya Nasrin, and Sanjida Akhter, *Labour Migration from Bangladesh 2018: Achievements and Challenges*, (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2018).

Thus, from 1976 to date, more than 12.8 million Bangladeshis have migrated to seek overseas employment opportunities.¹² The contribution of migration to the economy of Bangladesh is huge as it creates overseas job opportunities for many Bangladeshis. Every year more than 2 million youth enter the labour force in Bangladesh.¹³ The unemployment rate averaged 3.86 percent from 1991 until 2018¹⁴ but increased to 4.30 percent in 2018 from 4.20 percent in 2017. However, in 2019, the unemployment rate stood at 4.19 percent. Income from migration is one of the most consistent sources of foreign currency for Bangladesh, contributing to the balance of payments and the financing of imports of capital goods and raw materials for industrial development.¹⁵ Given the importance of international migration and remittances to the economy, since the late 1990s successive governments of Bangladesh (GoB) have taken various measures to streamline the recruitment process of international migration, to explore and consolidate markets that open up international migration opportunities for unskilled and semi-skilled workers, and to encourage the quicker inflows of remittances and the better utilisation of those

¹² BMET, *Overseas Employment and Remittances 1976-2019* (Dhaka: Bureau of Manpower Employment and Training (BMET), Government of Bangladesh, 2020a) Available at: <http://www.old.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=16>

¹³ Mhustahsin Ul Azis, "Skilling up Bangladesh's Youth for a Changing Job Market," In *World Bank Blogs*, edited by World Bank Blogs (Washington, D.C.: The World Bank Group, 2019).

¹⁴ "Trading Economics, Bangladesh Unemployment Rate," New York: Trading Economics, 2019.

¹⁵ Tasneem Siddiqui, Marina Sultana, Rabeya Nasrin and Sanjida Akhter. *Labour Migration from Bangladesh 2018: Achievements and Challenges*, (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2018); Bangladesh Bank, *Annual Report 2017-2018*, (Dhaka: Bangladesh Bank, 2019). Available at: <https://www.bb.org.bd/pub/annual/anreport/ar1718/index1718.php>

resources. These actions have ensured better facilitation of international migration and remittance management.¹⁶

Nevertheless, Bangladeshi migrant workers are one of the most vulnerable sections of the labour force due to the lack of operational mechanisms both within Bangladesh and in receiving countries. Unscrupulous and fraudulent recruitment practices have led to high migration costs and the impoverishment of a section of migrant workers and this has led to these workers to look towards illegal channels for overseas migration that further entrench their vulnerability, exposing the unprotected workers to more abuse and violence. In the destination countries, many migrants, including female migrants, face exploitation in the form of low and irregular wages, poor working conditions, and restricted movement. This is possible because the countries have discriminatory policies and do not regulate the employers. Unskilled and low-skilled workers tend to be the main victims, facing hardships at both ends of their journey.¹⁷ As there are limited and even weak institutional mechanisms to support their social and economic reintegration, the migrants continue to face problems even on their return to Bangladesh.

¹⁶ Tasneem Siddiqui, *International Labour Migration and Remittance Management in Bangladesh* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka, 2009), 1.

¹⁷ MEWoE, BMET, and ILO, *Skills for the International Labour Market: Bangladesh Country Report Part of a Multi-Country Labour Market Trend Analysis for Migrant Workers from South Asia to the Member States of the Cooperation Council for the Arab States of the Gulf* (Dhaka: Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE), the Bureau of Manpower Employment and Training (BMET) and the International Labour Organisation (ILO) 2015); Sumaiya Khair, *Migration Disputes Mediation Manual* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2017); Tasneem Siddiqui, *Untold Stories of Migrants: Dreams and Realities*, (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2017).

The chapter is based on the findings of secondary materials¹⁸ and statistical data from various government bodies.¹⁹ Additional information was obtained from relevant research organisations.²⁰ An analysis of internal migration in Bangladesh is also presented for a better understanding of the significance of international labour migration in Bangladesh.

Specifically, the chapter explores the nature and extent of international migration from Bangladesh, the macro-micro economic benefits of migration, the risks and key challenges of international labour migration in Bangladesh and the key responses of government and non-governmental organisations (NGOs) to protect migrants' and their families' rights.

Nature and Extent of International Employment

Bangladesh's socio-economic context

Bangladesh is a developing country and one of the largest deltas in the world, with a total area of 147,570 square kilometres (56,977 square miles). The 2011 census noted a population of 142.3 million, making it the seventh most populated country in the world. The population growth rate of 1.3 percent and population density of 928 persons per square kilometre of total area makes it one of the most densely populated countries of the world.²¹

¹⁸ The secondary sources include books, research papers and articles.

¹⁹ These include: the Bangladesh Central Bank, Bangladesh Bureau of Statistics (BBS), Bureau of Manpower Employment and Training (BMET), and the executive agency of the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE).

²⁰ The research organisations referenced include: The Centre for Policy Dialogue (CPD), Refugee and Migratory Movements Research Unit (RMMRU), and from international agencies such as The World Bank, Asian Development Bank (ADB), United Nation Development Programme (UNDP) and International Organisation for Migration (IOM).

²¹ BBS, *Statistical Year Book Bangladesh 2018* (Dhaka: Bangladesh Bureau of Statistics (BBS), Government of Bangladesh, 2018).

The inequalities of land ownership in the country are stark with 56 percent of rural households classified as functionally landless, in that they own less than 0.2 ha of land.²² Floods, land erosion, and other consequences of climate change affect one million people in an average year. Swelling rivers erode 10,000 hectares of lands thus making 20 percent of the total population landless.²³ The proportion of landless people living in the rural areas continues to increase.

Bangladesh has one of the world's highest poverty rates (26.3 percent in rural areas and 18.9 percent in urban areas are classified as poor, making the overall poverty rate 24.3 percent) and one of the lowest rates of economic development.²⁴ Most economic activities in Bangladesh are concentrated in the urban areas. The government generally invests more heavily in education, healthcare, transportation, and communication in urban areas than in rural areas. The urban areas also receive about half of the government budget. But over the years, GoB has framed rural development policies and implemented many development programmes in the rural areas, investing in crop diversification, modern agricultural technology, technological improvements of cottage and rural industries, and non-farm employment in rural locations.²⁵

²² Kazi Ali Toufique and Cate Turton, "Poverty in a Changing Landscape," In *Hands Not Land: How Livelihoods Are Changing in Rural Bangladesh*, edited by Kazi Ali Toufique and Cate Turton (Dhaka/London: Bangladesh Institute of Development Studies (BIDS) and Department for International Development (DFID)UK) 2003), 16.

²³ GOB, *National Plan for Disaster Management 2010-2015*, (Dhaka: Disaster Management Bureau, Disaster Management and Relief Division, Ministry of Food and Disaster Management, Government of Bangladesh (GOB), 2010).

²⁴ BBS, *Bangladesh Labour Force Survey (Lfs) 2016-1* (Dhaka: Bangladesh Bureau of Statistics (BBS), 2018).

²⁵ Ayubur Rahman Bhuyan, Harun-Ar-Rashid Khan and Sultan U. Ahmed, *Rural-Urban Migration and Poverty: The Case for Reverse Migration in Bangladesh* (Dhaka: Centre on Integrated Development for Asia and the Pacific (CIRDAP), 2001), 15.

These development initiatives are significant but not sufficient to generate the required rates of employment to impact the development of the national economy.

Based on the Labour Force Survey (LFS) 2016-2017, Bangladesh is estimated to have a labour force of 56.7 million. It is disaggregated to 17.2 million females and 39.5 million males with 13.3 million workers in the urban areas and 43.4 million in the rural areas. However, the unemployment rate is 4.2 percent.²⁶ Bangladesh is mainly an agriculture-based economy and the sector accommodates around 40% (FY 2016-17) of the total labour force.²⁷ Nevertheless, the role of agriculture in the national gross domestic product (GDP) is declining. From contributing 14.17 percent in Financial Year (FY) 2016-17, it has fallen to 13.82 percent in FY 2017-18, 13.32 percent in FY 2018-19, and 13.02 percent in FY 2019-20.²⁸ Thus, the declining role of agriculture in the national GDP does not create sufficient opportunities to absorb the growing rural labour supply and this has an impact on both micro and macro economics in Bangladesh. This may be one of the push factors for a large proportion of the economically active population, living mostly in the rural areas, to opt for migration.

²⁶ See (BBS, 2018). Unemployment rates are higher in the rural areas (4.9 percent) than in the urban areas (4.2 percent), and also higher among females (6.7 percent) than among males (3.1 percent). <http://203.112.218.65:8008/WebTestApplication/userfiles/Image/LatestReports/Labour%20Statistics%20in%20Bangladesh-An%20empirical%20analysis.pdf>

²⁷ See (BBS, 2019). Bangladesh: An Overview. https://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/86b66335_4fa7_4143_a034_9abe3e537553/2020-05-15-16-21-919737265f99c7c1397ac87a11cdbcf6.pdf

²⁸ Sectoral Share of GDP at Current Prices, 2016-17 to 2019-20(p), (Dhaka: Bangladesh Bureau of Statistics (BBS)). Available at: http://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/057b0f3b_a9e8_4fde_b3a6_6daec3853586/2020-08-10-14-49-94b60708240f454c1036d64090cf38ec.pdf

This statistical information highlights the disparity between the urban and rural economies with regard to poverty, landlessness and employment opportunities. Most of the economic activities are concentrated in the urban areas, although two-thirds of the population lives in rural areas, where agriculture is the major source of employment. This drives a large proportion of the economically active population, mostly living in the rural areas, to migrate, either to the cities or overseas.²⁹

Scale of international migration

It is difficult to estimate the total number of international migrants, because the numbers include both regular and irregular migrants. According to data from the Bureau of Manpower, Employment and Training (BMET), in 2019, a total of 700,159 workers migrated overseas from Bangladesh. In 2018, the figure was 734,181 and in 2017 the number was 1,008,525.³⁰ The downward trends of migration growth are explained in terms of implementation challenges with regard to international and national policies. There is widespread concern that the fall in international oil prices, a slowdown in the global economy, and the consequences of the Arab Spring are also likely to have adverse effects on labour migration from Bangladesh.³¹

²⁹ Richard Black et al, *Demographics and Climate Change: Future Trends and Their Policy Implications for Migration* (Brighton: Development Research Centre on Migration, Globalisation and Poverty, University of Sussex, 2008), 21; Michael Herrmann and David Svarin, *Environmental Pressures and Rural-Urban Migration: The Case of Bangladesh*, (Munich: Munich Personal RePEc Archive (MPRA) 2009), 3–5.

³⁰ See annex-1.

³¹ Tasneem Siddiqui et al, *Labour Migration from Bangladesh 2018: Achievements and Challenges* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU) 2018)

Internal migration is far more significant than external migration, both in terms of the numbers of people involved and the numbers of rural households that are supported through remittances from internal migration.³²

The Household Income and Expenditure Survey (HIES) of 2016, shows 11.22 percent of households reported migration experiences from their households either within the country (from one district to another district) or abroad.³³ Of these, 8.27 percent of households reported migration experiences abroad. The figure was 8.60 percent in 2010. The proportion of migration from rural areas (12.98 percent in 2016 and 13.72 percent in 2010) is higher than that of urban areas (6.72 percent in 2016 and 8.33 percent in 2010) in case of both types of migration.³⁴

Migration destinations:

The HIES 2016 reported that 28.59 percent of total migrant persons migrated from one district to another within the country and 71.41 percent migrated abroad.³⁵ Almost 80 percent of the total workers who migrated from Bangladesh went to Gulf Cooperation Council (GCC) and other Arab countries. The remaining 20 percent went mainly to different South East Asian countries. In 2019, Saudi Arabia received the highest number of Bangladeshi workers. A total of 399,000

³² Rita Afsar, *Internal Migration and the Development Nexus: The Case of Bangladesh, 2005*. Available at: <http://www.shram.org/uploadFiles/20131213045931.pdf>

³³ This survey was based on 12,240 households (7,840 in rural and 4,400 in urban areas) and HIES of 2016, based on 46,076 households (32,096 in rural and 13,980 in urban areas).

³⁴ BBS, *Household Income and Expenditure Survey-2010* (Dhaka: Bangladesh Bureau of Statistics (BBS), Government of Bangladesh, 2011); BBS, *Preliminary Report on Household Income and Expenditure Survey 2016*, (Dhaka: Bangladesh Bureau of Statistics (BBS), Government of Bangladesh, 2019); see also annex 2.

³⁵ Ibid., BBS, 2019.

Bangladeshi workers migrated to Saudi Arabia and this figure is 56.99 percent of the total flow from Bangladesh. With no major change compared to the previous year, Oman received the second highest number of migrants from Bangladesh. A total of 72,654 workers migrated to Oman (13.38 percent). By receiving 50,292 Bangladeshi workers, Qatar positions itself as the country receiving the third largest number of Bangladeshi migrants. In 2019, around 7.11 percent of the total Bangladeshi migrant workers went to Singapore.

Migration to the industrialised countries, especially to the West, began in the 1950s with the United Kingdom (UK). Today, Bangladeshis continue to migrate to the West through various routes: on work vouchers, as students, and through family reunification. Many subsequently acquire work visas. Among the developed economies, the UK and United States of America (USA) are the two major destinations. Unfortunately, information on permanent migrants is limited, as the government does not maintain systematic records on this category of movement. However, migration experts estimate that almost 1.2 million Bangladeshis live in industrialised countries as permanent settlers and this figure includes both documented and undocumented migrants.³⁶

³⁶ Tasneem Siddiqui, Mohammad Jalal Uddin Sikder, and K. N. M. Hossainul Haque, *Work Conditions of Bangladeshi Factory Workers in the Middle Eastern Countries* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka, 2004), 13.

Gender distribution

The increased migrant flows have also resulted in the feminisation of the labour force in many sectors. Between 2001 and 2019, 887,471 female workers had formally migrated overseas.³⁷ The Gulf States and other Arab countries are the major labour market for Bangladeshi female migrant workers. Saudi Arabia was the single most important destination for Bangladeshi female migrant workers, receiving 72.48 percent of the total female migrant workers in 2018.

Oman (10.85 percent) receives the second largest percentage of female migrant workers, followed by Jordan (8.95 percent), Qatar (3.14 percent), United Arab Emirates (UAE) (2.39 percent), Lebanon (1.89 percent), and Mauritius (0.44 percent).³⁸

Traditionally, men were the principal rural-urban migrants in Bangladesh and women accompanied them as part of migrating families.³⁹ Almost all migration from rural to urban areas was temporary or seasonal. However, now, many migrants seek to settle permanently in the urban areas. Since the mid-70s, many distressed, divorced women or those separated from their husbands migrated from rural to urban areas in order to join the informal sector including as domestic workers, in the construction industry, and as daily paid labour. However, during the 1980s, an increasing number of women started migrating, particularly to Dhaka, making up the principal category of migrants joining the labour force in the formal sector of garment manufacture.

³⁷ BMET, *Overseas Employment of Female Workers from 1991 to 2019* (Dhaka: Bureau of Manpower Employment and Training (BMET), Government of Bangladesh, 2020b). Available at: <http://www.old.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=25>

³⁸ Ibid.

³⁹ Afsar, 1994, 1998, 2000a, 2000b, 2001 and 2003; Kabeer, 2000, 2004; Siddiqui et. al. 2006; Skinner and Siddiqui, 2008; and Siddiqui and Sikder, 2014.

Today, more than 4,560 garment factories operate in Bangladesh, employing four million workers, 80 percent of which are women.⁴⁰ The Bangladesh Population and Housing Census 2011 also reported that the internal migrant rate is now higher for female migrants (53.6 percent in 2004 and 61.6 percent in 2011) compared to male migrants (46.4 percent in 2004 and 38.4 percent in 2011).⁴¹

Skill composition

BMET has classified short-term migrants to the Middle East and South East Asia into four categories: professional, skilled, semi-skilled and unskilled workers.⁴² In recent times, however, semi-skilled and unskilled workers make up the majority of migrants and in 2019, semi-skilled and unskilled workers constituted the largest proportion of migrants compared to professional and skilled workers (393,324, 56.18 percent in 2019). However, the professional and semi-skilled workers earned higher average wages and sent more remittances. In 2019, the percentage of the skilled category of labour was 43.82 percent, with 43.51 percent in 2017, 42.69 percent in 2016, and 38.89 percent in 2015.⁴³ The data indicates that Bangladesh is still dependent on remittances from less skilled labour.

⁴⁰ BGMEA, *Number of Garment Factories and Employment*, Bangladesh Garment Manufacturers and Exporters Associations (BGMEA), <https://www.bgmea.com.bd/home/pages/aboutus>

⁴¹ Also see: Bangladesh Bureau of Statistics 2015.

⁴² Nurul Islam, *Migration from Bangladesh and Overseas Employment Policy*, https://bmet.portal.gov.bd/sites/default/files/files/bmet.portal.gov.bd/publications/af50023f_5031_4cc4_8913_47c580fe858a/Migration-BOEP.pdf

⁴³ BMET, *Category-Wise Overseas Employment from 1976 to 2019* (Dhaka: Bureau of Manpower Employment and Training (BMET), Government of Bangladesh, 2020c). Available at: <http://www.old.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=9>; see annex-4

Thus, despite the fact that unskilled workers are vulnerable to abuse during the recruitment process and do not receive fair wages, high remittances are now received via the low-skilled and unskilled migrant labour force.⁴⁴ However, in a number of Gulf countries, the recruitment of skilled workers is increasing. For example, Qatar is recruiting more technical workers, targeting the construction required for the 2022 FIFA World Cup.⁴⁵

Localities sourcing migrant workers

Bangladesh is divided into 64 administrative districts. Interestingly, the majority of the international migrants originate from six districts: Comilla, Chittagong, Brahmanbaria, Tangail, Dhaka, and Chandpur⁴⁶, accounting for 34.01 percent of the total migrants. Comilla tops the list sending 9.83 percent of the migrant workers. A baseline survey of these districts shows that there is a correlation between the destination and source areas. The majority of the people from Chittagong and Comilla go to Saudi Arabia. Migrants from Dhaka and Tangail tend to go to Singapore and Malaysia. It appears that a social network of friends and relatives as well as middlemen working as informal recruiters or Brokers (*dalals*), results in this migration chain, linking the source to destination areas.⁴⁷

⁴⁴ Tasneem Siddiqui, *International Labour Migration and Remittance Management in Bangladesh* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka, 2009), 19.

⁴⁵ Tasneem Siddiqui et al, *Labour Migration from Bangladesh 2018: Achievements and Challenges* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2018).

⁴⁶ See annex-5

⁴⁷ Wide ranges of informal labour migration intermediaries are present in Bangladesh. These include professional dalal (full-time brokers) and amateur dalal (family members, friends, neighbours and acquaintances with connections abroad who dabble in mediating migration).

An insignificant number of people migrate from the relatively poorer districts of Northwest Bangladesh. The lack of migration from these districts may be due to the inability of aspiring migrants to bear the upfront costs of migration or the absence of a social network to encourage and support them.⁴⁸

Characteristics of migrants

Research on international migration in Bangladesh suggests that most migrants are young.⁴⁹ Several studies and empirical research on rural-urban migration also report that most migrants are young and under the age of 30 years; female migrants are younger than the males.⁵⁰ These studies also report that the rate of literacy of the migrants and their families is very low. The reason for this does not appear to be the lack of access to schooling but rather the necessity for all the members of poor families to work and ensure a decent livelihood for the family.⁵¹ Thus the value placed on education is limited in this demographic and the school dropout rate is very high among both male and female migrants.⁵²

⁴⁸ Tasneem Siddiqui, Marina Sultana, Rabeya Nasrin, and Sanjida Akhter, *Labour Migration from Bangladesh 2018: Achievements and Challenges*, (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2018).

⁴⁹ Ibid. Rita Afsar, 2005.

⁵⁰ See Siddiqui 2001, Afsar, Yunus and Islam 2002, Siddiqui and Abrar 2003, Siddiqui, Sikder and Haque 2004, Siddiqui and Billah 2012, Siddiqui and Mahmood 2015, Rashid and Sikder 2016, and Sikder, Higgins and Ballis 2017.

⁵¹ Tasneem Siddiqui and Mohammad Jalal Uddin Sikder, "Rural to Urban Migration for Domestic Work in Bangladesh," In *Social Protection and Marginalised Migrant Workers in India and Bangladesh*, edited by Chowdhury Rafiqul Abrar and Janet Saleey. 57-81 (Dhaka: University Press Limited, 2009); BBS, 2015.

⁵² Mohammad Jalal Uddin Sikder, *Remittances and Social Resilience: A Study of Migrant Households in Rural Bangladesh* (Monash University, 2013); Rashid and Sikder, 2017.

As most migrants come from very poor rural backgrounds, they have found migration to be somewhat effective as a route out of poverty. However, the migrants also face personal insecurity in urban areas, stemming from poor working conditions and the lack of protection for their legal rights and their human rights. This directly affects their incomes, social security, and resilience.

Migrant returnees

There is no systematic mechanism to maintain data on migrant returnees although different stakeholders and civil societies have emphasised the importance of keeping such records.⁵³ A study revealed that in the 12 villages in Bangladesh that were likely to have high rates of migration, 29 percent of the migrant households were migrant returnees. This study considered those who have returned within the last 10 years and who have remained in Bangladesh for more than a year as returnees.⁵⁴ Based on this, the national figure for migrant returnees in Bangladesh can be estimated. According to BMET, in the last 10 years, a total of 5,521,838 workers have migrated for work. If 29 percent of them return, then we may estimate that, during the last ten years, 1,601,333 workers have returned.⁵⁵

⁵³ Tasneem Siddiqui and Raisul Awal Mahmood, *Impact of Migration on Poverty and Local Development in Bangladesh* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU) and Swiss Agency for Development and Cooperation (SDC), 2015).

⁵⁴ The Asia Foundation, *Labour Migration Trends and Patterns: Bangladesh, India and Nepal 2013*, <https://asiafoundation.org/resources/pdfs/LabourMigrationTrendsandPatternsBangladeshIndiaandNepal2013.pdf>

⁵⁵ Ibid.

Linkage of Migration and Development Economies

Most migration literature in Bangladesh deals with the macro level impact of international remittances on economic development, and so it is difficult to find data on domestic remittances as it is largely unrecorded. However, the government collected statistical information on migration and remittances (both internal and external) through the Household Income and Expenditure Surveys of 2000, 2005, 2010, and 2016.

The survey reports provide significant information about the econometric analysis of migrant remittances per household income, but it does not offer any qualitative analysis of the use of money in relation to their social and economic changes stemming from their migration experiences. However, researchers concerned with Bangladesh have focused on how development is affected by internal migration and urbanisation and the migration behaviours and survival strategies of the poor. The research is based on small-scale surveys and describes the use of remittances in statistical terms (as percentages). These studies suggest the increasing importance of migration and remittances for individuals, for households, and for the village community.

On the basis of the existing literature on migration and remittances in Bangladesh, this section investigates whether migration coupled with remittances significantly affects macro-economic development in the villages of the migrants and assesses the micro socio-economic benefits at the household level.

Remittance transfers

It should be noted that the Bangladesh Central Bank only documents global international remittance that flows into Bangladesh. In 1991, the total amount of international remittances received by Bangladesh equalled US\$ 7.6 million. By 2001, the amount of remittances received had increased to US\$ 2 billion, further rising to US\$ 13.53 billion in 2017, US\$ 15.54 billion in 2018, and US\$ 18.35 billion in 2019⁵⁶ (Bangladesh Bank, 2020: Annex-6). It should also be mentioned that unrecorded flows and transfers in kind could more than double this figure. However, these figures and their effect on the areas that send migrants abroad are difficult to fully estimate.

Empirical research on internal migration in Bangladesh also found that migrants transfer considerable amounts of their income from the urban to the rural areas.⁵⁷ A study of rickshaw pullers who temporarily migrate to Dhaka city showed that remittances constitute the single largest source of cash income for their family. A village-based research on households in the migrants' place of origin also found that almost all of the cash income of the migrants' households in the *char*⁵⁸ areas of the Gaibandha district of Bangladesh consisted of remittances.⁵⁹

⁵⁶ Bangladesh Bank, 2020, Annex-6

⁵⁷ Tasneem Siddiqui and Mohammad Jalal Uddin Sikder, "Rural to Urban Migration for Domestic Work in Bangladesh," In *Social Protection and Marginalised Migrant Workers in India and Bangladesh*, edited by Chowdhury Rafiqul Abrar and Janet Saleey (Dhaka: University Press Limited, 2009), 74.

⁵⁸ The char is a tract of land surrounded by river waters.

⁵⁹ Jessica Skinner, and Tasneem Siddiqui, *Migration from Chars: Risks, Costs and Benefits* (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka, 2008), 2; T. Siddiqui and M. J. U. Sikder, *Marginalised of Migration: A Study of Domestic Workers and Rickshaw Pullers in Dhaka*, (Dhaka: Refugee and Migratory Movements Research Unit (RMMRU), 2014).

Interestingly, not all districts⁶⁰ of Bangladesh receive an equal distribution of remittances. The HIES of 2000 and 2005 showed that the households in the Barisal, Rajshahi, and Khulna divisions received most of the domestic remittances and those in the Chittagong, Sylhet, and Dhaka divisions received most of the international remittances. In Chittagong, 20 percent of households received remittances from abroad in 2005, and 16 percent of those in Sylhet received international remittances compared to less than 5 percent of households in Rajshahi, Khulna, and Barisal.⁶¹ The majority of international migrants originate from five districts within two divisions: Chittagong and Dhaka.

These are Comilla, Chittagong, Brahmanbaria, Dhaka, Tangail, and Chandpur. These districts account for 40 percent of the total migrants, with Comilla heading the list.⁶²

Macro and microeconomic benefits of migration

At a macro-level, the major developmental impacts of migration are calculated in terms of the remittance flows. In the fiscal year 2018-19, Bangladesh received US\$ 15.97 billion in international remittances from all over the world.⁶³ The contribution of international remittances to GDP was 7.75 percent in FY 2007, which has increased to 9.6 percent in FY 2013, 5.17 per cent in FY 2017, and 5.80 percent in FY 2018. In FY 2018, remittances also contributed 40.86 percent of total

⁶⁰ There are seven divisions of Bangladesh and each division is divided into *zila* or districts. The districts are further divided into 493 *upazila* or subdistricts.

⁶¹ See the HIES of 2000 and 2005, Annex 7.

⁶² BMET, *District-Wise Overseas Employment (Major Districts) from 2005 to 2019*, edited by Statistical Reports (Dhaka: Bureau of Manpower, Employment and Training (BMET), Government of Bangladesh, 2020d). Available at: <http://www.old.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=16>

⁶³ Bangladesh Bank, *Yearly Data of Wage Earner's Remittances* (Dhaka: Bangladesh Bank, 2020). Available at: <https://www.bb.org.bd/econdata/wageremittance.php#>

export earnings and 27.51 percent of import payments. It also played a supportive role in strengthening the reserves.⁶⁴ However, these analyses only take into account the official remittance flows. The figure is greatly enhanced with informal remittance flows and so it is recognised that the contribution of migrants' remittances to development is very large.

Rural to urban migration largely occur in multi-locational households that have one foot in urban economies and another foot in rural economies. Migration, is in fact, a series of exchanges between rural and urban societies, simultaneously impacting both rural and urban economies. Rural-urban migration has played a key role in the rapid growth of the cities.

The census indicates that between 1991 and 2011, the urban population increased from 21.21 percent to 23.30 percent, and the urban growth rate was 1.37 percent.⁶⁵ Migrants also meet the labour needs in urban areas where there is labour-intensive economic growth and this benefits the rural poor, as it is a source for transferring an income to rural communities. Migrants also represent a critical mass of consumers that contribute to the development of enterprises and creation of employment opportunities in the urban areas.

Migration and remittances in Bangladesh have emerged as dominant factors in household incomes, consumption, and savings. Income from remittances from both domestic and international migration have replaced agriculture as the most important aspect of household income, thus contributing to the migrants' households' social and

⁶⁴ Bangladesh Bank, *Annual Report 2017-2018* (Dhaka: Bangladesh Bank, 2019). Available at: <https://www.bb.org.bd/pub/annual/anreport/ar1718/index1718.php>

⁶⁵ BBS, *Population Distribution and Internal Migration in Bangladesh*, (Dhaka: Bangladesh Bureau of Statistics (BBS), Government of Bangladesh, 2015).

economic development.⁶⁶ The HIES in 2016 reports that gifts and remittances accounted for 10 percent of household income at the national level, 12.2 percent in the rural areas, and 6.6 percent in the urban areas.⁶⁷

According to the Household Income and Expenditure Survey 2010, remittances not only boost the incomes, but also the overall consumption and savings per household. In fact, the capacities and advantages of remittance-receiving households far exceed that of households who do not receive remittances.

For remittance-receiving households, in 2010, the income per month was on average 82 percent higher, consumption per month 37.7 percent higher, and savings per month 10.7 percent higher when compared with households that do not receive remittances. Moreover, the poverty headcount rates of remittance receiving households are 61 percent lower than those of households that do not receive remittances. Only 13.1 percent of the remittance-receiving households were below the poverty line in 2010, compared with 33.6 percent of the remittance non-receiving households and the 31.5 percent national average poverty incidence.⁶⁸

⁶⁶ Kazi Ali Toufique and Cate Turton, "Poverty in a Changing Landscape," In *Hands Not Land: How Livelihoods Are Changing in Rural Bangladesh*, edited by Kazi Ali Toufique and Cate Turton (Dhaka/London: Bangladesh Institute of Development Studies (BIDS) and Department for International Development (DFID), UK, 2003), 24.

⁶⁷ BBS, *Report of the Household Income and Expenditure Survey 2016* (Dhaka: Bangladesh Bureau of Statistics (BBS), Government of Bangladesh, 2019), 32. https://drive.google.com/file/d/1TmUmC-0M3wC5IN6_tUxZUvTW2rmUxMce/view

⁶⁸ Ibid, BBS, 2011.

Risks and Challenges of International Migration from Bangladesh

New routes for irregular migration

When people choose to migrate, they are willing to take risks in search of a better life and to promote their family's welfare. Nevertheless, it is a matter of concern that, alongside regular migration pathways, there is a significant increase in the number of Bangladeshi migrants opting for irregular pathways of migration.⁶⁹ They may travel abroad via air, maritime and land routes, but as they do not use legal and formal channels, they are vulnerable at every stage of their journey - at risk of human rights violations, violence, exploitation, and even murder. Irregular Bangladeshi migrants focus on three major destinations – the European Union (EU), South East Asia (Malaysia), and the United States of America (USA). Forntex, the European Border and Coast Guard Agency, reported that from 2012 to 2016, a total of 32,620 Bangladeshi nationals who had illegally crossed the border by sea, land, and air and entered Europe via six routes were detected.⁷⁰ Moreover, the Italian authorities stated that, from January to April 2017, 4,645 Bangladeshis had registered at the landing points in Italy. According to the UNHCR (2016), 30,700 people from Bangladesh and Myanmar departed from the Bangladesh-Myanmar maritime border, with an additional 2,000 believed to have embarked near Sittwe in Myanmar. Since 2012, approximately 170,000 refugees and migrants are believed to have departed by sea from Bangladesh or Myanmar.

⁶⁹ The section is based on published information as well as detailed notes on observations, experiences, and discussions with local stakeholders.

⁷⁰ The six main routes are the Western African, Western Mediterranean, Central Mediterranean, Apulia and Calabria, Albania-Greece, Western Balkan, Eastern Mediterranean and Eastern Borders routes. [this mentions 8]

It is difficult to estimate the total flow of irregular Bangladeshi female migrants. Because of the challenging nature of the journey, Bangladeshi female migrants rarely travel to the three popular destinations. Nevertheless, international criminal traffickers operate across the India-Bangladesh border and smuggle Bangladeshi women and children through the eastern Indian state of West Bengal with the promise of good jobs in Indian cities and towns and then sell them into prostitution or domestic servitude.⁷¹ Traffickers also use Bangladeshi recruitment agencies legitimately to move Bangladeshi women migrants to countries like Jordan and Lebanon but later traffic and sell them even to war-torn Syria.⁷² The Rapid Action Battalion (RAB) of Bangladesh arrested a human trafficking gang who confessed to trafficking more than 400 women to Middle Eastern countries.

Various studies and newspapers report that individuals who migrate from Bangladesh to the EU and Malaysia suffer serious human rights violations.

There is evidence of agents, the *dalals*, professional smugglers, and members of their criminal networks committing acts of physical torture, kidnappings and ransom, and even killing their victims. When the Bangladesh border is controlled, the agents place the prospective migrants in a house along with many others, awaiting the opportunity to start their journey. The facilities in these houses are very poor, with many people crowded into each room with poor hygiene. The prospective migrants are not allowed to go outside and they receive little food. They are in effect in a jail. When they start their journey, they face similar problems at different transit points.

⁷¹ A. Nagaraj, "Traffickers Buy up Land, Houses to Smuggle Women across India-Bangladesh Border," *The Reuters*, 23 June 2017.

⁷² N. Bhalla, "Bangladeshi Women Trafficked to War-Torn Syria as Sex Slaves, Maids," *The Reuters*, 1 March 2016.

For instance, on their way to EU States they must cross the Sahara Desert to reach Libya. During this journey, which takes more than 10 days, many migrants are reported to have died due to a shortage of drinking water. On the journey, the agents or smugglers take all their possessions from them, including their money and clothes. When they embark on the final stage of their journey to cross the sea, the situation becomes even worse. Many have never seen big waves before and cannot cope with the journey by sea. During the sea voyage many migrants fall ill, become unconscious, and die.⁷³

Regarding migration from Bangladesh to Malaysia, when the migrants finally reach the Thai, Indonesian, and Malaysian coastal border, the agents or smugglers demand more money.⁷⁴ A similar scenario is noted in the EU migration routes where, before crossing the sea, the smugglers demand more money. If the migrants cannot pay, they take them hostage, and torture and abuse them, demanding that they arrange for the money to be sent from Bangladesh.

Even if the migrants obtain the money and hand it to the agents, another group of criminals and traffickers may then kidnap them and demand further payment. International agencies have reported that due to this harassment many migrants die. The United Nations High Commissioner for Refugees (UNHCR) noted that at least 1,800 refugees and migrants are believed to have died while crossing the Bay of Bengal and Andaman Sea due to abuse and deprivation.⁷⁵

⁷³ Mohammad Jalal Uddin Sikder, *Smuggling of Migrants, Trafficking in Persons and Contemporary Forms of Slavery, Including Appropriate Identifications, Protection and Assistance to Migrants and Trafficking Victims* (Dhaka: International Organisation for Migration (IOM) and Refugee and Migratory Movements Research Unit (RMMRU), 2017), 8.

⁷⁴ Ibid.

⁷⁵ UNHCR, *Mixed Movements in South-East Asia*, Bangkok: UNHCR Regional Office for South-East Asia, 2016.

Once migrants reach their destination, they may remain prone to exploitation. Due to their inability to speak the local language, they have limited opportunities for social assimilation and are vulnerable to exploitation by new forms of slavery at the hands of unscrupulous employers. They are subjected to poor working conditions as they have reduced bargaining power. They are unable to access social services including health benefits and the justice systems that could ease their situation. In desperation they may be forced to return.⁷⁶ Human smugglers who were involved in processing irregular migration through maritime routes may be prosecuted under the Migration and Overseas Employment Act, 2013 but the government of Bangladesh hardly ever files any cases against them.⁷⁷

Irregular migration induced by climate change

According to the Refugee and Migratory Movements Research Unit (RMMRU) and University of Sussex's study findings, approximately 16 to 26 million people will migrate from their place of origin due to the effects of climate change. In the last population census, 29 *upazilas*⁷⁸ that are greatly affected by floods, cyclones, and eroding river banks, reported a negative population growth and are reported to be the locus for climate induced migration.⁷⁹ The government of Bangladesh offers very limited support by way of skills training and development projects in the affected areas and so the inhabitants are forced to seek alternative livelihoods in the face of climatic stress.

⁷⁶ Sikder, *Smuggling of Migrants, Trafficking in Persons and Contemporary Forms of Slavery, Including Appropriate Identifications, Protection and Assistance to Migrants and Trafficking Victims* (Dhaka: International Organisation for Migration (IOM) and Refugee and Migratory Movements Research Unit (RMMRU), 2017), 1.

⁷⁷ Siddiqui, et al. 2016.

⁷⁸ See footnote 61 noting the seven divisions of Bangladesh that are further divided into 64 *zila* or districts and the further sub division of districts into 493 *upazila* or sub districts.

⁷⁹ Martin et al., 2013.

However, newspaper reports on the irregular flow of migration through the Bay of Bengal and Mediterranean Sea and on the source areas indicate that almost all of them are from climate-stressed areas.⁸⁰

Unnatural deaths of migrant workers

The unnatural or premature deaths of Bangladeshi migrant workers is now a burning issue in Bangladesh, as the social costs of migration is borne by the migrant, his/her family, the community, and the nation. In the last fourteen years, from 2005-18, 37,138 bodies of deceased migrants were sent to Bangladesh and the average age of the deceased was 38 years.⁸¹ In 2012 as many as 32.16 percent of the deaths were due to accidents in the workplace or on roads and in 2013 these accidents amounted to 24.63 percent of the deaths.⁸² According the Wage Earners' Welfare Board (WEWB), from 2016 to 2018, 294 bodies of deceased female migrant workers were repatriated from labour-receiving countries. Most dead bodies came from Saudi Arabia (112), followed by USA (36), Oman (34), Lebanon (42), and Jordan (62).⁸³

The reasons for death were documented as suicide and heart attack. Human rights defenders and civil society organisations (CSOs) have questioned this and the real causes of migrants' death are widely believed to be due to the poor working conditions and a disregard for their safety and rights by the employers in the migrant-receiving countries.

⁸⁰ Siddiqui, Anas and Sultana, 2015.

⁸¹ WEWB, 2019: Annex-8.

⁸² Siddiqui and Reza, 2014.

⁸³ WEWB; *ibid.*

Returnee female migrants also reported human rights violations including physical torture and non-payment of wages by the employers. CSOs have criticised the government for not ensuring the protection of migrants' rights through proper safeguards and policies.

Inadequate mechanisms to ensure safe migration

Research on migration conducted in Bangladesh points to the many challenges that migrants face. Many prospective migrants are unable to travel abroad due to fraudulent practices or they fail to benefit from migration as they receive lower salaries than promised, experience poor working conditions or incur extra costs to renew work permits at the destination countries. Although prospective migrants also receive pre-decision and pre-migration information training, this does not help them in preventing the fraudulent practices. The training manual developed by the District Employment and Manpower Office (DEMO) targeted people who are actually planning to go abroad and so provided information on issues such as how to obtain a passport, visa processing, health check-ups, the rules and regulations of the migrant destination countries, how to send remittances, the use of remittances, and migrant welfare issues. However, the training module does not address how to assess whether migration is the most suitable choice for the individual, based on factors such as the money they may be able to earn overseas compared with staying in Bangladesh and their life aspirations and those of their families.⁸⁴

⁸⁴ Mohammad Jalal Uddin Sikder, and Selim Reza, *National Strategy on the Management of Wage Earners' Welfare Fund*, (Dhaka: Fairer Labour Migration in Bangladesh (FLM), PROKAS programme, British Council and Refugee and Migratory Movements Research Unit (RMMRU), 2019).

Inadequate services for migrants

Bangladeshi diplomatic missions in the migrant-receiving countries provide many services, but as there are few officials and a large number of migrants, it is difficult for the missions to provide the most needed services. The Migrant Welfare Desk, conducted by WEWB, at the three airports in Bangladesh is a good initiative as it provides both outgoing and returnee migrants with information on safe labour migration, welfare, and other related issues.

However, it is not well advertised and there is very limited space available. For instance, the waiting room is very small, there are only a few chairs available, there is no desk or room for a doctor, and it is not very service-oriented. They do not, on their own initiative, look around the airport to identify the outgoing migrants who are unaware of the welfare desk's activities and migration-related issues and inform them of their services.⁸⁵

Shelter homes at some migrant receiving countries and cities (for instance in Saudi Arabia (Riyadh, Jeddah), Oman and South Korea) are created for female migrant workers to support those who are ill or in deep shock, having suffered trauma, rape, or violence at the hands of the employers. However, it is not clear whether the distressed female migrants receive the appropriate medical attention when they are in the shelters, especially psychosocial counselling. It is very important during the initial stage to reduce the migrants' shock and stress through counselling. Key informant interviews (KIIs) with several returnee migrants have also reported that the women cannot return home easily from the shelters for a variety of reasons.

⁸⁵ Ibid

It takes time for them to receive their compensation or they are unwilling to return home because of a fear of the social stigma they will experience in their place of origin. It is also found that many become more ill and traumatised while in the shelter home.

It is not known what kind of additional support they receive besides physical security and whether the officials take the initiative to engage with the relatives of the migrants in their place of origin in order to eliminate the social stigma and facilitate their integration into the community on their return.⁸⁶

When the migrant workers return to Bangladesh from the shelter home, they are either handed over to their relatives or they receive help from NGOs to send them back to their relatives. However, WEWB does not have any shelters besides the airport back in Bangladesh. They need to wait for a long time at the airport to be handed over to the NGOs. They also need immediate psychosocial counselling and medical support at the airport, but these services are absent. A safe home or shelter is also needed for male migrant workers who are returning home having experienced trauma in the workplace. While sick migrants receive ambulance support to enable them to return home, immediate medical attention, including psychotherapy, is not provided to male migrants.⁸⁷

⁸⁶ Sikder and Reza, 2019.

⁸⁷ Ibid.

Absence of a social safety net programme for migrants

Under the social safety net programme, a poor person in Bangladesh receives government assistance under the Vulnerable Group Development (VGD) and Vulnerable Group Feeding (VGF) programmes. Where an individual's migration experience was unsuccessful and consequently, they or their families become impoverished due to a failed migration, the social safety programmes do not cover these poor migrants and their families to receive assistance until they have overcome their problems.

Furthermore, there is no social insurance for migrants who are disabled. Recently, however, the government has considered introducing a life insurance service for migrants.

Inadequate government institutional structure and capacity

The main activities of the 48 District Employment & Manpower Offices (DEMO) under MoEWOE is to provide services for migrant workers at the grassroots level. However, half of them lack leadership and half of the posts in these offices are vacant. Moreover, the staff does not receive regular and specialised training to serve the workers. In fact, there are no branches at the *upazila* level, and so very few functions are performed. Above all, BMET functions are extremely centralised.

The number of Technical Training Centres (TTCs) and trainees is increasing every year but an adequate number of instructors are not recruited and this undermines the quality of the training and the ability to produce skilled migrant workers. The annual capacity of the training centres is 68,000 but the actual number of workers who receive training exceeds the capacity.

Rather than bringing TTCs under the government's revenue budget, the government decided to establish 17 more training centres under the development budget, raising questions about the sustainability of TTCs. Current TTCs' trade-based trainings also face some problems. They lack proper mechanisms to respond to and incorporate the demands from overseas into the training curricula. There is also a mismatch between the quality of the training and the needs and expectations of the migrants and potential employers. These problems are largely due to the trainers' limited access to information about the nature of the international labour market, their use of traditional methods of training, a lack of facilities to support a practical application of the trainings, and poorly trained language trainers.

Although the employers of the major destination countries always emphasise the need for workers with practical experience, the students and trainers are more focused on the workers obtaining certificates.

The government training centres do not maintain systematic data records relating to the numbers of people participating in the trade-based trainings in their institutions. Thus, the job placement cells cannot perform efficiently. The centres are not directly linked to facilities overseas that link the trainees with the industry or to specific jobs. These training centres also cannot fulfil the high demand for trade-based training for females. This may be due to the social stigma and negative attitudes concerning women's participation in trade-based occupations. One of the biggest challenges for TTCs is that their trade-based training certificates are not recognised abroad. There are no bilateral agreements between TTCs and the destination countries to recognise the skills assessment and certification systems.

Lack of commitment to develop skilled manpower

One of the major challenges is the lack of commitment from government and international donor agencies to develop highly skilled manpower. For instance, there is an increasing demand for nurses around the world. The government, bilateral donors, and others who are helping Bangladesh in different ways do not invest in training institutes and develop the quality of nurses. Yet, they are in need of nurses themselves. These are some of the challenges that demonstrate the lack of high-level commitment to develop highly skilled workers.⁸⁸

Failing at reintegration of returnee migrants with skills and experiences

The Bangladesh government does not have systematically collected data on the total number of migrants who return home on completion of their contract. The recent financial crisis demonstrated that data on returnee migrants is essential. Records on returnee migrants would help the government understand the kind of skills that the returnees have gained during their work overseas. The lack of information on returnee migrants hinders public sector organisations from maximising the skills of returnee migrants within the country.

This is further complicated by the fact that female migrants who have gained skills as domestic workers have no job opportunities once they return. Due to social pressures and cultural stigmas, returnee domestic workers do not engage in the same profession. There are no awareness campaigns to remove these social and cultural constraints.

⁸⁸ Salahuddin M. Aminuzamman, *Migration of Skilled Nurses from Bangladesh: An Exploratory Study*, Development Research Centre on Migration, Globalisation and Poverty University of Sussex, UK, available at http://www.sussex.ac.uk/Units/SCMR/drc/publications/research_reports/Migration_of_Skilled_Nurses_from_Bangladesh.pdf

Governmental initiatives to support migrant workers

The government of Bangladesh (GoB) acknowledges the contribution of its labour migrants to the country's social and economic development in different policy documents. The Vision 2021 Plan and the associated Perspective Plan 2010-2021 both outline a series of development targets for upgrading the country's status from Least Developed Country to Middle Income Country by 2021.⁸⁹ One of the core priorities of Vision 2021 is to alleviate poverty by transforming the nation's workforce into a more skilled and efficient human resource, capable of venturing into domestic and foreign employment.

The 6th and 7th Five Year Plans (FY 2010-FY 2020) have given clear policy directions in relation to labour migration, e.g. promoting migration from poorer areas, encouraging women's participation in the labour force, increasing the share of skilled and semi-skilled migrant workers, identifying new international labour markets, regulating the migration sector, ensuring protection and welfare of migrant workers, increasing the current rate of remittances, reducing remittances and migration costs, supporting returning migrant workers through schemes for enterprise development, and enhancing their access to microfinance.

The Planning Commission of Bangladesh has also formed a committee to develop action plans to achieve sustainable development goals (SDGs); these plans identify the ways in which migration can contribute to achieving SDGs in Bangladesh. The National Skills Development Policy, 2011 also suggests organising more skilled based training that are registered with the Bangladesh Technical Education

⁸⁹ GOB, *Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 Reality*, 1-110 (Dhaka: General Economics Division, Planning Commission, Government of the People's Republic of Bangladesh, 2012).

Board (BTEB) to meet internal skilled and semi-skilled global labour demands, pre-departure orientation training, and more importantly to use the skills gained overseas by returnee migrants.

The government adopted the Overseas Employment and Migrants Act in 2013 and upgraded the Expatriate Welfare and Overseas Employment Policy in 2016. It is committed to ensure and establish a “Rights based Protection System” for migrant workers. The policy has been formulated in line with the national laws compatible with the 1990 UN Convention on the Rights of All Migrant Workers and their Families and other labour and human rights conventions.

The key aims of the policy are: (i) ensuring and encouraging safe migration as well as the protection of migrants and their family members; (ii) ensuring facilities for welfare of migrant workers; (iii) supporting the migration of female workers; (iv) associating migration with national development and proper planning for labour migration; (v) providing specific directions for various ministries, including the ministries of finance, foreign affairs, home affairs and civil aviation and tourism, to ensure proper welfare, facilities, and safety for migrants; (vi) developing integrated and participatory programmes in consultation with various stakeholders, including interested female migrants, public and private organisations, trade unions, recruiting agencies, employers as well as concerned international organisations, to strengthen the migration process; and (vii) monitoring human trafficking under the umbrella of labour migration.

The existing law does not specifically identify and criminalise the issue of migrant smuggling. However, in 2012, GoB was preparing the finalisation and adoption of rules for the Prevention and Suppression of Human Trafficking Act (PSHTA).

In June 2016, the Ministry of Home Affairs, along with other agencies and NGOs, developed an implementation roadmap for the 2015-2017 National Action Plan for Combating Human Trafficking.⁹⁰

The Government of Bangladesh established the Wage Earners' Welfare Fund (WEWF) in 1990 to assist and extend welfare services for both migrant workers and their families back home. These services include offering monetary, legal, health, social, and economic assistance including rescue assistance to migrant workers who may lose their jobs prematurely or under complicated circumstances; whose employers fail to fulfil the conditions of their employment; who are suffering from a serious illness and require treatment; and who are vulnerable and lose their shelter due to a lack of the required documents.

Moreover, WEWF provides support for impoverished workers who cannot return home, briefings to outbound workers, support to the families of deceased migrants, income generating work for returnee migrant workers, etc. Therefore, the activities of WEWF are regarded as innovative approaches to ensure the welfare of both migrants and their families.

In December 2016, the Bangladesh government took a leading role in hosting the 9th Global Forum on Migration and Development (GFMD) with the theme 'Time for Action; Doing rights-based Governance of Migration and Development in our Communities and Across Borders'.

⁹⁰ GOB, *Bangladesh Country Report, 2016: Combating Human Trafficking*, (Dhaka: Ministry of Home Affairs, Government of the People's Republic of Bangladesh, 2016).

In the Global Compact on Migration (GCM), the government of Bangladesh works constantly to protect the rights of all migrants regardless of their migratory status and to incorporate skilled workers into labour markets regularly and under safe conditions. GoB served as the Chair of the Colombo Process and is a key player of the Abu Dhabi Dialogue.

It also attended the Bali Process in 2017 and highlighted the business-government partnership required to combat people smuggling, human trafficking, and transnational crimes. It joined the Budapest Process as an observer State in 2010 and hosted a working group meeting in Dhaka in 2015 to discuss several crosscutting agendas such as regular migration, integration of migrants, and prevention of illegal migration and human trafficking.

The first EU-Bangladesh migration dialogue took place in Dhaka in April 2016. The two sides discussed a broad range of issues covering migration and its linkage with development, irregular migration, and human trafficking. The European delegation focused on the irregular migrants of Bangladesh origin in the EU region and the pathways for their possible return and reintegration. The EU delegates offered information for an awareness campaign on the risks of irregular migration and mechanisms to prevent irregular migration. The EU also offered to support reintegration programmes for returnees. Bangladesh acknowledged the necessity of bringing irregular migrants back, but also highlighted the need to support safe migration.

Initiatives of international donor agencies and national NGOs to support migrant workers

International development donor agencies, including the Manusher Jonno Foundation (MJF), Swiss Agency for Development and Cooperation (SDC), International Labour Organisation (ILO), International Organisation for Migration (IOM), and UN Women, have been supporting the training and awareness-raising activities of national and grassroots organisations working on migration issues.

These training programmes seek to ensure that aspiring migrants are equipped with the proper skills to enable them to access higher quality employment at home and overseas and also that migrants have access to support both before leaving for their destination countries and on their return. Organisation Different NGOs and think tanks are providing a range of services, such as awareness building, filing and seeking redress for complaints, ensuring compensation for migrants from recruiting agencies and *dalals* who have cheated migrants, filing cases under the Migration Act (2013) in different courts, campaigning to bring stranded workers back home, and providing skills development and training, among other actions.

The Refugee and Migratory Movements Research Unit (RMMRU), an affiliate of the University of Dhaka, has been functioning as a research, training, and policy advocacy institution since 1995. RMMRU plays a key part in the development of relevant and effective training programmes and workshops for potential migrants and for the grassroots NGOs in Bangladesh that support migrants.

The Bangladesh Rural Advanced Committee (BRAC) runs the BRAC Migration Programme that works to ensure the rights of migrants by providing training and awareness campaigns that help them to resist exploitation.

The programme provides pre-decision training for potential migrants so that they can analyse the social and economic costs and benefits of migration.

This programme offers linkages to provide skills enhancement training at government TTCs or private training centres to allow migrants to understand the importance of skills and to find the right trade for skills training. They also offer pre-departure training to outline the challenges both at the point of departure from Bangladesh and upon arrival.

The Welfare Association for the Rights of Bangladesh Emigrants Development Foundation (WARBE DF) is one of the oldest organisations working exclusively with female and male migrant workers, potential migrant workers, and returnee migrant workers in Bangladesh while the Bangladesh Ovivashi Mohila Sramik Association (BOMSA) is the first independent organisation for female migrant workers in Bangladesh that offers both pre- and post-departure support and training. They play an effective role in implementing awareness and training programmes for potential migrants in Bangladesh.

Conclusion and Policy Recommendations

The chapter illustrates how migration and remittances contribute to micro and macro development processes. However, there are some important challenges in regulating the migration sector in Bangladesh. The following recommendations are made for the consideration of policymakers and other key stakeholders:

- Information on safe migration must be continually disseminated through mass media and must target communities at the grassroots level. The information campaign should be continued vigorously and be linked to the local information centres at the union and

upazila levels⁹¹ and they in turn should use their resources to disseminate information at the pre-decision migration phase. The pre-migration decision phase is a crucial stage for the aspirant migrant, who must think rationally about the social and economic costs of migration. In the pre-departure briefing session, all methods should be used to make the outgoing migrants aware about the work conditions and services for migrants in the receiving countries. In the post-migration phase, Bangladeshi missions must expand and continue their safe labour migration campaign. An Information and Counselling Centre (ICC) can also be set up in the missions, where information about safe migration and services can be displayed on a big TV screen, or through posters, flyers, and booklets.

- Migration literature suggests that the cost of migration and risks increases because of the number of middlemen (dalal) who emerge during different stages of the migration process. In order to reduce the cost of migration and the fraudulent practices experienced by the migrants before departure, either employment exchange bureaus have to be created or the dalal system has to be regulated.
- Women now make up a significant proportion of the Bangladeshi migrant force. The number of shelter homes for them is inadequate. More shelters are needed in different regions in the destination countries to provide protection for female migrant workers. A clinic with a treatment and laboratory facility should be set up in the shelters where migrants can access general and emergency medical services. Special psychiatric counselling facilities should

⁹¹ In Bangladesh, the union comprises several villages and the *upazila* is composed of several villages.

also be made available at the centre because most female migrants are mentally traumatised and require treatment for shock and stress as well.

- Since female migrants must wait a long time to claim their compensation and preparatory documents to return home, they become homesick. Therefore, well-facilitated recreation programmes should be established in the shelter centre. A couple of shelters could also be set up in the airports in the migrant sending countries. Many distressed and returnee migrants return at night and then they need immediate shelter on their return. A clinic with treatment, laboratory, and psychosocial counselling facilities should also be available at the airport centres.
- GoB should provide legal assistance and interpreter services to migrants who are detained in camps and jails in the destination countries. The Bangladeshi missions should also expand their relations with CSOs, particularly legal firms in the migrant receiving countries, so that Bangladeshi migrants can obtain legal assistance through them. Bangladeshi missions should organise training and advocacy campaigns with the CSOs in the migrant receiving countries to inform them about the common workplace and legal problems encountered by Bangladeshi migrants so that they can understand the conditions of Bangladeshi workers and provide better support.
- A voluntary social and health insurance scheme should be introduced to protect the migrants in the destination countries. This insurance should cover the death, disability, mental disorder, injury, and healthcare of the migrants and their families. However, a key concern in this regard should be the ‘insurance premium’ that the individual migrant would pay for the insurance policy.

Considering the socio-economic background of Bangladeshi migrants, this amount should be set at an affordable level:

- The overseas offices of the recruiting agents should be monitored rigorously as there is evidence that they collude with employers to increase the vulnerability of female employees.
- The existing training institutions of BMET must be upgraded to increase skilled migration. A trade-wide, common module must be developed; sufficient equipment for training provided; and training for trainers and the strict monitoring and evaluation of training should be conducted regularly. In order to increase the number of professional and highly skilled workers, the government should increase its investment in trainings in the hospitality, nursing, and caregiving sectors. Initially, training centres should be established at least at the divisional level. The government of Bangladesh should withdraw all restrictions and offer incentives to private universities to start courses such as a Bachelor of Science (BSc) in nursing and caregiving courses to create employment for both the local and international markets. Public-private partnerships regarding trainings must be encouraged in the hospitality, nursing, and caregiving services.
- In order to survive in today's competitive global labour market, research is essential. It helps to identify future threats and collates the experience of other States in managing those threats. To date, migration research in Bangladesh has been initiated by different donor agencies. Therefore, the agenda setting for research is beyond the government's purview. The directorate of rights and welfare, along with the CSOs and expert research bodies, should set long- and short-term research agendas. It should also allocate certain

funds for conducting and disseminating those researches. The development partners can also join hands in allocating resources.

- The government can collect returnee migrants' data through migration management. The government has to create a database with some incentives and involve DEMO or private organisations in developing a returnee database. These organisations will promote the options that, in turn, will encourage returnees to register their names and other information in the database. The incorporation of returnee data in the national census will be through simple questions, like how many returnees from each family and if they are male or female. It is important to create opportunities to involve returnee migrants in the training activities of the government. The government should create a platform to encourage those returnee migrants who have skills and knowledge to engage with Registered Training Organisations (RTO) and TTCs, to become trainers, instructors, and assessors.
- The government can initiate programmes for the reintegration of returnee migrants and form an umbrella body like the Palli Karma Sahayak Foundation (PKSF) to provide an endowment fund to disburse loans to private sector organisations, NGOs, and microfinance institutes (MFIs) working with returnee migrants from an endowment fund created by the government. These loans should be disbursed at low interest rates. Organisations working in migrant-intensive areas should get access to credit from endowment funds.

- To ensure continuous employment and earnings upon their return, the migrants should be informed about the importance of savings and the various forms of saving instruments offered by government, non-governmental, and private agencies. BMET, BOESL, the Bangladesh Association of International Recruiting Agencies (BAIRA) and different NGOs should include these issues in their training sessions.
- The government should provide incentives to public and private sector business advisory institutions to develop projects for migrants and their families to impart the necessary training in financial management and project planning, and ensure that they receive loans from the endowment fund. NGOs can also be engaged as partners at the grassroots to reach families of migrants left behind. They can connect migrant families with the available business services by forming support groups. A large number of families left behind are female-led, so women-specific investment avenues must be consciously integrated into the design of such plans.

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Annex-1

Labour Outflows of Bangladeshi Workers for Overseas (2000-2019)

Year	Name of the Country											
	KSA	UAE	Kuwait	Oman	Qatar	Bahrain	Lebanon	Jordan	Libya	Sudan	Malaysia	
2000	144,618	34,034	594	5,258	1,433	4,637	-	-	1,010	54	17,237	
2001	137,248	16,252	5,341	4,561	223	4,371	-	-	450	153	4,921	
2002	163,269	25,462	15,769	3,854	552	5,421	2	1,829	1,574	136	85	
2003	162,131	37,346	26,722	4,029	94	7,482	3	2,128	2,855	784	28	
2004	139,031	47,012	41,108	4,435	1,268	9,194	-	6,022	606	923	224	
2005	80,425	61,978	47,029	4,827	2,114	10,716	14	9,101	972	885	2,911	
2006	109,513	130,204	35,775	8,082	7,691	16,355	821	2,822	104	2,380	20,469	
2007	204,112	226,392	4,212	17,478	15,130	16,433	3,541	494	1,480	1,726	273,201	
2008	132,124	419,355	319	52,896	25,548	13,182	8,444	682	5,067	170	131,762	
2009	14,666	258,348	10	41,704	11,672	28,426	13,941	1,691	22,742	514	12,402	
2010	7,069	203,308	48	42,641	12,085	21,824	17,268	2,235	12,132	14	919	
2011	15,039	282,739	29	135,256	13,111	19,996	19,169	4,387	89	79	742	
2012	21,232	215,452	2	170,325	28,801	21,777	14,864	11,726	14,975	23	804	
2013	12,654	14,241	6	134,028	57,584	25,155	15,098	21,383	7,175	211	3,853	
2014	10,657	24,232	3,094	105,748	87,575	23,378	16,640	20,338	4,461	86	5,134	
2015	58,270	24,232	17,472	129,859	123,965	20,720	19,119	22,093	231	350	30,483	
2016	143,913	8,131	39,188	188,247	120,382	72,167	15,095	23,017	-	739	40,126	
2017	551,308	4,135	49,604	89,074	82,012	19,318	8,327	20,449	1	1,716	99,787	
2018	257,317	3,235	27,637	72,504	76,560	811	5,991	9,724	63	824	175,927	
2019	399,000	3,318	12,299	72,654	50,292	133	4,863	20,347	213	1	545	
Total	4,049,588	2,371,545	628,950	1,500,870	808,090	410,460	167,086	180,563	122,402	11,792	1,057,056	

Source: BMET (2020a) 'Country-wise Overseas Employment Workers 1976-2019'.

Available at: <http://www.old.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=16>

	Singapore	S. Korea	UK	Italy	Japan	Egypt	Brunei	Mauritius	Iraq	Others	Misc.	Total
	11,095	990	-	-	22	9	1,420	271	-	4	-	222,686
	9,615	1,561	-	-	19	3	2,958	272	-	1017	-	188,965
	6,856	28	-	19	37	17	154	59	-	133	-	225,256
	5,304	3,771	166	28	12	26	980	-	-	301	-	254,190
	6,948	215	2,055	550	47	33	1,802	44	-	2859	8582	272,958
	9,651	223	2,793	950	79	207	191	1,381	-	4015	12240	252,702
	20,139	992	1,625	1,428	174	639	496	2,090	-	8995	10722	381,516
	38,324	39	972	10950	164	1068	1,186	3,658	-	1827	10222	832,609
	56,581	1,521	952	6,928	133	1891	1,054	3,071	-	2461	10914	875,055
	39,581	1,474	1,153	5,339	39	3018	2,699	1,826	412	5036	8485	475,278
	39,053	2,699	173	6,726	17	2730	2,191	3,705	2288	4017	7560	3,90,702
	48,667	2,021	30	7,624	20	3312	5,150	5,353	234	3566	7440	568,062
	58657	1447	17	9,280	420	7478	5038	5421	359	10,190	9509	607,798
	60,057	2,121	14	4,792	41	949	5,971	5,961	7,456	21,279	9,224	407,253
	54,750	1,748	16	856	55	266	6,633	5,938	13,627	28,762	11,690	425,684
	55,523	2,259	4	44	99	601	6,354	4,753	13982	19638	4697	555,881
	54,730	1,689	11	3	165	758	5,836	4,679	4,738	23,527	10,590	757,731
	40,401	1,829	7	1	145	30	8,587	5,942	3,819	9,731	12,302	1,008,525
	41,393	2,287	8		163	48	4,480	6,608	19,567	15,790	13,224	734,181
	49,829	1,647	11	2	229	1	3,628	7,576	9,266	10,619	53,686	700,159
	782,657	41,552	10,107	55,520	2087	23,084	74,893	69,476	75,748	254,650	201,107	12,899,283

Annex-2

Percentage Distribution of Households Reporting Migration of any Member by Residence HIES 2016 and HIES 2010

Residence in total	Total	Within country	Abroad
2016			
National	11.22	2.95	8.27
Rural	12.98	3.59	9.39
Urban	6.72	1.32	5.40
2010			
National	12.28	3.97	8.60
Rural	13.72	4.84	9.25
Urban	8.33	1.62	6.85

Note: Migration within country and abroad when added together does not equal to the total because one household might have reported incidents of migration under both categories. Source: BBS, 2017.

Annex-3

Number of Female Workers 2001-2019

Year	Number	Yearly Increased (%)
2001	659	45.15
2002	1,217	84.52
2003	2,353	93.50
2004	11,259	378.50
2005	13,570	20.53
2006	18,045	32.98
2007	19,094	5.81
2008	20,842	9.15
2009	22,224	6.63
2010	27,706	24.67
2011	30,579	10.37
2012	37,304	21.99
2013	56,400	51.19
2014	76,007	34.76
2015	103,718	36.46
2016	118,088	13.85
2017	121,925	3.25
2018	101,695	- 16.59
2019	104,786	3.04
TOTAL	887,471	

Source: BMET (2020b) 'Overseas Employment of Female Workers from 2001 to 2019'

Annex-4

Skill Composition of Labour Outflows 2000 – 2019

	Workers' Category									
	Professional	Skilled	Semi-skilled	Less-skilled	Others	Total	BMET	BOESL	Recruiting Source Recruiting Agent	Individual
2000	10,669	99,606	26,461	85,950		222,686	1	524	91,475	130,686
2001	5,940	42,742	30,702	109,581		188,965		149	76,669	112,147
2002	14,450	56,265	36,025	118,516		225,256	-	226	84,401	140,629
2003	15,862	74,530	29,236	134,562		254,190	-	456	82,507	171,227
2004	12,202	110,177	28,327	113,670	85852	272,958	-	306	85,458	187,194
2005	1,945	113,655	24,546	100,316	12240	252,702		645	81,608	173,187
2006	925	115,468	33,965	220,436	10722	381,516		977	104,949	275,590
2007	676	165,338	183,673	472,700	10222	832609	-	619	362531	469459
2008	1864	292,364	132825	437,088	10914	875055	773	2172	207018	665092
2009	1426	134,265	84,517	246,585	8485	475,278	-	-	-	-
2010	387	90,621	20,016	272,118	7560	390,702	-	-	-	-
2011	1,192	229,149	28,729	301,552	7440	568,062	-	-	-	-
2012	36,084	173,331	104,721	284,153	9509	607,798				
2013	689	133,754	62,528	203,058	9224	409,253				
2014	1730	148,766	70,095	193,403	11690	425,684				
2015	1828	214,328	91,099	243,929	4697	555,881				
2016	4,638	318,851	119,946	303,706	10,590	757,731				
2017	4,507	434,344	155,569	401,803	12,302	1,008,525				
2018	2,673	317,528	117,734	283,002	13,244	734,181				
2019	1,914	304,921	142,536	197,102	53,686	700,159				
TOTAL	236,978	4,455,855	2,004,739	6,000,604	201,107	12,899,283				

Source: BMET (2020c) 'Category-wise Overseas Employment from 2000 to 2019.'

Annex-5

District-wise Overseas Employment (major districts) from 2005 to 2019

District	% of total Migrants	
Comilla	10.95	(939,773)
Chittagong	8.34	(715,548)
Brahmanbaria	5.59	(479,581)
Tangail	5.07	(435,368)
Dhaka	4.63	(397,258)
Chandpur	4.17	(358,002)

Source: BMET, 2020d 'District-wise Overseas Employment from 2005 to 2019.'

Annex-6

Wage Earners Remittance Inflows (Yearly)

Year	Remittances In million US dollar	Year	Remittances In million US dollar
1991	769.30	2005	4249.87
1992	901.97	2006	5484.08
1993	1009.09	2007	6568.03
1994	1153.54	2008	8979.00
1995	1201.52	2009	10,720.00
1996	1355.34	2010	11,000.00
1997	1525.03	2011	12,168.09
1998	1599.24	2012	14,163.99
1999	1806.63	2013	13,832.13
2000	1954.95	2014	14,942.57
2001	2071.03	2015	15,270.99
2002	2847.79	2016	13,609.77
2003	3177.63	2017	13,526.84
2004	3565.31	2018	15,544.68
		2019	18,354.94

Source: Bangladesh Bank (2020) “Yearly data of Wage Earner’s Remittance.”
Available at: <https://www.bb.org.bd/econdata/wageremittance.php#>

Annex-7

Percentage of Households Receiving Remittances by Division

Division	Domestic		International	
	2000	2005	2000	2005
Barisal	37.2	29.5	8.2	5.2
Chittagong	16.1	25.3	20.7	24.2
Dhaka	17.5	13.5	8.2	7.8
Khulna	21.0	24.1	1.8	3.9
Rajshahi	13.6	27.0	2.2	1.3
Sylhet	33.3	10.4	17.4	15.7
Total	18.9	21.1	8.6	8.8

Source: HIES, 2000, 2005 cited in World Bank (2008:41) 'Poverty Assessment for Bangladesh: Creating Opportunities and Bridging the East-West Divide.' Available at: <http://siteresources.worldbank.org/BANGLADESHEXTN/Resources/295759-1240185591585/BanglaPD.pdf>

Annex-8

Annual Number of Deceased Workers' Bodies Received at the Three (03) International Airports in Bangladesh (2005-2018)

Years	Hazrat Shajalal International Airport, Dhaka	Shah Amanat International Airport, Chittagong	Osmani International Airport, Sylhet	Total Number of Dead Bodies Received
2005	1246			1246
2006	1402			1402
2007	1673			1673
2008	2098			2098
2009	2315			2315
2010	2300	260		2560
2011	2235	305	45	2585
2012	2383	442	53	2878
2013	2542	436	98	3076
2014	2872	411	52	3335
2015	2831	407	69	3307
2016	2985	421	75	3481
2017	2973	363	51	3387
2018	3353	374	66	3793
TOTAL	33,210	3,419	509	37,138

Source: Bangladesh – Wage Earners' Welfare Board (WEWB), 'Year-wise Received Deceased Workers (Dead Bodies) at the Three (03) International Airports (from 2005–2018)' (WEWB, n.d.a.); Also see: International Labour Migration Statistics in South Asia: Establishing a subregional database and improving data collection for evidence-based policymaking, ILO 2018, p. 78.

2

AT THE MERCY OF THE LAW: LEGAL PROTECTION FOR INDIA'S MIGRANT WORKERS

*Raghuram S. Godavarth**

Introduction

An elderly woman now residing in her husband's village in Rajsamand district, in the Indian state of Rajasthan, recounted⁹² how her family had worked on construction sites in Jaipur, Delhi, and even as far south as Bangalore, but had to return to their village because they could not access welfare entitlements anywhere else. She spoke of the Rajasthan government finally ensuring that those entitled to receiving foodgrain rations through the Indian government's Public Distribution System (PDS) could at least do so anywhere within Rajasthan, a portability of welfare benefits equally promised pan-India through the seeding of the Aadhaar number with the PDS database.

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⁹² Personal interviews.

Many of this woman's neighbours, mostly women themselves and often equally advanced in age, have found work locally through the National Rural Employee Guarantee Act, 2005. The projects assigned to them include the digging of trenches which serve as ponds collecting rainwater. However, the women employed to dig trenches are completely at the mercy of the contractor who has been delegated the responsibility of overseeing work in a particular village or block. Since the digging is usually an act of unskilled manual labour, the contractor or one of his unofficial deputies may arbitrarily claim that the trench does not meet the expected size and area criteria and refuse to pay the women full wage for the work done. Most of the women thus targeted have no knowledge of the legal protections available to them, and the wages rightfully due to them end up in the pockets of the contractor or his deputies.

The above anecdotes illustrate the two-fold failure of policy as well as jurisprudence in addressing social and legal protections that should be available especially to migrant labourers. Even as successive governments push for 7-8% growth in gross domestic product (GDP), they have little concern for the issues faced by labourers across sectors. While on paper there are a slew of protection measures, they are not implemented. For example, in the Supreme Court of India's (SC's) March 2018 judgment in *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India and Others*,⁹³ Justice Madan B. Lokur declared that in the context of India's construction workers, they receive at best, only symbolic justice:

⁹³ *Supreme Court of India, National Campaign Committee for ... v. Union of India* (19 March, 2018).

No State Government and no Union Territory Administration (UTA) seems willing to fully adhere to and abide by (or is perhaps even capable of fully adhering to and abiding by) two laws solemnly enacted by Parliament, namely, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act).

Justice Lokur's opinion also discusses the constitutional validity of these two Acts which were set aside by the Delhi High Court. He relied on the judgment of Justice P. N. Bhagwati, one of the titans of labour jurisprudence in India and an architect of public interest litigation, in *Bandhua Mukti Morcha v. Union of India & Others* to formulate his opinion.⁹⁴

In this judgment, Justice P. N. Bhagwati wrote:

...right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

⁹⁴ *Supreme Court of India, Bandhua Mukti Morcha v. Union of India & Others* (16 December, 1983).

Barely two sentences later, Justice Bhagwati's judgment continues:

Since the Directive Principles of State policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.

Justice Bhagwati reminds the central government that:

The State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy.

The upshot of Justice Lokur's opinion is that the courts in India may issue directions to the various States and the central government to fulfil their obligations *in implementing laws passed by India's Parliament*. In Justice Lokur's words:

Bearing in mind the welfare and beneficial intent behind the BOCW Act and the Cess Act and for their effective and meaningful implementation, this Court has issued a series of directions since May 2008. This Court was compelled to do so since even twelve years after the enactment of the BOCW Act, the basic statutory mandates had not been carried out by the State Governments and UTAs.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The history and development of labour laws in India may be examined against three temporal contexts, viz. from the colonial era to India's Independence (1947); from Independence to the onset of economic liberalisation (roughly, 1991); and from 1991 to the present day. Such a long and storied evolution inevitably engenders the criticism that the laws enacted are numerous – 44 central laws and 100 state laws⁹⁵ - and not always consistent in their definitions even of basic terminology (such as “workmen” or “wages”).⁹⁶ Furthermore, not all of these laws account for the various employment relationships extant today.

Odisha (renamed from Orissa in 2011) took the lead in protecting and safeguarding the interests of the state's *dadan*, or debt migrants, by promulgating the Orissa Dadan Labour (Control and Regulation) Act (ORLA) in 1975.⁹⁷ Included in this Act were provisions for registration of workers as well as agents; ensuring compliance with minimum wage norms, appointing inspectors, and setting up a dispute redressal authority. The government of India followed suit in 1976; the

⁹⁵ FICCI-AIOE, Suggested Labour Policy Reforms, 2014.

⁹⁶ K. R. Shyam Sundar, “India's Mismanagement of Labour Law Reform Continues with the Modi Government,” *The Wire*, 7 May 2018.

⁹⁷ Aajeevika Bureau, *Analytical Review of Market, State and Civil Society Response to Seasonal Migration from Odisha*, (Centre for Migration and Labour Solutions, July 2014)

deliberations of the 28th Session of the Labour Ministers' Conference led to the constitution of a Compact Committee "to go into the whole question and to suggest measures for eliminating the abuses prevalent in the system."⁹⁸ This committee in turn recommended that the central government bring about new legislation "to regulate the employment of inter-state migrant workmen."⁹⁹ The committee preferred such a new law, rather than amending the Contract Labour (Regulation and Abolition) Act, 1970 as such amendments may not adequately address the ongoing malpractices by the contractors – called *sardars* and *khatadars* in the *dadan* system.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter, the ISMW Act) received the President of India's assent on 11 June of that year and eventually came into force on 2 October 1980. The Act applied to the entirety of India (including the then State of Jammu and Kashmir), and required the registration of every establishment, or licensing of every contractor, employing five or more inter-state migrant workers within a calendar year. While establishments were required to register with the central government as well as state governments, contractors had to be licensed in the home State of the workers as well as the host State where they were taken to work.

Further, guidelines on wage payments were included in the Act, including the payment of displacement and journey allowances. Besides this, the "provision of suitable residential accommodation, adequate medical facilities, protective clothing to suit varying climatic conditions and suitable conditions of work taking into account that

⁹⁸ Govt. of India, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Introduction, p. 3 of 27.

⁹⁹ Ibid.

they have migrated from another State” was mandated.¹⁰⁰ Specific guidelines regarding these issues were included in The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980¹⁰¹ (hereinafter, the ISMW Rules), which also contains a chapter on legal aid. The entirety of this chapter is reproduced below, to highlight its extreme brevity and lack of nuance:

Legal aid: On receipt of a written application from migrant workmen or in the event of his death, from next of his kill (sic) for providing legal aid in relation to any proceedings before the Authority under section 15 of the Payment of Wages Act, 1936 of Authority under section 20 of the Minimum Wages Act, 1948 or appropriate Labour Court under section 33C (2) of the Industrial Disputes Act, 1947 or Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923, in which the migrant workman or his legal heir is a party, the specified authority concerned, if he is satisfied, may with the prior approval of the Deputy Chief Labour Commissioner (Central) engage an advocate to conduct the relevant proceeding on behalf of the migrant workman or his legal heir as the case may be and meet all legal expenses in this regard.¹⁰²

It is heartening that the procedure for applying for “legal aid” has since been revised. A 1986 SC judgment broadened the understanding of legal aid to mean not only the provision of legal services, even free of cost to those impoverished, but also the dissemination of legal rights, as well as the knowledge of filling forms. This eventually led to the creation of the National Legal Services Authority (NALSA), in 1998.

¹⁰⁰ Ibid. p. 5 of 27.

¹⁰¹ Govt. of India, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980.

¹⁰² Ibid. 47.

Despite this, it is hard to imagine, even in 2019, an impoverished Adivasi migrant worker from Odisha or Chhattisgarh being able to approach any “Authority” with confidence to seek legal aid, without even knowing *a priori* whether she qualifies for such aid.

Arming the Inter-State Migrant Workmen Act

The first test for the Inter-State Migrant Workmen Act (hereinafter ISMW Act) came before an SC bench comprising Justice P. N. Bhagwati and Justice Baharul Islam in 1982, and dealt with the payment of wages to migrant workers brought to Delhi for working on construction projects related to that year’s Asian Games. In adjudicating *People’s Union for Democratic Rights and Others v. Union of India & Others*,¹⁰³ also called the *Asiad Workers Case*, the justices first had to affirm that the People’s Union for Democratic Rights (PUDR) had *locus standi* in the case (perhaps unsurprising given the nature of the legal aid rule discussed above). Having done so, they ruled:

It is difficult to understand as to why in the case of beneficent legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 it should have taken more than 18 months for the Government of India to delegate the power to enforce the provisions of the Act to the Administrator of the Union Territory of Delhi and another almost 12 months to make the Rules under the Act. It was well known that a large number of migrant workmen coming from different States were employed in the construction work of various Asiad projects and if the provisions of a social welfare legislation like the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979

¹⁰³ *Supreme Court of India, People’s Union For Democratic ... v. Union of India & Others* (18 September, 1982).

were applied and the benefit of such provisions made available to these migrant workmen, it would have gone a long way towards ameliorating their conditions of work and ensuring them a decent living with basic human dignity.

This judgment also dwelt on the question of arming the law with “teeth and claws”:

We must in fairness point out that the Union of India has stated in its affidavit in reply that a number of prosecution have been launched against the contractors for violations of the provision of various labour laws...we are shocked to find that in cases of violations of labour laws enacted for the benefit of workmen, the Magistrates have been imposing only small fines of Rs. 200/- thereabouts. The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity... If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity.

Barely six months later, Justice P. N. Bhagwati, this time opining in *Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir And Others*,¹⁰⁴ addressed the critical lacunae of workers migrating on their own rather than being brought to worksites by contracts which, the central government claimed, did not fall under the purview of the ISMW Act:

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted with a view to

¹⁰⁴ *Supreme Court of India, Labourers Working on Salal ... v. State of Jammu & Kashmir And Others* (2 March, 1983).

eliminating abuses to which workmen recruited from one State and taken for work to another State were subjected by the contractors, sardars or khatedars recruiting them... The stand taken by the Central Government that the workers had gone to Salal Project for work on their own and therefore, strictly speaking, they were not migrant workmen, cannot be accepted as valid.

The Bench further directed that:

The Central Government will tighten up its enforcement machinery and ensure that thorough and careful inspections are carried out by fairly senior officers at short intervals with a view to investigating whether the labour laws are being properly observed, particularly in relation to the workmen employed either directly or through khatedars by the contractors as well as the 'piece wagers' or sub-contractors.

A 1990 SC judgment in *Dr. Damodar Panda Etc v. State of Orissa Etc.*,¹⁰⁵ authored by Justice Misra Ranganath reiterated the above positions but also brought in an international perspective:

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party.

¹⁰⁵ *Supreme Court of India, Dr. Damodar Panda Etc v. State of Orissa Etc* (16 July, 1990).

The jurisprudence described thus far has been called *second-wave legal empowerment*¹⁰⁶ characterised by “judicial activism and PILs”¹⁰⁷ which aimed to enforce laws created “to protect vulnerable labour”¹⁰⁸ rather than push for new laws. The distinct modus at work here often involved a non-governmental organisation (NGO) such as the People’s Union for Democratic Rights or the Bandhua Mukti Morcha, or formal workers’ unions, in response to whose complaint (often treated as a writ petition), the Supreme Court would order an investigation and issue directions based on the results of the investigation. Many of the directions also applied, with some judicial creativity, to the constitutional guarantee of human rights – in particular the Article 21 right to life and personal liberty, extended to include the right to human dignity and the right to livelihood. However, given that from Independence until the present day only about 8% of the Indian workforce is formal or organised, this activist mode of ensuring legal protection was only able to reach a small minority of workers and, even then, threatened by policies aimed at bringing about economic liberalisation.

Economic Liberalisation, Informalisation, and Third-Wave Legal Empowerment

The ushering in of economic reforms aimed at fostering liberalisation, privatisation, and globalisation (the acronym LPG is used in popular discourse) also brought about a telling shift in the attitude toward labour. The priority is on economic growth and not the workers’ welfare. Those formally employed were already seeing a gradual defanging of formal workers’ unions and similar bodies, with management exercising more control on the destinies of workers.

¹⁰⁶ Rina Agarwala, (2019), “Using Legal Empowerment for Labour Rights in India,” *The Journal of Development Studies*, 55:3, (2019), 401-419, DOI: 10.1080/00220388.2018.1451631.

¹⁰⁷ *Ibid.*, p. 406.

¹⁰⁸ *Ibid.*

Ironically, the hitherto mostly ignored informal workforce gained the impetus to collectivise and demand not just minimum wages or benefits from their employers but also “welfare from the State.”¹⁰⁹

The post-liberalisation period also saw the burgeoning of labour migration, both in terms of the number of workers crossing State – and national – borders for seasonal work, as well as permanent employment. The kinds of work sought by migrants tend to require minimal or no qualifications but, equally, the pay is a pittance with migrant workers often receiving lower wages than their non-migrant counterparts in the host State. These jobs rarely come with an employment contract, leaving the worker unable to access even the available legal protections. Some of the sectors in which migrant workers abound include “textiles, construction, brick kilns, mines and quarries, domestic work, street vending, rickshaw pulling, salt pans, and prawn processing.”¹¹⁰

Circumscribing the ambit of legislative frameworks, the Ministry of Housing and Urban Poverty Alleviation’s 2017 Report of the Working Group on Migration offers the perspective that extant legislation covered two aspects of unorganised labour, viz. workplace conditions and wages, and social security.¹¹¹ Such legislation spans the spectrum of employment, with firms employing more than 20 workers covered by The Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (EPFO Act); those with more than 10 workers but less than 20 workers covered by the Building and other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996

¹⁰⁹ Ibid., p. 410.

¹¹⁰ P. Deshingkar, R. Khandelwal, and J. Farrington, “Support for Migrant Workers: The Missing Link in India’s Development,” *Natural Resource Perspectives*, Sep. 2008.

¹¹¹ Housing and Urban Poverty Alleviation (Ministry of), *Report of The Working Group on Migration*, 2017, p. 26.

(discussed in the next section); and those with fewer than 10 workers falling under the Unorganised Workers' Social Security Act, 2008.¹¹²

The Unorganised Workers' Social Security Act, 2008 legislated the provision of healthcare, insurance cover, and maternity and old-age benefits, with a National Social Security Board managing funds for these schemes set up in 2011.¹¹³ However, no rules had been framed under the Act by 2017¹¹⁴, by which time the then incumbent Bharatiya Janata Party was announcing an Unorganised Workers' Identity Number (UWIN) while also signalling the simplification of existing labour legislation into four new codes. However, in the absence of explicit rules, which also plagues the newly proposed codes (discussed further on in this chapter), the protections carved out for migrant workers remain unclear.

The Case of Brick Kiln Workers

A recent report from Andhra Pradesh describes the painful condition of brick kiln workers - migrants from the neighbouring State of Odisha, living as bonded labourers – in these words:

*Workers live in a shanty which is five feet in height, with a flimsy plastic cover serving as a roof and walls that are made of loosely arranged bricks. There is no electricity, not for a day or two, but for months. Women bathe in green, stagnant water at an open sump.*¹¹⁵

¹¹² Govt. of India, The Unorganised Workers' Social Security Act, 2008.

¹¹³ "Cabinet Okays Fund for Unorganised Sector," *The Times of India*, 29 July 2011.

¹¹⁴ Basant Kumar Mohanty, "Identity Numbers for Unorganised Workers," *The Telegraph*, <https://www.telegraphindia.com/india/identity-numbers-for-unorganised-workers/cid/132744920> Nov. 2017.

¹¹⁵ "Life of Misery for Brick Kiln Workers," *The Hindu*, 21 Nov. 2019.

One particular family had been working for over five months, having been promised an advance of INR 35,000 (less than USD 500) by a manpower contractor. Citing the District Labour Commissioner, the report talks about how ushering in ‘Ease of Doing Business’ rules has taken away the authority of the commissioners to “inspect any factory or business establishment premises or penalise the owners for violation of rules.”¹¹⁶

A pre-election report from March 2019 spoke of attempts by labour advocates to engage the political class in creating legislation to protect brick kiln workers, including the setting up of a recruitment board that would “eliminate labour contractors who offer cash advances to marginalised farmers in remote Indian villages only to trap them in bondage.”¹¹⁷

There are attempts to study brick kiln work but researchers have invariably expressed an inability to estimate with any accuracy either the exact number of brick kilns operating in the country or the number of people these kilns employ. The report mentioned above puts the number of brick kilns at 200,000 (2 lakh) while a July 2018 appraisal by the Centre for Policy Research (CPR) puts the number at over 100,000 (a lakh).¹¹⁸ However, both agree that the total production of bricks is around 250 million annually, and that India is the second-largest producer of bricks worldwide.

¹¹⁶ Ibid.

¹¹⁷ Roli Srivastava, “End Bondage, Demand Millions of Indian Brick Kiln Workers as Polls Loom,” *Thomas Reuters Foundation*, 29 Mar. 2019.

¹¹⁸ Shamindra Nath Roy, and Eesha Kunduri, “Migration to Brick Kilns In India: An Appraisal,” (Centre for Policy Research, July 2018).

The CPR authors¹¹⁹ also point out the divergence in employment data between the ILO estimate of 10 million workers employed in brick manufacturing - which is closer to the 12 million workers mentioned in Srivastava's article - and the National Sample Survey 68th Round (2011-2012) estimate of 2.1 million workers.¹²⁰

This latter estimate also corresponds to a growth in the number of workers from 1.19 million in 1999-2000, and the predominance of male workers (numbering approx. 1.8 million in July 2018). Despite the conservative workforce estimation, the CPR study provides a statistical measure of the largely migrant nature of the brick kiln workforce and also confirms the direction of migration from States such as Odisha to Gujarat, Maharashtra, and Tamil Nadu. A point to note here is that brick kiln workers, comprising mainly rural workers, often migrate from one rural area to another rural area in districts which also include a metropolitan city with a million-plus population. Again, women migrating for brick kiln work historically exceed men doing so and this continues to be the trend.

This is in keeping with the larger trend of women migrating to work in labour-intensive sectors, often as a result of marriage. However, women's migration tends to be within the same district, whereas more men migrate across States.

¹¹⁹ Srivastava, Roli *op.cit.*

¹²⁰ National Sample Survey Office, "Employment and Unemployment Situation in India," NSS 68th Round, July 2011-June 2012.

Overall, brick kiln workers are predominantly economically vulnerable and migrant brick kiln workers even more so. Per the National Sample Survey 2007-2008¹²¹ on unemployment and migration cited in the CPR appraisal, half of all migrant workers surveyed were not employed prior to their migration, and of those employed previously, 70% were agricultural workers. As work in brick kilns are regarded as unskilled, this affects the wage rates. The health of such workers is also compromised and they are unable to negotiate better conditions. Factoring in the social disadvantages that brick kiln workers traditionally suffer - over 60% are from Scheduled Caste/Scheduled Tribe (SC/ST) communities¹²² - the need for legal and social protection becomes apparent. Workers from SC/ST backgrounds comprise only ~25% of the overall migrant workforce;¹²³ their high concentration in the brick kiln sector necessitates legal intervention to ensure the welfare of these communities. Another significant challenge is the continued incidence of bonded labour, to which SC/ST communities tend to be particularly vulnerable. Contractors offer workers cash advances as high as INR 50,000 (approx. USD 700), with the workers unable to either challenge working (and living) conditions or shift to a different occupation under pressure of repaying the debt.

Government job programmes like the Mahatma Gandhi National Rural Employee Guarantee Act (MGNREGA) have also failed to check such exploitative labour practices, in part because those charged with supervising work allocation and performance under the MGNREGA are also *sardars*, or contractors, being paid to send migrant workers to

¹²¹ National Sample Survey Office, "Migration in India 2007-2008," NSS 64th Round, July 2007-June 2008.

¹²² Roli Srivastava op.cit p. 6

¹²³ Housing and Urban Poverty Alleviation (Ministry of), *Report of the Working Group on Migration*, 2017, 15.

work in brick kilns elsewhere, as was reported in Odisha.¹²⁴ Over time, these contractors have also come to wield political clout which in turn stymies efforts to license migrant workers. The Odisha government, in response, posted three labour inspectors in the Belapada, Bolangir, and Khaprakhole blocks in order to motivate workers not to migrate, in anticipation of the distress migration starting in September 2019.¹²⁵ A senior State Labour Directorate official was also camped in Bolangir and Nuapada to ensure enforcement of the ISMW Act.

Legal Protections Available to Migrant Brick Kiln Workers

By virtue of their proximity to the construction sector, brick kiln workers fall within the purview of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996¹²⁶ (BOCW Act). The date of this legislation, well after the generally agreed onset date for economic liberalisation, is also a testament to the collectivisation and unionisation of informal workers in what is called *third-wave legal empowerment*. Through the 1970s and 1980s, seeing how the laws enacted to protect formal workers (mostly, during *first-wave legal empowerment*) were then reinforced in the courts through PILs via NGOs (the *second-wave legal empowerment* discussed earlier), informal workers came together to demand first, that new laws be created to specifically protect certain classes of workers¹²⁷, whose implementation could then be sought by approaching various courts.

¹²⁴ M. Rajshekhar, "Why Lakhs of People Leave Odisha to Work in Distant, Unsafe Brick-Kilns," Scroll.in, 8 Sep. 2015.

¹²⁵ "Odisha Initiates Major Steps to Curb Distress Labour Migration," *LocalWire*, 28 Aug. 2019.

¹²⁶ Housing and Urban Poverty Alleviation (Ministry of), *Report of The Working Group on Migration*, 2017, p. 15.

¹²⁷ Rina Agarwala, "Using Legal Empowerment for Labour Rights in India," *The Journal of Development Studies*, 55:3,(2019), 401-419, DOI: 10.1080/00220388.2018.1451631,p. 412-413.

Workers in the construction sector and allied occupations also formed unions, several of which came together as the National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) in 1985 and, in the following year, sent to the Lok Sabha a draft for a law regulating such workers. This finally came to life as the BOCW Act, which was legislated along with the Building and Other Construction Workers Welfare Cess Act, 1996 (BOCW Cess Act). Not only did the BOCW Act mandate registration of brick kiln workers and others in the construction sector with State-level Workers' Welfare Boards, it spelt out minimum safety standards as well as employment conditions. The BOCW Cess Act further mandated creating a State-level fund by levying a cess of 1% (of total cost of construction), which would be managed by the Worker Welfare Boards and utilised to ensure workers could avail such social security benefits as “medical assistance and accident cover, assistance to family members in case of death (by accident, at worksite or even in case of natural death), funeral assistance, and in some States, marriage assistance for children of workers.”¹²⁸

However, poor implementation and inefficient spending of cess funds plagued this legislation as well. As Justice Lokur noted in his March 2018 judgment in *NCC-CL v. Union of India*:¹²⁹

...there is something terribly rotten with the collection and accounting mechanism and it is quite clear that the exercise of registration, both of the establishments and of the construction workers, is not being carried out satisfactorily. This is an area that has to be very seriously looked into by all the State Governments and the UTAs as well as by the Ministry of Labour and Employment. Unless there is effective

¹²⁸ Housing and Urban Poverty Alleviation (Ministry of), *Report of The Working Group on Migration*, 2017, p. 16.

¹²⁹ *Supreme Court of India, National Campaign Committee for ... v. Union of India* (19 March, 2018).

and full compliance of the provisions regarding collection of cess, several establishments will remain outside the net and thousands of beneficiaries will be denied what is constitutionally and statutorily due to them.

Among the directions issued by the Supreme Court was the replacement of schemes designed to benefit informal construction workers with a model scheme adopting best practices from extant ones. The court directed that a model scheme was to be framed and publicised by 30 September 2018 that would have to deal with education, health, social security, and old age and disability pensions.¹³⁰ Observing that the three kinds of audits undertaken by the Comptroller and Auditor General of India (CAG), viz. Financial Audit, Compliance Audit and Performance Audit had been inefficient, the court also directed the Labour Ministry along with State and union territory authorities to conduct “a social audit on the implementation of the BOCW Act so that in future there is better and more effective and meaningful implementation of the BOCW Act.”¹³¹

One such social audit was conducted in September 2018 – not by any government authority but the NCC-CL itself. In Delhi’s Shalimar Bagh, they found an “array of slight gap”¹³² which a key concern was the defrauding of workers by middlemen. In the case of 35-year-old Gangiya Devi, as the social audit found, a middleman had taken INR 500 (USD 7) on the promise of getting her a labour identity card and had not been heard of since.

¹³⁰ Ibid. Para 72

¹³¹ Ibid. Para 76.

¹³² Vijayta Lalwani, “Welfare Laws for Construction Workers May be Failing them, a Social Audit in Delhi Finds,” *Scroll.in*, 29 Sep. 2018.

Out of a total of 2,493 beneficiaries registered with the Workers' Welfare Board, only 109 workers' claims had been settled and about 800 received scholarships for their children. Worse still, as many as 162 were not construction workers and of these, 40 people's claims amounting to INR 254,800 (~ USD 3,600) had been settled.

With governments paying mere lip service to even Supreme Court directions, there is, in effect, a breakdown of redressal mechanisms, leaving workers to resort to marching to Parliament, as was planned by the Construction Workers Federation of India (CWF) on 5 December 2019.¹³³ However, even as informal workers grappled with the poor implementation of the BOCW and BOCW Cess Acts, they now had to protest the revamping of the entire legislative framework through the newly proposed Labour Code on Social Security (*see discussion at page 119*). NCC-CL, concerned that the new codes would upturn the registration (thus far) of nearly 4 crore informal construction workers apart from cancelling pensions, scholarships, and maternity benefits, wrote to India's Prime Minister earlier in 2019 demanding the withdrawal of the labour codes¹³⁴ and resolved to launch a joint platform for all unorganised sector workers.

¹³³ Rabindra Nath Sinha, "Construction Workers Plan March to Parliament on Dec 5," *Sabrang*, 16 Nov, 2019.

¹³⁴ "National Campaign for Construction Workers Oppose New Labour Codes," *NewsClick*, 9 July, 2019.

The several thousand workers who marched to Parliament on December 5, 2019 under the CWFBI banner reiterated these demands,¹³⁵ emphasising that demonetisation (of INR 500 and INR 1,000 currency notes) in 2016 had led to a 25 percent job loss in the construction sector and that the workers had lurched from crisis after crisis since, with the labour codes only the latest. For brick kiln workers, just as for other construction workers, the fleeting promise of protection under the BOCW and BOCW Cess Acts now seems to be giving way to a fresh battle.

The case of diamond cutting workers and other informal workers in Surat, Gujarat

Writing in 1994, in the aftermath of the 1992 riots, the social activist Irfan Engineer described the working conditions in Surat:¹³⁶

Labour laws are ignored with impunity by owners of units and workers have little legal protection and security for their jobs. In fact, precisely on account of this factor, small units have been encouraged by big industrial houses who benefit from shift in investment and production away from big cities where workers have unionised and have managed to gain higher wages and better working conditions.

The city of Surat in Gujarat is an internationally renowned centre for diamond cutting and polishing, a status it achieved in little over half a century.

¹³⁵ “Construction Workers Demand Full GST Waiver; Seek Social Security,” *The Hindu Business Line*, 5 Dec. 2019.

¹³⁶ Irfan Engineer, “Backward Communities and Migrant Workers in Surat Riots,” *Economic and Political Weekly*, Vol. 29, No. 22 (May 28, 1994), pp. 1348-1360.

As of 2017, it was estimated that one million of the city's six million people were employed in the diamond industry¹³⁷ whereas a 2016 report¹³⁸ put the number at 2 million – the simplest explanation for this disparity being that the polishing units are mostly unregistered and the workforce largely informal. This workforce also comprises both intra-state and inter-state migrant workers, with men predominant in both categories.

Approximately 0.8 million workers are migrants from the Saurashtra region of Gujarat, as of October 2019.¹³⁹ A similar number, 0.6-0.7 million, appear to be migrants from the northern Indian States of Uttar Pradesh and Bihar,¹⁴⁰ working mainly in the dyeing-printing sub-branch of the textile industry. Further, as of August, 2018,¹⁴¹ over 0.7 million workers had migrated from Odisha with the majority from Ganjam district although these numbers represent a significant fall from the 0.9 million reported in 2007.¹⁴² Most of the Odia men work in weaving,¹⁴³ with a fair spread across other industries as well. All put together, nearly 65% of Surat's population comprises migrants, with 32% coming from outside Gujarat (August 2019).¹⁴⁴

¹³⁷ "What is Really Going on Behind Surat's High-Tech, Labour-Intensive Diamond Industry?," *The Economic Times*, 1 Oct, 2017.

¹³⁸ Sohini Das, and Vimukt Dave, "Why were these Workers Forced to Go Home?," *rediff.com*, 14 Dec, 2016.

¹³⁹ Kamaal Saiyed, "Ahead of Diwali, 1,200 extra Buses from Surat to Saurashtra Region," *The Indian Express*, 16 Oct, 2019.

¹⁴⁰ "Thousands of Migrant Workers Flee Gujarat after Alleged Hate Attacks on North Indians," *Business Today*, 9 Oct, 2018.

¹⁴¹ "Eye on 2019 election, CM plans Surat visit to woo Odia migrants," *The New Indian Express*, 29 Aug, 2018.

¹⁴² Priya Deshingkar, & Shaheen Akter, *Migration and Human Development in India*, (UNDP, 2009), p. 16.

¹⁴³ Kiran Desai, "Migrant Workers, the Nowhere People of 'Gujarat Model,'" *Deccan Herald* 20 Oct, 2018.

¹⁴⁴ "Half of the People in Gujarat's Big Cities are Migrants," *The Times of India*, 9 Aug, 2019.

The diamond industry in Surat is one of the few in India affected more – and more directly – by the international diamond market. The 1970s and early 1980s heralded the first boom for the *hira karigars*, or diamond workers, of Surat,¹⁴⁵ but the migration of agricultural workers affected by Saurashtra's notorious cycles of famine and drought began as early as 1962. A vital aspect of this migration, which burgeoned through the 1970s, is that there were no labour contractors involved – most workers came to work through the reference of a relative, an example of push migration turning into pull migration. The fact that, similar to brick kilns, no basic qualification was required and training to cut and polish diamonds takes at most two to three months, made it a lucrative option for the poor Saurashtrian farmers.

The rising influx of migrants did not stem the requirement for labour; on the contrary, workshop owners vied to attract more workers – and keep workers connected with the workshop. This they did so through the *baki* system of paying workers large advances (similar to the ones paid by contractors elsewhere) which in turn led to the exploitation of the workers, even to “murder and torture.”¹⁴⁶ There is equally a history of workers shifting to another workshop for want of quality work which often depends not just on the workshop owner's ability to supply diamonds but also the connections between the *karigars* – workers – within the workshop. Where the supply of diamonds is likely to be intermittent, workers get paid on a daily or weekly basis while bigger workshops often advertise as paying monthly wages.

¹⁴⁵ Miranda Engelshoven, “Diamonds and Patels: A Report on the Diamond Industry of Surat,” 1 Feb, 1999.

¹⁴⁶ *Ibid*, p. 360 (8 of 25).

However, these wages are usually withheld to bolster the owner's capacity to procure diamonds. The worker, in exchange for asking for wages only when needed, gets to work with better quality rough diamonds.¹⁴⁷

The relatively miniscule presence of women aside – even today, only a few large diamond workshops have “Ladies’ Sections” for women workers – the diamond workers from Saurashtra are entirely from the same Patel caste and, despite sub-caste variations, have coalesced under the Saurashtra Patel moniker. The Saurashtra Patel Sewa Samaj (roughly, Society for the Welfare of Saurashtra Patels) was set up in Surat in 1982. However, they did not rally together to counter worker oppression or the violence still prevalent then but instead discussed “promoting education among Saurashtra Patels, creating unity among them, and how to persuade them not to spend huge amounts of money in marriage ceremonies.”¹⁴⁸

The cohesiveness of this caste bloc became important in the 1990s when the international market was hit by overproduction. It also became a pivotal in re-jigging the social equation of the Saurashtra region where the once-poor Patels now became a political force to reckon with. Varachha Road in Surat, which is home to most of the Saurashtra Patels, has come to be called Mini Saurashtra. Paradoxically, this political reckoning has made the Saurashtra Patel workers even less inclined to protest dismal working conditions, thanks to a mix of gratefulness and belief that they too will one day become “big *diamondwallahs*.”

¹⁴⁷ Ibid, p. 366-367 (13, 14 of 25).

¹⁴⁸ Ibid, p. 374 (22 of 25).

The economics of the diamond trade continues to impact the workers nevertheless, with the most recent – and ongoing - slowdown attributed to such international as well as domestic factors as the trade war between the United States of America and China and issues with India's Goods and Services Tax.¹⁴⁹

This has mainly affected small- and medium-scale diamond polishing units, of which many have trimmed or ceased productions, resulting in massive layoffs and even worker suicides. A further consequence is the reported return to Saurashtra of as many as 15,000 workers, even prior to the annual extended holiday coinciding with the festival of Diwali.¹⁵⁰

Similar to the diamond trade, the migration of workers from Odisha follows the rise of the textile industry in Surat.¹⁵¹ Young men moved to Surat in the 1980s to work in the power loom sector, mostly in small-scale, unregistered workshops. It is normal for such workers to put in 12 hours shifts of work; they also work more looms in order to make more money. Invariably, they live in slums, with no guaranteed access to toilets, water or sanitation.¹⁵² Unsurprisingly, health issues are a key concern among these workers. While sexually transmitted illnesses have received a large share of attention, workers are also highly susceptible to tuberculosis (TB), with data at one health centre suggesting that Odia workers reported 80% of the TB cases.¹⁵³

¹⁴⁹ Rahu Nair et al, "Surat's Diamonds Lose Sparkle: Stories of Mass Layoffs & Suicides," *The Quint*, 25 Sep. 2019.

¹⁵⁰ "15,000 Surat Diamond Workers Return Home to Saurashtra," *The Times of India*, 10 Oct. 2019.

¹⁵¹ Sayeed Mohammad, "Aswin Bhai – A Local Deity," <http://www.indiafellow.org/blog/2019/09/local-deity-aswin-bhai/23Sep>. 2019.

¹⁵² "Of Hope, Health and Survival in Surat: A Scoping Study on Health Status of Odiya Migrants in Surat Power Looms," *Aajeevika Bureau*, (Centre for Migration and Labour Solutions, July 2014).

¹⁵³ *Ibid.*

There is also anecdotal reporting of occupational hazards and workplace accidents. Odia family networks are the cause for more workers migrating to Surat opportunistically, but they, along with other inter-state migrants have remained cloistered in a few areas. While there is no evidence available of any union of informal workers among the Odias, the significantly high percentage of migrants in Surat has electoral consequences as a large number of migrants have lived there for decades, built or bought houses, and have registered to vote locally.¹⁵⁴

The Pandesara industrial area in Surat is part of the Choryasi assembly constituency. It is here that the Odia migrants have purchased plots and established a Jagannath Nagar and recently built a Jagannath temple.¹⁵⁵ In 2018, the Odisha Chief Minister, Naveen Patnaik, at long last acknowledged the fact that an overwhelming majority of the Odia migrant workers were from his home district, Ganjam. He also amplified the community's demands for direct train services connecting Berhampur with Surat, besides also demanding flight connections between Odisha's capital Bhubaneswar and Surat and for a one-acre plot in Surat for a community centre.¹⁵⁶ Despite Naveen Patnaik's Biju Janata Dal returning to power in the 2019 Odisha Assembly Elections – and the Narendra Modi-led Bharatiya Janata Party being re-elected to form the Union government – there is as yet no sign of the Berhampur-Surat railway connection.

¹⁵⁴ Sandeep Phukan, "A Million Migrants Now: Pandesara's Voting Power," *The Hindu*, 24 Nov. 2017.

¹⁵⁵ Sayeed Mohammad, "Aswin Bhai – A Local Deity," 23 Sep. 2019.

¹⁵⁶ "Odisha CM Naveen Patnaik Demands Direct Flight, Train to Surat," *moneycontrol*, 16 Dec. 2018.

White-collar Migration: The Case of Special Economic Zones

The promulgation of the Special Economic Zones (SEZs) Act, 2005 and the subsequent legislation of The Special Economic Zones Rules, 2006, offers a stark contrast to the legislative crawl seen in ensuring social protection for vulnerable workers. SEZs were seen as “an engine for economic growth”¹⁵⁷ spurring “economic activity and employment”. The SEZ Act accordingly set out the following objectives:

- generation of additional economic activity
- promotion of exports of goods and services
- promotion of investment from domestic and foreign sources
- creation of employment opportunities
- development of infrastructure facilities

The SEZ Rules similarly buzz with the promise of simplification and single window clearance, but not everyone was sold on the promise of economic growth. In Goa, for instance, “SEZs were seen to promote white collar immigration (sic) from other states to a scale that would destroy or burden existing livelihoods, resources, and infrastructure; raise real estate prices beyond local affordability; and threaten local political economies and relationships with land and resources.”¹⁵⁸ Even as formally-approved SEZs grew in number to 404 in 2008 and 747 in 2011, the government of India was forced to take its foot off the accelerator with growing pressure from multiple quarters.

¹⁵⁷ Ministry of Commerce & Industry, Department of Commerce, Introduction, Special Economic Zones in India.

¹⁵⁸ Preeti Sampat, “The ‘Goan Impasse’: Land Rights and Resistance to SEZs in Goa, India,” (The Land Deal Politics Initiative, December 2013).

The government has since de-notified SEZs and the official figure stands at 423,¹⁵⁹ as of 1 December 2017.¹⁶⁰

In response to a question in India's Parliament in December 2018, total employment generated in the 230 operational SEZs (out of 373 notified) is estimated at 1,996,610 (in 2018-2019),¹⁶¹ up from 1,591,381 in 2015-16. However, historical data reveals that employment in SEZs has not lived up to the promise – as of November 2006, SEZs had generated 178,000 jobs and an addition of 687,565 jobs was expected “in 2-3 years.”¹⁶² Extrapolating this arithmetic yields a probable number of jobs in excess of 2.45 million, which further suggests a failure of SEZs to contribute significantly to employment even 15 years after the Act.

The same 2007 report also suggested that SEZs are not likely to attract migrant workers, but instead generate more local employment – a stark contrast to the SEZ story in other developing countries. Such local employment, the report added, is likely to trigger a transition from informal sector work to formal sector work, particularly for 20-29-year-old men and women for whom this would be their first job. The better wages and working conditions associated with formal employment at SEZs were expected to encourage women to take up organised sector work.

¹⁵⁹ Govt. of India, Formal Approvals Granted in the Board of Approvals after Coming into force of SEZ Rules as on 01.12.2017.

¹⁶⁰ The Government of India website Special Economic Zones in India was last updated 27 Nov. 2018

¹⁶¹ Radheshyam Jadhav, “62% of SEZs are Operational and have Created 20 Lakh Jobs,” *The Hindu Business Line*, 25 Dec. 2018

¹⁶² Aradhna Aggarwal, “Impact of Special Economic Zones on Employment, Poverty and Human Development,” ICRIER, May 2007.

On the flip side, despite the formal nature of employment at SEZs, workers experienced such woes as long working hours, delayed salaries, and weak bargaining power.¹⁶³ Effectively, while employees at SEZs had the right to form trade unions by law, they found the management and authorities colluding to suppress this right. A separate 2008 survey of 60 workers across three SEZs – two of which were also included in the 2007 report - went even further to say that labour laws were simply not applicable in SEZs which promoted “flexible hire and fire practices.”¹⁶⁴ The 2008 survey also found that the majority of SEZ workers lived in fear of losing their jobs, while a smaller number compared to non-SEZ workers actually received retirement benefits. The survey also found non-SEZ workers tended to be more unionised than SEZ workers.

Workers employed in SEZs come under the purview of the International Labour Organisation’s Convention No. 87 (protection of the right to organise and, by corollary, the right to strike) and Convention No. 98 (right to organise and collective bargaining). Although India has not ratified either of the conventions,^{165,166} as a consequence of being an ILO member, it is bound by the organisation’s Constitution and the Declaration of Philadelphia and thereby give effect to the principles.

¹⁶³ Ibid.

¹⁶⁴ Sunanda Sen, & Byasdeb Dasgupta, “Labour under Stress: Findings from a Survey,” *Economic & Political Weekly*, January 2008.

¹⁶⁵ International Labour Organization, Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India, 2011.

¹⁶⁶ International Labour Organization, Up-to-date Conventions and Protocols not ratified by India.

The long vigil of Goans against the establishment of SEZs in their state came to an end in July 2018 with the Goa government agreeing to an out of court settlement¹⁶⁷ with the SEZ promoters to buy back the allocated land for INR 256.6 crore, although a part of the payment is as yet due.¹⁶⁸ Meanwhile, in June 2018, the Ministry of Commerce and Industry constituted a committee headed by Baba Kalyani (Chairman and Managing Director, Bharat Forge) “to study the existing Special Economic Zone (SEZ) policy of India and prepare a policy framework to adopt strategic policy measures which helps India to capitalise on global growth opportunities while developing its own highly competitive manufacturing and service base.”¹⁶⁹ The 15-member committee comprised, among others, three representatives each from SEZ operators and real estate developers, and included in its terms of reference compliance with the World Trade Organization’s regulations on subsidies and countervailing measures.

Its first recommendation was to rename SEZs as 3Es – Employment and Economic Enclaves - accounting not only for exports but also “investments targeted towards leveraging the domestic demand”.¹⁷⁰ The committee’s report did not suggest any investigation of the welfare of workers employed in SEZs, nor were there any relevant recommendations. As Sen & Dasgupta wrote in 2007, “The real test will lie in combining efficiency with safeguarding the legitimate demand and authentic interest of labour.”¹⁷¹ Clearly the Baba Kalyani Committee did not care for any such test.

¹⁶⁷ “Promoters,” *The Times of India*, 30 Oct. 2018

¹⁶⁸ “Inquiry against GIDC Officers for Wrong SEZ Advice, Says Vishwajit Rane,” *The Times of India*, 8 Dec. 2019

¹⁶⁹ Commerce and Industry, Ministry of, “Revitalising SEZs: From Islands of Exports to Catalysts of Economic and Employment Growth,” Government of India, December 2018

¹⁷⁰ *Ibid.*

¹⁷¹ Sunanda Sen & Byasdeb Dasgupta, “Labour under Stress: Findings from a Survey,” *Economic & Political Weekly*, January 2008.

International Migration: India as Source and Destination

India is seen as both a source and a destination for labour migration. However, more than 90% of migrants from India comprise low- or semi-skilled workers headed for the GCC (Cooperation Council for the Arab States of the Gulf) region or South East Asia.¹⁷² The absence of detailed governmental data inhibits detailed analysis of such migration; the only numbers available are of those who require emigration clearance to travel to their destination. The official statistics indicate that fewer people seem to be migrating for work abroad, with under 400,000 emigration clearances granted in 2017 compared to over 520,000 in 2016 and nearly 800,000 in 2015 – the official explanation is that this corresponds to the GCC countries experiencing an economic slump. However, there may be other factors at play. Nearly a third of these workers originated in Uttar Pradesh, which has historically been one of India's least developed States.

For instance, starting August 2016, India made it mandatory that nurses and domestic workers be recruited only through six State-run recruitment agencies. Further, nurses apart, women under the age of 30 who required emigration clearance were peremptorily banned from emigrating. Also, foreign employers were required to validate themselves through an Indian mission and then register on the e-Migrate System, while those looking to directly hire women requiring emigration clearance would require embassy attestation. Such a gendered control of migration only further endangers women seeking to migrate who may, out of desperation, seek ways and means that put them at a higher risk of abuse.

¹⁷² International Labour Organisation, India Labour Migration Update, 2018.

As of 1 January 2019, registering on the e-Migrate system was mandatory for all Indians migrating overseas for work, whether or not they required emigration clearance.¹⁷³

Despite their lack of skills, workers are driven to migrate by the prospect of earning a wage that is guaranteed to be higher than what they can earn in India, and with a formal contract at that. With employment growth also trending negatively, workers look to avoid the far more intense domestic competition by looking for opportunities outside India, thus also loosening the pressure on the Indian labour scenario even if slightly. However, their relative lack of education disadvantages the workers and exposes them to exploitation and being forced to work in insalubrious conditions. To minimise this, the Indian government has undertaken pre-departure education and orientation programmes, besides also training its own officials to manage migration more sensitively.

Unskilled workers migrating to GCC countries cannot protest against workplace harassment, low wages, or poor living conditions, a result of the *kafala* system¹⁷⁴ common in Saudi Arabia, the United Arab Emirates, Bahrain, and Kuwait. With their employer also responsible for their legal status, the workers suffer hardships rather than risk being deported. India has signaled intent to amend the existing Emigrant Act, 1983 and adopt a more restorative approach¹⁷⁵ to ensuring the welfare of unskilled workers abroad.

¹⁷³ “India Move on Overseas Workers Needs More Clarity,” *Gulf News*, 20 Nov. 2018.

¹⁷⁴ Neeta Lal, “India’s Overseas Labour Pains,” *The Diplomat*, 9 June 2016.

¹⁷⁵ Binod Khadria, *Paradigm Shifts in India’s Migration Policy Toward the Gulf*, (Middle East Institute, 2 Feb. 2010).

The setting up of the Ministry of Overseas Indian Affairs in 2004 and, in 2014, the signing of the Agreement on Labour Cooperation for Domestic Service Worker Recruitment with Saudi Arabia were some moves in a progressive direction.¹⁷⁶

On the contrary, India has been proactive in wooing its skilled diaspora residing in the United States or elsewhere in the First World. The introduction of the Overseas Citizenship of India (OCI) status in 2005 is the closest India has come to allowing dual citizenship; in 2015, the Supreme Court ordered the central government to allow non-resident Indians to vote in India's elections via proxy electronic ballots.¹⁷⁷ It is supremely ironical then that the long-standing promise of portability for domestic migrant workers is still unfulfilled, rendering them unable to vote unless they are willing to forgo hard-earned salaries just to make a long journey home in time for voting day.

Migrant Workers in India

Migrant workers from Nepal

The United Nations estimates, India hosted over 5 million migrants in 2015,¹⁷⁸ of which over 3 million came from Bangladesh, Pakistanis comprised just over 1 million, while over 500,000 were Nepali. Only anecdotal evidence exists of the kind of employment these migrants may seek, which largely points to unskilled or semi-skilled work.

¹⁷⁶ Rajan S. Irudaya and Jolin Joseph, "Migration (In)flux: Impact of Legislation on Patterns and Quantum of Irregular Mobility between India and Saudi Arabia," in *Skilful Survivals: Irregular Migration to the Gulf*, eds. Philippe Fargues and Nasra M. Shah, (Gulf Research Centre (GRC), 2017).

¹⁷⁷ Mridula Chari, "Supreme Court Gives NRIs the Right to Vote, but Internal Migrants are Unable to Do So," *Scroll.in*, 13 Jan. 2015.

¹⁷⁸ Economic and Social Affairs, Department of Population Division: International Migration Stock, UN, 2015.

One account of Nepali migrant workers compares their circumstances in Mumbai (previously Bombay) and the hill town of Nainital in Uttarakhand which borders Nepal:

“In the cosmopolitan metro-city of Mumbai, young men worked as watch-men, domestic workers and helpers in hotels and restaurants. In the tourist hill town of Nainital, young men worked primarily as porters, construction labourers or helpers in hotels and restaurants.”¹⁷⁹

For these young men, migration to India and often back and forth between Nepal and India is a journey that is in part adventure, in part exercising their freedom, and in part seeking material advancement. They are often exploited, overworked, and underpaid in India, and largely remain undereducated about their rights as migrants. One effort at addressing this knowledge gap involves a radio programme, *Paurakhi* (entrepreneur), broadcast weekly on Radio Nepal which covers job vacancies; necessary information on migration, including documents required, migrants’ rights, health issues, labour policies, etc.; experiences of those who have worked abroad; and interviews with policymakers.¹⁸⁰ While the number of women migrating from Nepal is increasing, *Paurakhi* rarely features women callers given the prevalent social stigma around women travelling for work and women’s own reluctance to come forward and self-identify as migrants.

¹⁷⁹ Jeevan Raj Sharma, “Marginal but Modern: Young Nepali Labour Migrants in India,” *Young: Nordic Journal of Youth Research*, 2013.

¹⁸⁰ Susan Thiem et al, “Addressing the Needs of Nepalese Migrant Workers in Nepal and in Delhi, India,” *Mountain Research and Development*, 25(2): 109-114.

Another initiative centred around the Nepali community in Delhi was launched by the South Asia Study Centre (SASC)¹⁸¹ targeting, in particular, migrants from the Sudurpaschim province in the Far-Western Development Region of Nepal. While men from this community find work as watchmen and car cleaners, the women only travel for medical reasons, at best seeking short-term employment as housekeepers. SASC's courses impart awareness about, for instance, the location of the Nepalese Embassy, nearby police stations, migrant associations, and public health facilities. SASC also organises roundtable meetings featuring Indian and Nepali policymakers, as well as NGOs to tackle migration-related policy challenges. Such initiatives have motivated the migrant men to register as an organisation of watchmen, thereby increasing their ability to negotiate with Indian employers as well as with the police and resist harassment.

Migrants from China

In 2018, as the Indian government geared up to inaugurate the controversial Statue of Unity, the news that “several hundred Chinese labourers”¹⁸² were part of the 2,500-strong crew working on the statue caused a social media hubbub, largely because of the government's insistence that the statue would be entirely “Made in India.” Yet the real story is complex - the 2011 census indicating a sharp decadal drop in the number of Chinese immigrants residing in India.¹⁸³

¹⁸¹ Ibid.

¹⁸² “2,500 Labourers, Including Chinese, Working Round the Clock to Complete Statue of Unity”, *moneycontrol*, 4 Sep. 2018

¹⁸³ Omkar Khandekar, “What Happened to India's Disappearing Chinese Migrants?”, *South China Morning Post*, 7 Aug. 2019

In part this had to do with out-migration of Chinese origin – and Tibetan – settlers in India to western countries, in particular the United States. Equally, those residing in India for long were no longer categorised as Chinese immigrants, nor were children of immigrants born in India. The Chinese crackdown on Tibetan refugees migrating to India is also a factor.

Then again, there is a rising number of Chinese immigrants who have not stayed longer than a year in India. A last crucial change is the number of Chinese expatriates, now at 5,000-7,000, working in India's tech hubs and not enjoying life in India. The reasons for this dissatisfaction range from poor infrastructure and quality of life to a tough visa application process.¹⁸⁴

This narrative does not talk about Chinese unskilled workers. In general, to protect India's own unskilled and semi-skilled workers, the Ministry of Home Affairs has stipulated the minimum wage for expatriate workers at USD 25,000 per annum.¹⁸⁵ This has the effect of precluding any migration of unskilled workers. A 2009 report¹⁸⁶ estimated that there were as many as 25,000 Chinese unskilled/semi-skilled workers who had been flown in to work on projects for which Chinese companies had won contracts. These involved such jobs as carpentry, welding, masonry, and driving, and the workers were said to be earning INR 1,700 per day and had living arrangements far superior to those usually assigned to Indian unskilled workers at such sites. However, data on how much the Chinese labourers working on the Statue of Unity earned is not available.

¹⁸⁴ Ibid.

¹⁸⁵ In 2013 the exchange rate was INR 60.68 to the US dollar, thus requiring a minimum annual wage of INR 1,517,000.

¹⁸⁶ Debarishi Dasgupta and Jeetender Gupta, "The Long March," *Outlook*, 9 Nov. 2009.

These unskilled workers were found to possess short-term business visas generally meant for skilled workers, leading to speculation whether Chinese firms, aided by their government in a “Go Abroad” push aimed at countering domestic unemployment, were able to procure skilled-worker visas even for unskilled labourers. The alternative scenario suggests a lackadaisical approach by Indian visa-issuing authorities in China.

While the fate of the projects mentioned in the report is unknown, the Theog-Hatkoti-Rohru Road project,¹⁸⁷ awarded to the Chinese firm Longjian Road and Bridge Company Limited, came to a standstill after the central government insisted that the 80-member Chinese workforce brought in for the project must get work visas. That project is yet to be completed, severely impairing transport in the apple cultivation belt.¹⁸⁸

¹⁸⁷ Ashwani Sharma, Dinker Vashisht, “Visa Rules Take Chinese off Apple Belt Road Project, Himachal Govt Upset,” *The Indian Express*, 26 Oct. 2009.

¹⁸⁸ “11 years on, Theog-Rohru Road Yet to See Completion,” *The Times of India*, 2 Sep. 2019.

Conclusion

Migrant workers remain an underrepresented constituency, who have had to repeatedly find new ways of making themselves heard. Their assimilation into other informal workers unions, as in the case of brick kiln workers, has not entirely served them well. While being an electorally significant group, such as the Saurashtra Patels or Odias in Surat, seems to at least get them some political attention, it has not always resulted in the desired results. The fruits of their rallying are more in the nature of sops rather than actual redressal of persistent issues – Patnaik, for instance, asked for a community centre and train services rather than health centres or civic sanitation measures. Attempts to stem or reverse the flow of labour migration are also infructuous due to systemic corruption, as in Odisha where the *sardars* are also MGNREGA contractors, or the lack of government support. What little is given in legislation old or new is invariably taken away in implementation.

Governments seem to move quicker when corporate profits are involved. In the name of ease of doing business, all caution and concern for workers is thrown to the winds. No new law proposed is based on extensive consultations with either workers' unions or NGOs providing a crutch for workers abandoned by the government. And every so often, migrant workers have new legislation with which to contend, the latest being the four proposed labour codes.

Postscript

Sleepwalking into a New Era of (problematic) Labour Reforms

A developing concern for informal workers and in particular migrant workers is that the recognition of informal workers' concerns achieved over the past four decades is now likely to be undone with the proposed subsuming of all existing labour laws into four new Labour Codes - the Code on Wages; the Code on Occupational Safety, Health and Working Conditions; the Code on Industrial Relations; and the Code on Social Security.

The not-for-profit policy research and advocacy institute Dvara Research was among those who submitted comments to India's Ministry of Labour and Employment regarding the proposed code on Social Security. Citing the Second National Labour Reforms Commission, 2002, Dvara welcomed the simplification of labour laws,¹⁸⁹ but also called for eLabourating on the functions of the proposed National Board for Social Security of Workers in the Unorganised Sector. Further, the comments asked for greater social security protections for unorganised sector workers and for explicitly detailing measures for inter-state migrant workers, particularly with respect to whether protections were even available to such workers.

Dvara's submission sought, firstly, the recognition of migrant workers as being equal to other workers, additionally demanding that all benefits due to migrant workers be made available across the country with full portability.

¹⁸⁹ Dvara Research, Comments submitted to the Ministry of Labour and Employment on the Draft Labour Code on Social Security, 2019, 24 October 2019.

The government, meanwhile, having struggled to ensure portability of benefits through mandatory seeding of *Aadhaar* numbers - the 12-digit biometrics-linked unique identification number used to authenticate identity - into, for instance, the Public Distribution System database,¹⁹⁰ has instead decided to focus on the Direct Benefit Transfer scheme whereby a fixed sum is deposited into the beneficiary's bank account without any consideration for the market rate of the services for which that sum may be utilised.¹⁹¹ The migrant worker, in effect, is still fighting the battle for legal and social protection, and now has to deal with a different set of policy and legislative measures.

¹⁹⁰ Reetika Khera, "Viable Solutions to PDS Portability are being Ignored in the Push for Aadhaar," *The Indian Express*, 28 Nov. 2019,

¹⁹¹ Housing and Urban Poverty Alleviation (Ministry of), *Report of The Working Group on Migration*, 2017, p. 20.

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3

LABOUR IN THE MALDIVES: A SNAPSHOT INTO DISCRIMINATION OF MIGRANT WORKERS

*Shahindha Ismail**

Maldives: A Political Background

In 2008, the Maldives transitioned from 30 years of autocracy to a democracy. But this was forcibly reversed in 2012 by a military coup. However, a major achievement of the democratic movement prior to 2008 is the reform of the Constitution of the Maldives. The country ratified a new and democratic constitution on the 7th of August 2008. For the first time, the separation of powers, checks and balances, and accountability was introduced to the governance of the Maldives. The chapter on Fundamental Rights and Freedoms in the constitution addresses almost all of the provisions of the International Covenant on Civil and Political Rights, granting wide range of individual rights to everyone living in the Maldives.

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The Maldives is one of the member States of the United Nations that has signed or ratified most of the international treaties and conventions, albeit under international pressure. The ratification and domestication of these treaties have not always been made with the view to uphold the spirit of the treaty provisions. Oftentimes, domestic laws obstruct the implementation of fundamental rights thus restricting the full enjoyment of those rights. Laws are reformed without due consultations and without considering relevant provisions in other legislation. Thus, the reformed law does not make the required, positive impact on the protection and enjoyment of fundamental rights. While the human rights advocacy and the democratic movement gathered strength through the efforts of activists and some politicians with knowledge and expertise in these fields, the majority of lawmakers do not have a deep understanding of the values reinforcing the struggle for human rights. They present legislation that their political parties endorse, thus contributing to the enactment of laws that do not fully protect and guarantee fundamental rights.

Developments have been taking place in the Maldives from 2020, since the research for this chapter was conducted. As this report progresses for publication, the Maldives has witnessed 200 migrant workers employed by a construction company protesting over unpaid wages and inhumane treatment. Protesters were arrested¹⁹² and remain in detention, facing possible charges of terrorism or charges related to national security. No information regarding the investigation of the employer is available at this time, despite public calls to the government to do so.

¹⁹² Human Rights Watch, “Maldives: Migrants Arrested for Protesting Abuses,” <https://www.hrw.org/news/2020/07/24/maldives-migrants-arrested-protesting-abuses>

Shortly after assuming office, the Solih administration identified over 70,000 ‘undocumented’ workers. The government made arrangements to provide documents for some of these migrants that legitimises their status and protects their rights. However, more than 4,000 migrant workers have been sent back to their homes during the COVID-19 crisis.¹⁹³ The government provided little information on the processes that are followed to repatriate workers. In some cases, the return of the workers was organised in cooperation with their respective governments such as India and Bangladesh, and it transpired that workers were sent home on naval ships and flights. It was also disclosed that some of the migrant workers requested to be sent to their home countries. It is unknown whether all of those workers who were sent back consented to it, or whether all of the workers received due compensation or wages before being sent back. No information about best practices followed or treatment of workers during transition is available at this time.

¹⁹³ South Asia Monitor, “Government to Facilitate Arrangements for Undocumented Migrant Workers to Return Home,” <https://southasiamonitor.org/index.php/maldives/government-facilitate-arrangements-undocumented-migrant-workers-return-home><https://avas.mv/en/86360>; “Government Announces Arrangements for Undocumented Workers to Return Home,” <https://raajje.mv/73745>;

Ministry of Foreign Affairs, Republic of Maldives, <https://migrationnewsbd.com/news/view/32310/38/2500-Bangladeshi-Workers-Sent-Back-from-Maldives>; “Bangladesh Armed Forces Airlifts Bangladeshi Migrant Workers who Wished to Return Home,” April 21 2020, <https://foreign.gov.mv/index.php/en/mediacentre/news/5622-bangladesh-armed-forces-airlifts-bangladeshi-migrant-workers-who-wished-to-return-home>, <https://en.sun.mv/61907>; Human Rights Watch “Maldives: Covid-19 Exposes Abuse of Migrants,” August 25, 2020 <https://www.hrw.org/news/2020/08/25/maldives-covid-19-exposes-abuse-migrants>

The Workforce

According to national statistics¹⁹⁴, in 2017, the civil service in the Maldives employed a total of 220,082 persons. Of this figure, 8,977 were from the capital Malé and 13,105 were recruited from the rest of the country. Across the country, women civil servants totalled 13,175 and 8,907 were males. Out of this number, 4,969 women and 4,008 men worked in the capital while 8,206 women and 4,899 men worked in the rest of the country. A higher number of women were found in the civil service through 2016 and 2017.

The Maldives does not have a minimum wage restriction. National statistics indicate that 97% of the civil service gets a basic salary below MVR 10,000 (approx. USD 649). Of a total of 22,082 civil servants, 5,813 women and 4,630 men received a basic salary of less than MVR 5,000 (approx USD 324) whereas 7,065 women and 3,927 men received salaries between MVR 5,000 and 9,999 in 2017. It is noted that without the inclusion of the salaries and remuneration of political appointees, it is not possible to realistically gauge the gender gaps in wages in the national workforce.

In 2016, there were 83,143 expatriate workers in the Maldives and this was the highest when compared to the past five years.¹⁹⁵ In 2014, expatriate workers numbered 45,584 and this was the lowest number in the past 5 years. The National Statistical Report of 2018 captures these trends.

¹⁹⁴ Statistical Yearbook of Maldives, 2018, <http://statisticsmaldives.gov.mv/yearbook/2018/employment/>

¹⁹⁵ The national statistical reports refer to all foreign workers as “expatriate workers.” However, a sharp distinction exists between ‘expatriates’ and ‘migrant workers’ in terms of wages and working conditions and this is addressed later in this chapter.

There are more expatriate men than women workers and specifically, in 2016 there were 73,188 expatriate men working in the Maldives to 9,955 women, and in 2014 there were 41,231 men to 4,353 women. Since 2014, the largest numbers of expatriate workers were employed in the construction industry and the second largest sector was the tourism industry. The national statistics report does not include expatriate employment in the private sector and as domestic workers. However, it is believed that a larger number of women may be employed in these sectors.

International Obligations and Legislation

The Maldives is yet to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). During the most recent Universal Periodic Review, several member States of the United Nations have made recommendations that the Maldives accede to the convention.¹⁹⁶

However, the Maldives has ratified other international treaties that indirectly oblige the State to protect certain rights including those of migrant workers. These include the International Convention on the Elimination of All forms of Racial Discrimination (CERD), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (CESR), and the Convention on the Rights of the Child (CRC).

¹⁹⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/154/64/PDF/G1515464.pdf?OpenElement>

Although the Maldives is yet to sign the ILO Migration for Employment Convention (1949) and the ILO Migrant Workers (Supplementary Provisions) Convention (1975), it is, nevertheless, party to all major conventions of the International Labour Organisation. The Maldives became a ILO member in 2009 and ratified its eight core conventions in 2013. These are: the Forced Labour Convention (1930), the Freedom of Association and Protection of the Rights to Organise Convention (1948), the Right to Organise and Collective Bargaining Convention (1949), the Equal Remuneration Convention (1951), Abolition of Forced Labour Convention (1957), the Discrimination (Employment and Occupation) Convention (1958), the Minimum Age Convention (1973), and the Worst Forms of Child Labour Convention (1999).

The Constitution of the Maldives

The following table lists the relevant provisions of the constitution that ensure the protection of the rights of migrant workers in the Maldives.

Chapter	Article	Text
2	16	This Constitution guarantees to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained in this Chapter, subject only to such reasonable limits prescribed by a law enacted by the Peoples' Majlis in a manner that is not contrary to this Constitution. Any such law enacted by the Peoples' Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society.

Chapter	Article	Text
	17	<p>Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, poverty, birth or other status, or native island.</p> <p>Special assistance or protection to disadvantaged individuals or groups, or to groups requiring special social assistance, as provided in law shall not be deemed to be discrimination, as provided for in article (a).</p>
	18	<p>It is the duty of the State to follow the provisions of this Constitution, and to protect and promote the rights and freedoms provided in this chapter.</p>
	20	<p>Every individual is equal before the law, and has the right to the equal protection and equal benefit of the law.</p>
	25	<p>No one shall be held in slavery or servitude or be required to perform forced labour.</p>
	30	<p>Everyone has the freedom to form associations and societies, including the following:</p> <p>2. the right to form trade unions, to participate or not participate in their activities.</p>
	31	<p>Every person employed in the Maldives and all other workers have the freedom to stop work and to strike in order to protest.</p>

Chapter	Article	Text
	32	Everyone has the right to freedom of peaceful assembly without prior permission from the State.
	35	a. Children and young people are entitled to special protection and special assistance from the family, the community and the State. Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour.
	37	<p>b. Everyone is entitled to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion.</p> <p>c. Everyone has the right to rest and leisure, including limits on hours of work and periodic holidays with pay.</p> <p>d. Everyone has the right to spend time at rest and leisure. In order to provide this right to each employed person, the maximum number of working hours have to be determined as well as the length of paid holidays.</p>

Chapter	Article	Text
	51	<p>Everyone charged with an offence has the right:</p> <ul style="list-style-type: none">a. To be informed without delay of the specific offence in a language understood by the accused;b. To be tried within a reasonable time;c. Not to be compelled to testify;d. To an interpreter to be provided by the State where he does not speak the language in which the proceedings are conducted, or is deaf or mute;e. To have adequate time and facilities for the preparation of his defence and to communicate with and instruct legal counsel of his own choosing;
		<ul style="list-style-type: none">f. To be tried in person, and to defend himself through legal counsel of his own choosing;g. To examine the witnesses against him and to obtain the attendance and examination of witnesses;h. To be presumed innocent until proven guilty beyond a reasonable doubt.

Domestic Law Impacting on Migrant Workers

The Employment Act

Law No. 2/2008 (Employment Act) was ratified in 2008. It contains many good provisions but it also contains many gaps and thus does not provide strong protections to migrant workers.

For instance, Section 3 of the Act prohibits forced employment. However, it must be noted that the definition of forced employment does not include misrepresentation or deception by employers on the specific tasks or nature of work assigned to those who are recruited remotely. Deception and renegeing on the promise of decent employment is a notorious form of exploitation of migrant workers in the Maldives.

Section 4 prohibits discrimination and lists several forms of discrimination apart from discrimination on the basis of nationality. Thus, migrant workers cannot claim protection from discrimination on account of their nationality. This has proved to be problematic for many migrant workers, especially for Bangladeshi workers in the Maldives, in their struggle for their rights.

Section 6 of the law prescribes the minimum age of employment as 16 with a provision for minors of age 16 and above to be eligible to “participate in the family’s line of work on their own”. Specific durations of work hours and a requirement to register minors employed under the law are prescribed in the law. Standard requirements for protection of contractual liabilities, wages, rest and leisure, and other prescriptions are found in the Employment Act of the Maldives.

Amendment Law No. 3/2014, amending the Employment Act, 2008, requires that employers make a financial deposit for every foreign employee and that migrant workers may only be allowed to enter the Maldives following an approval of the application made by their employers in advance of arrival.

The Amendment Law No. 14/2015 addresses the requirement to pay a special allowance during the holy month of Ramadan. The mandatory requirement has been amended as an optional requirement for employers of Muslim migrant employees to pay the Ramadan allowance. Once again, the largest migrant worker population it affects unfairly is the Bangladeshi workers.

The Immigration Act

Law No. 1/207 (Immigration Act) regulates entry into, departure, and deportation from the Maldives. This law also authorises the Controller of Immigration to detain immigrants violating the law, at a facility of the choice of the Controller of Immigration until such time that the individual can be sent back to his or her country. The section also provides that all financial responsibility of returning the individual to his or her country of origin lies upon the owner of the vessel that carried the individual to the Maldives.¹⁹⁷

A major gap in the law is that it does not recognise as a special category, foreigners with family members in the Maldives but who are divorced. They are required to pay high visa fees in order to remain in the Maldives. While some are able to find social support to pay these fees, many workers, especially those who have children from Maldivian spouses and are unable to leave the Maldives, face long-term struggles with visa fees and restrictions related to these visas.

¹⁹⁷ <https://immigration.gov.mv/wp-content/uploads/2019/01/mi-act-english.pdf>

Anti-Torture Act

Section 17 of Law No. 13/2013 (Anti-Torture Act) says that information regarding places of detention for all categories of detention must be made public. However, the legality of the main detention centre for those detained under the Immigration Law has been questioned in a national prisons audit.¹⁹⁸

Prohibition of Human Trafficking Act

The main objective of Law No. 12/2013 (Prohibition of Human Trafficking Act) is to penalise human traffickers and provide protection for victims or potential victims of human trafficking in the Maldives.

The law broadly addresses definitions of human trafficking, exploitation, enforced labour, debt bondage and punishments for perpetrators. It also addresses the trafficking of minors.

More importantly, the law states in detail how victims of human trafficking will be protected and assisted.

Minimum Wage

As stated previously, the Maldives has never had a law prescribing a minimum wage. This is one of the biggest problems that workers face in the country, be they local or foreign workers. Evidently, it affects the already vulnerable and exploited community of migrant workers very negatively.

¹⁹⁸ Prison Audit Commission Report; Maldives Establishes Commission to Audit Prisons <https://edition.mv/news/8368>

Having said this, it must also be noted that, given the high cost of living through enforced urbanisation in the Maldives, many locals too have no choice but to work at two or more jobs to be able to pay rent.

Since the change of government in September 2018, a robust legislative reform agenda is in place and a minimum wage law is being discussed. However, at the time of writing, a Bill has yet to be submitted to Parliament. In January 2019, the Maldivian Democratic Party proposed a minimum daily wage of MVR 200 (US\$ 12.97) to be included in an amendment to the Employment Act,¹⁹⁹ but a decision has not yet been taken on the matter.

In the event that a minimum wage is introduced in the Maldives, it is crucial that it should also be specifically applied to migrant workers in the country. As stated previously, the Maldives has laws that discriminate between migrant workers and local workers, such as the provision in the Employment Act requiring payment of a special allowance for the month of Ramadan while giving employers the option of not giving the allowance to Muslim migrant workers.

Migrant Workers and the ‘Expatriate Community’ - A Distinction that Goes Beyond Semantics

It is important to understand the environment of the migrant/expatriate workforce. Some distinctions are being used to address the different categories of “expatriate workers” based on the sectors they work in, their skill set, and even their countries of origin.

¹⁹⁹ “Govt to Set Minimum Wage at MVR 200,” <https://avas.mv/en/59626>

In the Maldives, the overseas labour working in sectors involving manual labour such as the construction industry, fishing, agriculture, and domestic work, are largely from Asian countries and are referred to as ‘migrant workers’ while foreigners who work in managerial or administrative levels, including the tourism sector, are referred to as “expatriate workers.’ Employees from western countries are also referred to as ‘expatriate workers.’ Needless to say, the wage gap between the two groups (i.e. migrant workers and expatriate workers) is significant.

This chapter focuses on the category of “migrant workers” within the foreign labour force in the Maldives. Several reports have previously highlighted the dire state of imported labour in the Maldives. Between 2010 and 2015, the Maldives was twice placed on the US Human Trafficking Watch List Tier 2²⁰⁰ and again in 2019. The US State Department stated that 60,000 undocumented foreign workers, mainly from Bangladesh and India, were “subjected to practices indicative of forced labour, including fraudulent recruitment, confiscation of identity and travel documents, withholding or non-payment of wages, and debt bondage.” The report also said that a small number of women and girls from Africa, Asia, Central Asia, Eastern Europe, Bangladesh and the Maldives, were exposed to sex trafficking in the Maldives, while some women from South Asia were forced into prostitution after entering the country.²⁰¹ The newly elected government of 2018 said in a press briefing in January 2019 that the number of illegal immigrants is estimated at 63,000.²⁰²

²⁰⁰ “Maldives Placed Back on US Human Trafficking Watch List,” *Maldives Independent*, July 28, 2015, <https://maldivesindependent.com/politics/maldives-placed-back-on-us-human-trafficking-watch-list-115872>

²⁰¹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282702.html>

²⁰² “Number of Illegal Migrants Estimated at 63,000,” *Maldives Independent*, January 17, 2019, <https://maldivesindependent.com/society/number-of-illegal-migrants-estimated-at-63000-143502>

Migrant workers are subjected to extremely harsh conditions at work and equally harsh living conditions. Their working conditions are unsafe and consist of long hours with no breaks. They experience malnutrition, live in highly congested living spaces, and receive low wages or even no payment at times.²⁰³ A news article by the *Maldives Independent* probes further into these issues through conversations with migrant workers.²⁰⁴ The unsafe conditions at work, especially in the construction industry, have taken many lives, most of whom are migrant construction workers.

Migrant workers are subjected to severe discrimination and racism by the larger society. For instance, expatriate workers must pay a higher fee to enter the public park in the capital Male while locals can enter the park free of charge.²⁰⁵ Civil society has advocated for affordable arrangements for migrant workers to access these public spaces, as it is impossible for them to spend money for recreation when they receive such low wages. These calls have been met with the blunt message: “We don’t want them in a park with our children.” Migrant workers have died at hazardous work sites and with the rise in the number of murders of Bangladeshi workers, bringing the death toll to 30 in 2017, Bangladeshi Ambassador Rear Admiral Akhtab Habeeb was moved to publicly comment on this matter.²⁰⁶

²⁰³ “In Pictures: The Migrant Workers of the Maldives,” *Maldives Independent*, February 16, 2018. <https://maldivesindependent.com/in-pictures/the-migrant-workers-of-the-maldives-135867>

²⁰⁴ <https://maldivesindependent.com/in-pictures/the-migrant-workers-of-the-maldives-135867>

²⁰⁵ “Migrant Workers Keep Out’: A Day at Rasrani Park,” *Maldives Independent*, September 5, 2017, <https://maldivesindependent.com/feature-comment/migrant-workers-keep-out-a-day-at-rasrani-park-132402>

²⁰⁶ “Bangladesh Ambassador Urges ‘Proper Investigation’ into Expat Death,” *Maldives Independent*, October 5, 2017 <https://maldivesindependent.com/crime-2/bangladesh-ambassador-urges-proper-investigation-into-expat-death-132912>

Arbitrary Detention and Torture

Article 48 of the Constitution of the Maldives²⁰⁷ states that anyone arrested or detained must be allowed to contact a lawyer and maintain this contact throughout, until the case is closed, and that such detainees must be brought before a judge within 24 hours of detention to legalise the detention.

Foreigners detained for allegedly violating the immigration law are mostly undocumented workers and are detained in the Hulhumalé Detention Centre - a facility in Hulhu Island, developed in the Greater Malé territory of the capital city - and operated by the Maldives Correctional Service. However, closer scrutiny of the processes at the Hulhu Malé Detention Centre by the Prison Audit Commission²⁰⁸ found that the facility held migrants as well as convicts and that the facility was not in line with the constitution, laws or international obligations of the Maldives. The commission further discovered that migrants were held for up to seven years at this facility with no access to a lawyer and without being presented before a judge to legalise the detention. Further, the commission in their report highlighted the severe discrimination against foreign detainees, in a facility that also held Maldivians. According to the commission, some of the conditions and treatment that migrants are subjected to fell under the definitions of torture.

²⁰⁷ Functional Translation of the Constitution of the Republic of Maldives, 2008, <http://agoffice.gov.mv/pdf/constitution.pdf>

²⁰⁸ "Maldives Establishes Commission to Audit Prisons," <https://edition.mv/news/8368>
<https://edition.mv/news/8368>

The report of the Prison Audit Commission highlighted that accommodation, food, recreation, and other rights inside the facility accorded to Maldivians and foreign nationals differed. Maldivian nationals were provided with large cells with individual beds with mattresses, permitted to use personal radio and TV sets, and were served food from a popular local caterer in a separate dining hall. The cells were unlocked throughout the day and prisoners were free to move within the boundaries of the prison block that included a small open area, a separate laundry with washing machines, and a mosque. Foreign nationals held under the Maldives Immigration Act shared a large cell (40 prisoners at the time of visit), which was locked throughout the day and did not have access to any of the services outside of the cell. A different caterer provided their food and the prisoners were forced to eat, do their laundry, and pray inside the crowded cell. According to the report, officials at the facility explained the differentiation on the grounds that although the two adjacent cells were located in the same block and in the same facility, the cell that held Maldivians was considered a prison while the cell that held foreign nationals was considered a detention facility.

The commission interviewed embassies and missions for the purpose of the prison audit and noted that they have not been open to assisting their nationals in detention to ensure a swift passage back to their home country. (The Bangladesh mission in the Maldives was mentioned specifically due to the high rate of Bangladeshi migrant workers detained in the Maldives.) There has been little cooperation from the missions to support detainees to prepare necessary documentation or to secure translation and interpretation services. As a result, detained migrants face prolonged detention.

In their recommendations to the government, the Prison Audit Commission advised that all foreign nationals held in arbitrary detention in Hulhumalé Detention Centre must be brought before a judge within 24 hours of receiving the recommendation. The report further recommended that the Maldives Correctional Service seek the assistance of the Ministry of Foreign Affairs to establish a more effective working relationship with the foreign missions in the country to make all necessary arrangements to ensure that detained foreign nationals are able to exercise their fundamental rights.

On 6 February 2019, Maldives Immigration conducted a special operation to detect and detain undocumented migrants, arresting 80 foreign nationals as a result. The authorities however took little to no action against the Maldivians responsible for trafficking undocumented workers into the country or for confiscating documents from foreign employees.

The Minister of Home Affairs opened a designated detention facility for those detained under the Immigration Act, on 11 April 2019, shortly after the Prison Audit was completed. The facility in Hulhumalé Detention Centre has since been transformed to only house persons detained under the Immigration Act. It includes separate blocks for women detainees and the physical conditions of the facility were generally improved to preserve human dignity.²⁰⁹

²⁰⁹ Mariyam Malsa “Detention Centre for illegal Immigrants Opens,” 11 April 2019 <https://edition.mv/news/10077>

Discrimination

Case study: Access to Rasrani (public) Park in the capital city

The Maldives has never charged entrance fees to recreational areas, landmarks or parks from those living in the country. The country has not promoted landmarks or parks to tourists as such. However, some landmarks such as the *Utheemu Ganduvaru* charge a small entrance fee from all visitors, including Maldivians and foreigners. The fees are different for Maldivians and foreigners as is common around South Asia.

The Rasrani Park in the capital city Malé was first named the Sultan Park as the grounds originally served as the gardens to the Sultan's Palace. It remained a free public park and was mostly neglected until President Mohamed Nasheed's government transformed the park in 2010. However, the park was closed by President Yameen Abdul Gayoom for months for renovations and was renamed at its opening in 2017. It was revamped with gardens, a fountain, and a children's play area. The government also announced that expatriates would be required to pay a fee of MVR 100 (US\$ 6.50) to enter the park on a weekend while Maldivians could enter it free of charge.²¹⁰ The weekend in the Maldives is Friday and Saturday and Friday afternoons are the only free time most migrant workers have in a week.

Human rights defenders opposed and heavily criticised this policy and described the working conditions of migrant workers in the Maldives akin to modern-day slavery, characterised by extremely hard work and

²¹⁰ "Migrant Workers Keep Out: A Day at Rasrani Park," *Maldives Independent*, Sept 2017 <https://maldivesindependent.com/feature-comment/migrant-workers-keep-out-a-day-at-rasrani-park-132402>

unacceptably low to no pay for migrant workers. Migrant workers can barely afford MVR 100 to meet their basic needs.

They live in extremely congested living spaces in an overcrowded island that has no recreational space other than the park. The decision to charge high admission fees from these workers to enter the park is unfair and inhumane. The government did not change the policy, and opposition leaders and activists criticised the decision, calling it ‘xenophobic’ and ‘racist.’²¹¹ However, the opposition has since formed the current government but they have not taken any steps to change the policy. At the time of writing, migrant workers continue to pay high fees to enter the park. Human rights defenders continue to raise this issue as discriminatory on social media and the majority of responses to these social media posts are appalling. The responses indicate the serious issue of xenophobia and racism in the country. The general view expressed on social media is, “We do not want Bangladeshi workers where our children go to play, they (children) are not safe with them.”

Delivery of Justice

To this day, the Maldivian justice system has failed to recognise that many of the migrants are victims of human trafficking – a form of modern-day slavery. When migrants are arrested, they are not granted due process, such as the right to consult a lawyer of their choice. On the pretext that the State cannot afford to pay for international telephone calls, family meetings, and interpreters during the investigation and trial process, or child support services to minors, migrant workers have no access to these basic services. They often face harassment and humiliation while in the State’s custody.

²¹¹ “Sultan Park Revamped and Re-opened as Rasrani Bageecha,” *Maldives Independent*, August 22, 2017 <https://maldivesindependent.com/society/sultan-park-revamped-and-reopened-as-rasrani-bageecha-132161>

The Prison Audit Report also refers to migrant minors who have spent years in prison without access to a lawyer, an interpreter, a family member or other support mandated for a child enmeshed in a judicial process. There was a lack of willingness on the part of the Human Rights Commission to assist them. Migrant workers have also been held on remand orders for up to eight years and without a court hearing for over a year.

Case study: Aminath Zara – Family Court case number 2203/Fm-C/2013

Aminath Zara, a Nepalese worker formerly named Tasi Telisa, arrived in the Maldives in 2009 to work in a beauty parlour. She later married a Maldivian and had a daughter. Case researcher and human rights defender Mushfiq Mohamed writes that among other cases of mistreatment towards migrant workers, Zara went through a harrowing ordeal during and after her marriage. She almost lost custody of her daughter and was continuously threatened by her then husband with deportation.²¹² However, pro bono lawyers, led by Lua Shaheer, assisted Zara to ensure her safety.

The initial court proceedings that registered Zara's marriage and those that confirmed the divorce from her Maldivian husband were conducted in *Dhivehi*, the Maldivian local language. Consequently, Zara was unable to respond to her former husband in court or to describe the abuse and mistreatment she had faced. She then faced a custody battle for her child and imminent deportation. Without the means to afford legal assistance and interpretation, she was at a great disadvantage.

²¹² "Migrant Workers' Voice: Illegal and Silenced in the Maldives." <http://www.dhivehisitee.com/judiciary/migrant-workers-voice-illegal-and-silenced-in-the-maldives/>

A group of lawyers and well-wishers came forward to assist Zara during different stages of her struggle. Pro bono lawyers assisted Zara and secured custody of her young daughter and Zara's right to continue employment in the Maldives. They arranged State care and foster homes for the mother and daughter throughout the trial. A social media appeal for help by the lawyers later raised funds to purchase a scooter for Zara so that she could juggle work and her daughter's school life. The mother and daughter continue to live in the Maldives and Zara is required to pay annual visa fees to Maldives Immigration, for which she receives some support from the National Social Protection Agency.

Zara is one among many who have faced similar or worse conditions and treatment within the judicial system. The constitutional prescription that "all court proceedings must be held in a language fully understandable by both claimant and defendant" is routinely ignored. However, Zara is also one of the very few who have been lucky enough to come across people who could and would help her, as Maldivians are generally not known to be sympathetic towards migrant workers.

Suspicious Deaths and Violence against Migrant Workers

The website www.mvmurders.com, run by two Maldivians, documents murders in the Maldives since 2001 that are unresolved. Five of the sixty-five victims documented are migrant workers. In August 2007, the mutilated body of Moagal Hussain²¹³ (Bangladeshi) was found in the football ground in H. Dh. Kulhudhuffushi, with his intestines outside of his body.

²¹³ "Murders in Maldives," <https://mvmurders.com/victim/moagal-hussein/>

On 26 November 2012, the body of Moneerul Islam²¹⁴ (Bangladeshi) was found in his room on the 6th floor of a building in the capital city Malé, with stab wounds.

On 22 March 2015, Shaheen Miah²¹⁵ (Bangladeshi) was attacked and murdered in the café that he worked in as a server in the capital. He was killed for refusing to serve coffee to a group of young men after the café had closed for the night.

On 23 March 2015, Bilaal²¹⁶ (Bangladeshi) was found in his room in A. A. Thoddoo, face down and with a sarong tied around his neck.

On 9 June 2015, Baadshah²¹⁷ (Bangladeshi) was found dead with wounds to his body, in L. Gan, in the house where he worked as a caretaker.

Violent crimes spiked around 2012–2017 and several Maldivians were killed, either by vigilante attacks or gang fights. However, there has been no constant voice to demand justice for the murdered migrant workers. Many of the victims are from Bangladesh. The Bangladesh Embassy in the Maldives announced a 24-hour helpline in the wake of the murders in 2015.²¹⁸

²¹⁴ <https://mvmurders.com/victim/moneerul-islam/>

²¹⁵ “Murders in Maldives,” <https://mvmurders.com/victim/shaheen-mia/>

²¹⁶ “Murder in Maldives” <https://mvmurders.com/victim/bilal/>

²¹⁷ “Murders in Maldives,” <https://mvmurders.com/victim/unknown/>

²¹⁸ <https://bdnews24.com/bangladesh/2015/03/27/24-hour-helpline-opens-for-bangladeshis-in-maldives-after--murders>

Only a handful of murder cases have been heard in all three levels of the courts. Most murder cases, of Maldivians and migrants alike, remain unresolved with no justice for the victims or their families.

The Construction Industry and Worker Health Hazards

There is a construction boom in the capital city Malé, with many housing projects and industrial locations being developed. Imported labourers from Asian countries, mostly from South Asia, work on these construction projects in the Maldives. Safety measures for workers are either non-existent or inadequate and the construction sites have become the focus of public outcry. The public has been calling for stringent safety measures and action against negligent employers and construction companies. Mass media has called out several construction sites that do not use safety nets to protect workers from accidental falls or protect bystanders from falling objects. Construction companies have also been called out for using nets designed for home-use instead of safety nets designed for construction sites. At times, the media have furnished photo and video evidence. However, the reactions of the relevant agencies to these reports are unknown. Several incidents - accidents resulting in serious injuries to both foreign and Maldivian workers and even deaths - are reported by the media, constituting a sad litany of deaths and injuries.

Several of these incidents have been highlighted on social media over the years. However, an accurate number of such incidents is unknown as this research is based on a desk review of what has been reported on public platforms.

A Sad Litany of Deaths and Injuries

On 19 June 2012, the death of a Bangladeshi worker was reported after he fell from the sixth floor of a construction site.²¹⁹

On 9 August 2018, media reported the death of a Bangladeshi worker at a resort development site in Laamu Atoll. He was reported to have fallen into a brick-laying machine. According to the news report, the Bangladesh Embassy in the Maldives was unavailable for comment.²²⁰

In December 2018, a falling cement bag from a construction site in Malé, the capital, killed an eight-year-old Bangladeshi girl.²²¹

On 18 February 2019, a Bangladeshi worker was reportedly killed at a construction site in Hulhu by a cement bag that fell from the fifth floor. The report also mentions a Maldivian victim who was injured by a cutting board that fell from a ninth-floor construction site in the capital.²²²

On 2 March 2019, the death of a Chinese worker was reported after he fell from the sixth floor of a construction site in Hulhu.²²³

²¹⁹ “Bangladesh Construction Worker Dies after Fall, June 19, 2012, <https://minivannewsarchive.com/news-in-brief/bangladeshi-construction-worker-dies-after-fall-39383>

²²⁰ “Bangladeshi Worker Dies in Construction Accident,” *Maldives Independent*, August 9, 2018, <https://maldivesindependent.com/crime-2/bangladeshi-worker-dies-in-construction-accident-140016>

²²¹ “Society Girl Hit by Cement Bag Passes Away,” *Maldives Independent*, Dec 17, 2018 <https://maldivesindependent.com/society/girl-hit-by-cement-bag-passes-away-143189>

²²² “Worker Killed in Construction Accident,” *Maldives Independent*, Feb 18, 2019, <https://maldivesindependent.com/society/worker-killed-in-construction-accident-143831>

²²³ “Chinese Worker Dies after fall from Construction Site in Hulhumale” March 2, 2019, <https://en.sun.mv/52558>

On 12 July 2019, the media reported the death of a 24-year-old Bangladeshi construction worker in the capital city after being crushed by a falling bag that carried several bags of cement²²⁴ in addition to the injury of a worker at the same site after a malfunction in a construction lift.

A public outcry followed the death of little Raushan Jian in December 2018, including calls to stop ongoing construction projects until safety guidelines were reviewed and accountability measures strengthened and implemented. An immediate review of safety guidelines and the inspection of 437 construction sites were undertaken in the Greater Malé region and the construction projects continued shortly thereafter.²²⁵ In April 2019, the Vice President is reported to have commended the Maldives Association of Construction Industries (MACI) for an initiative by the association to increase public awareness on measures taken to ensure construction-site safety.²²⁶

However, significant results of these actions are yet to be seen, as fatal accidents have continued and photographs and videos of unsafe construction sites continue to be reported on social media.

²²⁴ “Bangladeshi-Dies-in-Maldives-Construction-Site.” July 12, 2019, <https://en.prothomalo.com/bangladesh/news/198836/Bangladeshi-dies-in-Maldives-construction-site>

²²⁵ “Construction Industry in the Crosshairs after Girl’s Death,” Dec 18, 2018 <https://maldivestimes.com/construction-industry-in-the-crosshairs-after-girls-death/>

²²⁶ President’s Office, Republic of Maldives, “Press Release - Vice President Meets with the Board Members of Maldives Association of Construction Industry,” 02 April 2019, <https://presidency.gov.mv/Press/Article/20905?term=0>

Human Trafficking and Corruption

An accurate figure of inward or outward migration of foreign workers is impossible to calculate as many of the movements of these people are disguised as tourist traffic. Ineffective border controls in the Maldives contribute to the influx of undocumented workers and enable an easy passage for Maldivians to leave the country to fight in foreign wars.

The Maldives remains on Tier 2 of the US State Department Watch List for failure to comply with recommendations to increase protection mechanisms and prosecution of perpetrators of human trafficking.²²⁷ The Bureau of International Labour Affairs of the US Department of Labour noted in a 2017 report that while the Maldives had made minimal advancements in preventing the worst forms of child labour, significant improvement was still necessary to sufficiently protect children from forced labour.²²⁸

While the Prohibition of Human Trafficking Law in the Maldives is very progressive, it will need a host of supportive elements to ensure its effective implementation. Some of the steps required include regulations and procedures, training of employees in the relevant sectors, and creating a system that does not leave room for impunity.

²²⁷ USDOS – US Department of State, “2019 Trafficking in Persons Report: Maldives,” <https://www.ecoi.net/en/document/2010859.html>

²²⁸ US Department of Labour, International Child Labour & Forced Labour Report, <https://www.dol.gov/agencies/ilab/resources/reports/child-labour/maldives>

Hope for Change

With the change in government in September 2019, a very ambitious and progressive reform agenda was put in place. In September 2019, the legitimisation of thousands of undocumented migrant workers commenced along with steps toward strengthening border control. Legitimisation of workers inside the country is an important step in protecting their rights to work and to a dignified life, as they will face great financial loss if deported back to their home countries. They have paid large sums of money to employers and employment agencies to arrive in the Maldives and they need to earn to repay those costs.

Further steps are required in order to protect victims of human trafficking and forced labour. Several migrant workers receive false offers of employment and are brought to the Maldives on labour contracts that enable a form of modern-day slavery. In addition, many are coerced into engaging in criminal activity.

In consideration of the fact that there is a labour shortage in the Maldives and that it requires foreign labour to meet the manpower demands of pledged developmental projects, the Maldives must expedite the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). Necessary action to implement the convention further requires that the rights it guarantees are incorporated into domestic legislation in a timely manner.

A holistic approach to protect the rights of migrant workers is required. This flows from public awareness, education, and civic efforts to build tolerance and empathy in a context where xenophobia is growing rapidly. Legislative reforms must be made with adequate consultation with the public and civil society in order to address the challenges

faced by migrant workers in the Maldives. Lawmakers must be better educated on issues surrounding migrant workers and refugees, and have a better understanding of the country's human rights obligations if law reforms and implementation of these laws are to make a positive impact.

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4

THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING FOREIGN LABOUR MIGRATION IN NEPAL: CONCERNS AND CHALLENGES

*Barun Ghimire**

Introduction

Nepal is a country where 31.3 percent of the gross domestic product (GDP) is bolstered by remittances.²²⁹ One-third of households in Nepal report receiving remittances from family members who have migrated for foreign employment, which in comparison to other South Asian countries is a very large share.²³⁰

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²²⁹ International labour migration statistics in South Asia: Establishing a sub regional database and improving data collection for evidence-based policy-making, International Labour Organization, 2018, P. xiv available at: https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_645286/lang-en/index.htm?fbclid=IwAR0w9PhL8YsOKruzogwPnv31aUDXfPI7LWGEbYEdmiT6VNr4K NcmQGR2VEo

²³⁰ Laurent Bossavie and Anastasiya Denisova, *Youth Labour Migration in Nepal*, World Bank, p. 1 available at: <http://documents.worldbank.org/curated/en/428521522930811204/pdf/124999-WP-4-4-2018-16-2-18-YouthLabourMigrationinNepalFULL.pdf>

This proportion has been growing every year since 1997 when records indicate that remittances accounted for only 1 percent of the country's total GDP. As documented by the World Bank, remittances received by Nepal in 2000 amounted to 2.029% of GDP, while in 2015 it had increased significantly to 31.753%.²³¹ Nepal now ranks as the third highest remittance receiving country, in terms of remittance contributions to GDP.²³²

The government of Nepal has listed 110 countries as labour destination countries with restrictions currently applying only to Nepali labour going to Iraq, Afghanistan, and Libya. However, individual labour permits are issued to 172 countries. According to the data of the Department of Foreign Employment (DoFE), by the end of June 2019, a total of 4,599,576 workers acquired labour permits to work abroad. However, this figure does not include Nepali labour working in India.²³³ Amongst the permits issued, 218,273 were for women and 4,381,294 were for men. As per the country of destination for labour migration, 4,389,993, i.e., 95.44%, travelled to six Gulf countries, namely Qatar, Saudi Arabia, UAE, Kuwait, Bahrain, and Oman. In contrast, in the year 1993/94, only 3,605 workers travelled abroad for work.²³⁴ The increase in the number of migrant workers indicates the exponential growth of foreign labour migration in the last two decades.

²³¹ The World Bank, Personal remittances, received (% of GDP), World Bank Staff Estimates Based on IMF Balance of Payments Data, March 7, 2017 <http://data.worldbank.org/indicator/BX.TREPWKR.DT.GD.ZS?locations=NP>

²³² World Bank Group, *Migration and Remittances Fact Book* 2016, 3rd edition, p. 14.

²³³ Migration to India is not referred to as 'foreign employment' and is not governed by laws governing foreign employment. The mobility between India and Nepal is governed by the terms of the 1950 Friendship Treaty and no labour permits are required to migrate to India for employment.

²³⁴ National Human Rights Commission, *Situation of rights of migrant workers*, 2019, 2-3, available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Research_Report_MigrantWorker_Situation_compress_2073-03-31.pdf

The push-factors for this increased labour migration are: the years of armed conflict, lack of employment opportunities in the country, poverty, economic hardships, political unrest, and general insecurity.

The exponential rise of the number of migrant workers in recent times has made a significant impact on the country's economy. However, there is grave concern over the security and well-being of migrant workers. They are subjected to insecurity and harassment both at home and in destination countries. Migrant workers are victims of fraud perpetrated by recruitment agencies at home and face abuse and exploitation abroad, leading to severe injury and even death during employment in the destination country. Furthermore, migrant workers suffer from poor working and living conditions and are subjected to many forms of discrimination in their destination countries. Their hardships in their countries of destination include: low wages, non-payment of wages, working in unsafe environments, lacking social protection, denial of the freedom of association (the right to form and join trade unions), minimum workers' rights, and discrimination.²³⁵

The National Human Rights Commission of Nepal's (NHRCN) report (2019) identified some of the challenges regarding migration governance in general and specific challenges in relation to the recruitment process and access to justice when problems occur. The report highlights various malpractices, including the lack of professionalism in recruiting agencies. The agencies do not ensure proper health checkups/screening processes, or provide effective pre-departure orientations and trainings. They promote a 'free visa, free ticket' policy but that policy does not exist.

²³⁵ International Labour Migration, *International Labour Migration: A Right Based Approach* (Cornell University ILR School 2010, Geneva, International Labour Office) available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1086&context=intl>

Furthermore, there are no guaranteed procedures to address the injury or death of migrant workers, and the workers lack information and awareness of how to deal with emergencies. There is no rights-based approach to deal with migrant workers' issues and only weak procedures to monitor the agencies established to protect the migrant workers.

Despite the importance of migrant workers in terms of their contributions to the economy, the issues relating to migrant workers receive little or no attention in local level politics. There are few resources invested in the bodies managing and monitoring migrant labour. Issues facing migrant workers, such as safety, working conditions and fair wages are rarely taken up at the level of bilateral diplomacy. The legal procedures and institutions that should safeguard migrant workers are ineffective and there is scarce attention paid to reforming them. Most migrant workers are caught in a debt trap, paying exorbitant fees to get out of the country and as they receive low wages, they are unlikely to be able to get out of this trap. Yet these major concerns are not addressed through legal and policy reforms.²³⁶

There are a number of reports written by government and non-governmental organisations that express alarm and concerns regarding the security of Nepali migrant workers. Amnesty International in its report stated that one of the most common problems faced by migrant workers abroad is deception about the terms and conditions of their contracts.

²³⁶ National Human Rights Commission, *Situation of Rights of Migrant Workers*, 2019, p. 2-3, available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Research_Report_MigrantWorker_Situation_compress_2073-03-31.pdf.

The most common deception is related to salaries, but a number of migrant workers are also deceived about the nature of their work. The most reported disputes are over salary and they refer to underpayment, late payment, and even non-payment of wages.²³⁷ The series of reports published by the Ministry of Labour, Employment and Social Security (MoLESS) refer to the death of 5,892 Nepali migrant workers while working overseas from the period of 2008 to 2017.

In 2016/2017, 822 deaths were reported,²³⁸ and in 2017/2018, 753 deaths were reported.²³⁹ In most of the cases relating to death, the cause of death is often recorded as unidentified/unknown and of workers dying in their sleep. Cases of abuse, exploitation, infringement of labour rights, and the violation of human rights are reported regularly in the media and in other reports. The travails of migrant workers are not unknown to the government and relevant institutions. The MoLESS reports identify the procedural and regulatory challenges in migration governance, including access to justice and protection of the rights of migrant workers in destination countries. They also noted that there are major challenges to the implementation of existing laws, plans, and policies.²⁴⁰

²³⁷ Amnesty International, *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*, December 2011, p. 52, available at <http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>

²³⁸ MoLESS, *Labour Migration for Employment—A Status Report for Nepal: 2015/2016, 2016/2017 and 2020* <https://asiafoundation.org/wp-content/uploads/2018/05/Nepal-Labour-Migration-status-report-2015-16-to-2016-17.pdf>.

²³⁹ Nepal Labour Migration Report 2020, Government of Nepal Ministry of Labour, Employment and Social Security, available at <https://moless.gov.np/wp-content/uploads/2020/03/Migration-Report-2020-English.pdf>

²⁴⁰ MoLESS, *Labour Migration for Employment—A Status Report for Nepal: 2015/2016–2016/2017, 2018*, p. 63, <https://asiafoundation.org/wp-content/uploads/2018/05/Nepal-Labour-Migration-status-report-2015-16-to-2016-17.pdf>

Legislative and Institutional Apparatus

Nepal does not shy away from offering *de jure* legal protection to migrant workers. The rights of migrant workers are protected and guaranteed under the constitution and various national laws, international laws, global and regional commitments, and bilateral agreements. To implement the legal protection offered, specialised government institutions are also established in Nepal. Thus, in terms of legislative and institutional arrangements, there is a comprehensive apparatus in place. A brief overview of the existing legal and institutional apparatus governing foreign labour migration is essential to identify the major challenges relating to migrant workers' access to justice.

National legal framework

The key legal instruments relevant for the protection of migrant workers and to their access to justice include: The Constitution of Nepal (2015), Foreign Employment Act (2007), Foreign Employment Policy (2012), Human Trafficking and Transportation (Control) Act (2007), and Labour Act (2017).

Constitution of Nepal, 2015

The fundamental rights of individuals enshrined in the Constitution of Nepal protect and guarantee the constitutional rights of migrant workers. Article 29 guarantees the right against exploitation; Article 29 (3) prohibits trafficking, slavery, serfdom or any form of forced labour; and Article 18 guarantees non-discrimination on the grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction and equal protection of the law.

Moreover, the right to employment under Article 33, the right of labour under Article 34, and the rights of women under Article 38 further protect and guarantee the rights of migrant workers, including women migrant workers.

The Directive Principles, Policies, and Obligations of the State enshrined under Part 4 of the constitution also addresses the rights of migrant workers. Article 51 (i) refers to the policies regarding labour and the employment clause (5) specifically provides for the regulation and management of foreign employment with the objective of making the foreign employment safe, systematic, and free from exploitation, as well as to guarantee employment and rights of labourers.

Foreign Employment Act, 2007

The Foreign Employment Act (FEA) is the primary Act governing the foreign employment sector. As stated in its preamble, the Act aims at making the “foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business.” The Act provides authority to regulate minimum wages and costs of recruitment and includes requirements for training and insurance to ensure protection to the workers. The Act also regulates recruitment agencies prescribing penalties for fraud and misrepresentation.

Some of the key provisions in the Act include: the power of government to make bilateral agreements with destination countries²⁴¹ and agree on minimum remunerations, enforceable contracts, and secure insurance coverage for workers. The Act also requires that workers receive

²⁴¹ Foreign Employment Act (FEA), 2007, Section 4.

orientation training from the institution having obtained permission from the Department of Foreign Employment pursuant to Section 28,²⁴² establishing a foreign employment welfare fund under the Foreign Employment Promotion Board,²⁴³ a complaints mechanism,²⁴⁴ an investigation and enquiries mechanism, punishment for licensees, and the trial and settlement of cases.²⁴⁵ The Act further requires that migrant workers depart to their destination countries only through the national airport,²⁴⁶ that there is a labour desk at the national airport,²⁴⁷ that there are labour attachés in the destination countries,²⁴⁸ that only license holders are permitted to undertake dealings in foreign employment²⁴⁹, pre-departure orientation training,²⁵⁰ insurance to be procured prior to going for foreign employment,²⁵¹ and contracts to be made between the employers or their agents, workers and licensees regarding the terms and conditions of employment.²⁵² It has also incorporated some protective provisions, such as the prohibition of sending minors for employment²⁵³ and protection against gender discrimination.²⁵⁴

²⁴² FEA 2007, Section 28 (Provisions relating to institutions running orientation training).

²⁴³ FEA 2007, Chapter 8, Sections 38-42.

²⁴⁴ FEA 2007, Sections 23-36.

²⁴⁵ FEA, Chapters 9-11.

²⁴⁶ FEA, Section 22.

²⁴⁷ FEA, Section 73.

²⁴⁸ FEA, Section 68.

²⁴⁹ FEA, Section 10.

²⁵⁰ FEA, Section 27.

²⁵¹ FEA, Section 26.

²⁵² FEA, Section 25.

²⁵³ FEA, Section 7.

²⁵⁴ FEA, Section 8.

The Act has also established two institutional mechanisms, namely a Complaint Registration and Investigation Section within the Department of Foreign Employment (DoFE) and a Foreign Employment Tribunal.

Although these legislative provisions principally protect and guarantee the rights of migrant workers, their implementation poses a critical challenge and there are frequent instances recorded of the exploitation and victimisation of migrant workers. The Act principally provides a regulatory mechanism to supervise the activities of foreign employment agencies, but it does not provide a mechanism to address the rights and protection of migrant workers.

The structure and content of the Act focuses on foreign employment and is business-oriented and not on the rights and concerns of migrant workers *per se*.

Some of the failures and key loopholes in the Act include, but are not limited to the:

- Complex and complicated complaint procedures;
- Lack of specific provisions protecting migrant workers from instances of violence;
- Lack of provisions to recognise the right to protection of undocumented migrant workers;
- Failure to provide for the rights and protection of domestic workers;
- Lack of provisions to restrict recruitment costs and provide for protection mechanisms such as procedures to access legal assistance; and

- Lack of provisions to protect women migrant workers.

Foreign Employment Regulation, 2008

This regulation mainly sets out the rules and regulations for the implementation of the Foreign Employment Act, 2007. It deals with the procedural aspects of issuing, renewing, and cancelling licenses of recruiting agencies and other licensee (institutions providing orientation training and health checkups) under the Act. It also lists the procedural requirements for selecting workers, such as the need for advertisement, the application process, insurance requirements, pre-departure training, and skills training. It also provides details on the establishment and utilisation of a Foreign Employment Welfare Fund.

The regulation came into effect in 2008 amending the previous Foreign Employment Regulation and in comparison, it has incorporated some progressive provisions. For instance, the welfare fund may be used to provide legal aid to Nepalese migrant workers arrested or charged in foreign countries. This is an important development in protecting the rights of migrant workers.

Foreign Employment Policy, 2012

The Foreign Employment Policy (FEP), 2012 was formulated with the objectives of making foreign employment safe, organised, respectable, and reliable, and drawing on the economic and non-economic benefits of foreign employment to alleviate poverty by maximising the contribution of foreign employment revenues for the sustainable economic and social development of the country. It outlines the policy to address issues faced by female labour migrants and to secure their rights throughout the entire cycle of migration.

Furthermore, it aims to ensure good governance in regard to the management of foreign labour migration and to utilise regional, national, and international networks to promote regional cooperation in managing foreign employment.

Unlike the previous policy, the current policy focuses on the entire process of migration. It highlights the importance of information dissemination regarding foreign employment and the necessity to develop programmes to address all stages of migration, including the pre-employment, pre-departure, and departure phases; the period migrants are on the job; and their reintegration into the Nepali labour force and society on their return. It also points out the need for more research on the migrant experience, as well as programmes to address the social and familial relationships of those associated with labour migration.

Human Trafficking and Transportation (Control) Act, 2007

The Human Trafficking and Transportation (Control) Act (HTTCA) details provisions closely connected to offences relating to foreign employment. The elements of trafficking under the HTTCA are enshrined in Section 4 (1) of the Act which provides that: “(a) to buy or sell a person for any purpose; (b) to engage someone in prostitution, with or without receiving a benefit; (c) to extract a human organ except as determined by law; or (d) to engage in prostitution”. The offence of “trafficking” is primarily centred on prostitution, sex, and organ trafficking-related crimes. The act of “buying or selling a person for any purpose” (akin to slavery) being one of the elements of trafficking, could potentially include cases of labour trafficking, both internationally and within Nepal. But as it is not clearly stated, the offences under the HTTCA are ambiguous regarding trafficking for the purpose of labour exploitation.

Labour Act, 2017

The New Labour Act was considered to be a progressive improvement, as it is applicable to companies, private firms, partnership firms, cooperatives, associations or other organisation in operation, or established, incorporated, registered or formed under prevailing laws to undertake industry or business or provide service with or without profit motive.

The New Labour Act has removed the head count requirement for applicability. The New Labour Act is applicable to all entities regardless of the number of workers/employees. Previous Act was applicable only to an entity where ten (10) or more people engaged in the work.

However, the head count threshold of continues for certain arrangements to be made in an entity such as one having ten (10) or more workers should constitute a collective bargaining committee, and a Labour relations committee.

The New Labour Act has also made provisions in relation to settlement of dispute with the entity registered in a foreign country undertaking sales and market activities in Nepal through representative or hiring Labour in Nepal. In accordance with the New Labour Act, the representative or the Labour hired by the foreign entity may file a complaint before Labour Office or Labour Court if such entity violates the terms and conditions of the employment agreement.

The New Labour Act also deals with domestic workers. The New Labour Act has made certain provisions relating to domestic workers. For example, the New Labour Act provides that the minimum remuneration of such workers, public and weekly holidays should be as prescribed. The employer can deduct the expenses incurred in providing food and lodging from the remuneration if such is provided.

Domestic workers should be allowed to celebrate festivals as per their culture, religion, tradition.²⁵⁵

Institutional Apparatus

The Government of Nepal provides for institutions that will promote safe and decent foreign employment. The institutional framework is headed by the Ministry of Labour, Employment and Social Security (MoLESS). The Foreign Employment Act, 2007 mandated the creation of institutions designed to ensure the welfare of Nepalese foreign employment workers before departure and at their destination of work.

These institutions include the Department of Foreign Employment, Foreign Employment Board, Foreign Employment Tribunal, and labour attachés²⁵⁶ Further, the Ministry of Foreign Affairs, Department of Consular Services, and National Human Rights Commission also are key institutions in the context of migration issues.

Ministry of Labour, Employment and Social Security

The Ministry of Labour, Employment and Social Security (MoLESS) is a key institution in the governance of labour migration in Nepal. It is responsible for ensuring that foreign employment is well managed and that the safety and dignity of migrant workers are secured.²⁵⁷

²⁵⁵ <http://www.pioneerlaw.com/news/Labour-act-2017-2074-major-highlights>

²⁵⁶ “Labour Attaché” means the labour attaché appointed pursuant to Section 68. This term also includes an officer employee, in an abroad-based diplomatic mission, entrusted with the responsibility of promoting the interests of Nepalese workers. The Act requires the appointment of a labour attaché in destination countries where 5,000 or more Nepali migrant workers are based.

²⁵⁷ “Introduction,” official website of the Ministry of Labour, Employment and Social Security available at https://moless.gov.np/?page_id=218

The ministry is also responsible for promoting employment opportunities in Nepal by utilising the skills, technology, and capital gained from foreign employment. The functional areas of MoLESS in respect to foreign employment are specified in Nepal Government Work Division (*Karyabibhajan*) Regulation, 2074. The functional areas include:

- Development of policy and laws relating to the management and regulation of foreign employment;
- Collection of statistics and the studies and investigations relating to all forms of employment including foreign employment;
- Matters concerning labour attachés (appointment, monitoring, etc.); and
- Entering into international agreements, bilateral treaties, conventions, communication, and colabouration with different countries on the issues of foreign employment.

As of fiscal year 2019/20, the priority areas relating to foreign employment that are in line with the objectives of the ministry are:

- Encouraging migrant workers to send remittance to their families through banking channels and to invest it in productive sectors – e.g. tourism, small industries, agro-business, etc.;²⁵⁸
- Conducting bilateral agreements with destination countries that would include provisions for recruitment costs to be borne by the employer;²⁵⁹ and

²⁵⁸ Budget Speech for the fiscal year 2076/77.

²⁵⁹ Ibid.

- Providing trainings to promote entrepreneurship and skill development.²⁶⁰

Department of Foreign Employment

The Department of Foreign Employment (DoFE) was established under Foreign Employment Regulation, 2008 on December 31, 2008 as the sole organisation responsible for monitoring foreign employment.²⁶¹ DoFE is the key institution in facilitating and regulating foreign employment in Nepal.²⁶²

The main objective of DoFE is to promote safe and dignified foreign-based work opportunities for Nepal's migrant workers, including regulating recruitment agencies and other businesses offering related services to ensure that their terms are fair and their operations are decent.²⁶³

DoFE is responsible for carrying out policy works, regulations and directives, and working procedures formulated by the FEA. DoFE is responsible for regulating the foreign employment business, including the issuance, renewal, and revocation of the licence required to operate such a business. It may also authorise institutions to provide foreign employment orientation trainings and monitor their operations; register complaints related to foreign employment; and to investigate and to prosecute cases registered in the department.

²⁶⁰ Ibid.

²⁶¹ "Introduction," Official website of Department of Foreign Employment available at <http://www.dofe.gov.np/Introduction.aspx>

²⁶² Ministry of Labour and Employment, *Labour Migration for Employment A Status Report for Nepal: 2015/2016 – 2016/2017*, Government of Nepal: Ministry of labour and employment, p-47 available at <http://www.dofe.gov.np/report.aspx>.

²⁶³ Ibid

It is authorised to coordinate support in the rescue of migrant workers from destination countries and in the provision of compensation to migrant workers. DoFE also provides labour permits to the workers who apply for foreign employment.

The department has powers of a quasi-judicial nature with jurisdiction to decide on a case if an offence has occurred.²⁶⁴ It also runs the Foreign Employment Information Management System, a database with details of all labour permit applications, permits granted, complaints made, and cases resolved, regarding foreign employment. It further provides online services to migrant workers, such as tracking progress in obtaining labour permits.

Employment Board

The Foreign Employment Board (FEB), formerly known as the Foreign Employment Promotion Board (FEPB), was established in 2008 and is chaired by the Minister of Labour and Employment and Social Security (MoLESS).²⁶⁵ The major responsibility of FEB is to ensure the social protection and welfare of migrant workers. The functions of the Foreign Employment Board are to:²⁶⁶

- Study international labour markets and explore new international labour markets;
- To collect, process, and publish information for the promotion of foreign employment;
- Mobilise the Foreign Employment Welfare Fund;

²⁶⁴ Sections 43-59 of the Foreign Employment Act.

²⁶⁵ Section 38 of the FEA, 2007.

²⁶⁶ FEA, Section 39.

- Undertake acts required to protect the interests of the workers who have gone for foreign employment;
- Formulate, implement, monitor, and evaluate programmes to utilise the skills, capital of, and technology learnt by, the migrant workers who have returned and use the same for national interests;
- Prescribe qualifications for the registration of institutions providing foreign employment orientation trainings; and
- Monitor the institutions licensed to operate foreign employment businesses.

Foreign Employment Tribunal

The Foreign Employment Tribunal (FET) was established in 2008 pursuant to the Foreign Employment Act (2007) and Foreign Employment Regulations (2008). Its procedures are outlined in the Foreign Employment Tribunal Rules (2012). It is a judicial body consisting of three members, chaired by a judge of the Appellate Court, a case-officer of the Labour Court, and a first-class officer of the judicial service.

Its jurisdiction covers cases regarding licenses for recruitment agencies and ensuring recruitment agencies operate lawfully.

Labour Attachés

Section 68 of FEA 2007 requires the appointment of labour attachés for countries that host 5,000 or more workers. The labour attaché is responsible for recording migrant workers' grievances and assisting them in resolving their problems. The basic functions, duties, and power of labour attachés are to:²⁶⁷

- Provide information to the government of Nepal about the conditions of labour and employment and immigration requirements of the destination country and the steps taken by that country to protect labour, international human rights, and interests of workers;
- Assist in the resolution of such disputes, if any dispute arises between a worker, employer institution, or licensee;
- Make necessary arrangements for bringing back to Nepal any worker who is rendered helpless in the course of foreign employment;
- Provide information thereon to the government of Nepal if any work corresponding to the skills of the Nepalese worker is available in the concerned country;
- Repatriate the body of any worker, to Nepal, with the assistance of the concerned country or employer institution;
- Initiate a bilateral agreement at the governmental level for the supply of workers from Nepal;
- Advise workers and discourage them from doing any work other than that set out in the agreement; and

²⁶⁷ FEA, Section 68(2).

- Supervise any activity that may affect the workers.

Bahrain, Kuwait, Malaysia, Oman, Qatar, the Republic of Korea, Saudi Arabia, and the UAE are the eight countries to which the government of Nepal has appointed labour attachés.²⁶⁸

Vocation and Skills Development Training Centre

The Vocational and Skill Development Training Academy (VSDTC) was established in 1977 to solve the unemployment problem of the country and to alleviate poverty through a skill development programme.²⁶⁹ VSDTC currently provides counselling services for foreign employment workers and assists workers to register for and use online banking services.

The key institutions designed to support foreign employment are discussed above. However, there are other institutions with primary functions that are not focused on migrant workers, but which nevertheless intersect and are necessary to support migrant workers. The organisations and institutions with functional relevance in managing foreign labour migration are: The Ministry of Foreign Affairs, Department of Consular Services, and National Human Rights Commission.

²⁶⁸ Ministry of Labour and Employment, *Labour Migration for Employment A Status Report for Nepal:2015/2016 – 2016/2017*, Government of Nepal: Ministry of labour and employment, p-50 available at <http://www.dofe.gov.np/report.aspx>

²⁶⁹ Government of Nepal, Ministry of Labour, Employment & Social Security Vocational and Skill Development Training Academy, Introduction, available at: <http://training.gov.np/en/introduction/>

Ministry of Foreign Affairs

The Ministry of Foreign Affairs is responsible for formulating and implementing Nepal's foreign policy. Thus, strengthening Nepal's bilateral, regional, and multilateral relations; projecting and promoting Nepal's image in the international arena; promoting Nepal's development diplomacy; and protecting the rights and interests of Nepalis living abroad are the key tasks of the ministry.²⁷⁰ Its mandate and the nature of its inherent work make this ministry a very relevant institution in respect of foreign labour migration.

The role and function of The Ministry of Foreign Affairs are as follows:²⁷¹

- Formulation and implementation of Nepal's foreign policy;
- Maintenance and promotion of friendly relations with foreign countries;
- Protection and promotion of rights, interests, and security of Nepali nationals living abroad;
- Conducting of development diplomacy;
- Coordination with Nepali missions abroad and foreign diplomatic missions in Nepal;
- Negotiations and agreements with foreign governments at regional and multilateral forums;
- Providing policy inputs and reporting on matters of national interest to competent authorities of Nepal;

²⁷⁰ 'About MoFA', Official website of Ministry of Foreign Affairs available at <https://mofa.gov.np/about-mofa/>

²⁷¹ Ibid.

- Operation of Nepal Foreign Service;
- Delivery of passport and consular services; and
- Dealing with Non-resident Nepali (NRN) affairs;

Department of Consular Services

The Department of Consular Services is responsible for effective coordination with the Nepali missions abroad to provide legal assistance, including the rescue of Nepalese stranded abroad, repatriation of dead bodies of Nepali nationals, and assistance in getting compensation and insurance to the legal heir of any Nepali injured or deceased while undertaking various jobs and professions in foreign countries. The department is also responsible for consular attestation of the documents issued by governmental bodies to Nepali citizens that are to be presented abroad.²⁷²

National Human Rights Commission

The National Human Rights Commission of Nepal (NHRCN) is an independent and autonomous constitutional body with a separate sphere of responsibilities in the constitutional legal system of the country. The Constitution of Nepal mandates NHRCN to respect, protect, and promote human rights and to ensure their effective enforcement.²⁷³ This overarching responsibility of protecting and promoting the human rights of all people includes the rights of the migrant worker.

²⁷² 'Services at the consular services department,' Official website of Department of Consular Services available at <http://nepalconsular.gov.np/cn/page/about-us>.

²⁷³ The Constitution of Nepal (2015), Article 249.

They have also established formal mechanisms of cooperation by signing memoranda of understanding (MoUs) with other NHRIs, holding regional and global conferences to shape understanding on issues relating to the rights of migrant workers. They play a prominent bridging role between the different government institutions, civil society and rights-holders.²⁷⁴

As the rights of migrant workers are key human rights concerns, NHRCN is working actively on the issue. NHRCN conducts research and as part of its ongoing work towards the protection of migrant workers' rights, recently published a report on migrant workers.²⁷⁵ The report discusses national legislation as well as international law that guarantees, defends, and protects the rights of migrant workers and their families. The report is based on comprehensive research and studies the problems and challenges that migrant workers face before and during the recruitment process. Among other activities, NHRCN has also signed a MoU with the National Human Rights Committee of Qatar for the protection of the rights of Nepali migrant workers based in Qatar.²⁷⁶ Furthermore, NHRCN also organised the International Conference on the Protection of Rights of Migrant Workers in November 2019.

²⁷⁴ National Human Rights Commission, "International conference on the rights of migrant workers," official website of National Human Rights Commission, Nepal available at <https://www.intlconferencemw.nhrcnepal.org/about/conference>

²⁷⁵ National Human Rights Commission, *Situation of Rights of Migrant Workers*, National Human Rights Commission, 2019, available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Research_Report_MigrantWorker_Situation_compress_2073-03-31.pdf

²⁷⁶ Full Text MoU available at: <http://www.sartuc.org/wp-content/uploads/2015/11/MOU-Between-NHRC-Qatar-Nepal.pdf>

International Legal Framework

The Constitution of Nepal commits to “implement international treaties, agreements to which Nepal is a party.”²⁷⁷ Furthermore, the Treaty Act (1990) makes treaty provisions enforceable in Nepal upon ratification, accession, acceptance or approval of such treaties. In unequivocal language, the Treaty Act states: “In case of the provisions of a treaty, to which Nepal or the Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.”²⁷⁸ Thus, Nepal has a clear constitutional obligation to implement the treaties and agreements to which it is a party.

Nepal has ratified several international human rights instruments and ILO conventions. These instruments and their relevant provisions are relevant and applicable to Nepal in the context of labour migration. They include: the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966) and its Optional Protocols, International Covenant on Economic, Social and Cultural Rights (1966), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Elimination of All Forms of Discrimination against Women (1979), and Convention on the Rights of the Child (1989).

²⁷⁷ *The Constitution of Nepal* (2015), Article 51(b) 3.

²⁷⁸ Nepal Treaty Act (1990), Section 9, available at: <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/treaty-act-2047-1990.pdf>

The relevant International Labour Organisation conventions that Nepal has ratified include: the Weekly Rest (Industry) Convention (1921), Forced Labour Convention (1930), Right to Organise and Collective Bargaining Convention (1949), Equal Remuneration Convention (1951), Abolition of Forced Labour Convention (1952), Discrimination (Employment and Occupation) Convention (1958), Minimum Wage Fixing Convention (1970), Minimum Age Convention (1973), Tripartite Consultation (International Labour Standards) Convention (1976), and Worst Forms of Child Labour Convention (1999).

Nepal is yet to ratify some of the international instruments specifically relating to migrant workers. These documents include: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000); International Labour Organisation Convention on Domestic Workers 189 (2011); Migrant Workers (Supplementary Provisions) Convention (1975) (No. 143); Migration for Employment Convention (Revised) (1949) (No. 97); and Private Employment Agencies Convention (1997) (No. 181). Despite Nepal not having ratified these instruments, they are still relevant to the nation. In the *Rajendra Prasad Dhakal Case*,²⁷⁹ the Supreme Court of Nepal laid down a precedent that an instrument not ratified by Nepal - in this case the Convention for the Protection of All Persons from Enforced Disappearances - can also be relevant and applicable.

²⁷⁹ Decision of the Supreme Court on Disappearance Case, Order Re: Habeas Corpus, Writ No. 3775 registration date 2055/10/7/5 B.S. (Jan. 21, 1999).

Thus, international treaties on the issue of labour migration can have an impact in Nepal, both in the legislative process and through judicial decisions. In a recently decided public interest litigation case, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) was cited by the applicant (petitioning) organisation, in order to establish that its key provisions are part of international practice and is of relevance to Nepal.²⁸⁰

Bilateral Agreements

The government is taking measures to ensure basic protection, labour standards, and work and living conditions for Nepali migrant workers in destination countries through bilateral agreements. Nepal concluded the Bilateral Labour Agreement (BLA) with Qatar in 2005²⁸¹ and has concluded a memorandum of understanding (MoU) with the UAE in 2007²⁸² and in 2019.²⁸³

²⁸⁰ Case concerning the death of migrant workers, Writ No. 075-WO-0916, writ issues on Nov 2017 (full text of the judgment not available yet).

²⁸¹ Full text of the MoU available at: https://www.ceslam.org/uploads/backup/GoN_2005_AgreementBetweenTheGovernmentOfNepalAnd_TheGovernmentOfTheStateOfQatar.pdf

²⁸² Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2007_MoUBetweenNepalAndUAE.pdf

²⁸³ Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2019_MoUNepalandUAE.pdf

Similar MoUs were signed with the Republic of Korea (G2G model) in 2007,²⁸⁴ Bahrain in 2008,²⁸⁵ Malaysia in 2018,²⁸⁶ and most recently with Mauritius in 2019.²⁸⁷

An agreement was initially signed with Japan in 2009 (in the form of a directive) and recently in 2019 in the form of a Memorandum of Cooperation on a Basic Framework for Information Partnership for Proper Operation of the System pertaining to Foreign Human Resources with the Status of Residence of “Specified Skilled Worker”.²⁸⁸ The government of Nepal has also signed a Joint Pilot Programme with Israel in 2015 and General Agreement/BLA with Jordan in 2017. According to MoLESS, similar agreements with Oman, Saudi Arabia, Kuwait, Turkey, and Israel are in the pipeline.²⁸⁹

²⁸⁴ Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2007_MoUNepalAndSouthKorea.pdf

²⁸⁵ Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2008_MoUNepalAndBahrain.pdf

²⁸⁶ Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2018_MoUNepalAndMalaysia.pdf

²⁸⁷ Full text of MoU available at: https://www.ceslam.org/uploads/backup/GoN_2019_MoUwithMauritius.pdf

²⁸⁸ Umesh Poudel, “Nepal, Japan ink labour pact,” *The Himalayan Times*, available at: <https://thehimalayantimes.com/business/nepal-japan-ink-labour-pact/> DATE?

²⁸⁹ Extract from Presentation of MoLESS, Government Efforts and Initiatives (Policy Reform: A Continued Process).

International and Regional Commitment

Global Compact on Safe, Orderly and Regular Migration:

The Global Compact for Migration (GCM) was prepared under the auspices of the United Nations to cover all dimensions of international migration in a holistic and comprehensive manner.²⁹⁰ The United Nations General Assembly officially endorsed the Global Compact for Safe, Orderly and Regular Migration, a non-binding agreement adopted in Marrakesh on 10 December 2018 by 164 member States and endorsed by the United Nations General Assembly on 19 December 2018.²⁹¹ It has the distinction of being regarded as the first agreement on migration negotiated at the intergovernmental level.

Nepal was involved in framing the compact from the preliminary stages and has actively participated at the Intergovernmental Conference in Marrakesh, Morocco. Gokarna Bista, former Minister for MoLESS stated, “... through the compact, we have not only accepted migration as a reality, but also reinforced the foundation for achieving the Sustainable Development Goals.”²⁹²

²⁹⁰ ‘Global Compact for Migration’, UN for Refugee and Migrants available at <https://refugeesmigrants.un.org/migration-compact>

²⁹¹ ‘General Assembly officially adopts roadmap for migrants to improve safety, ease suffering’, 19 December 2018, UN News official website available at <https://news.un.org/en/story/2018/12/1028941>

²⁹² ‘Statement by Hon. Gokarna Raj Bista, Minister for Labour, Employment and Social Security of Nepal at the plenary session of the Intergovernmental Conference on Global Compact for Migration’ 10 December 2018, available at https://mofa.gov.np/wp-content/uploads/2018/12/Statement-_GCM.pdf

Further, Pradeep Kumar Gyanwali, Minister for Foreign Affairs and Head of the Nepali Delegation to the 74th session of the United Nations General Assembly on 27 September 2019, emphasised that ensuring the rights and well-being of migrant workers is a matter of priority to Nepal. He further stated, “The Global Compact on Migration (GCM) adopted in December last year is an important stepping stone and a good example of multilateralism at work”. He urged other UN member States, “to own the process and be part of this outcome.”²⁹³

The government of Nepal and civil society organisations are actively engaged in consultation meetings on the GCM. The government of Nepal with support from the International Organisation for Migration (IOM) organised a series of multi-stakeholder consultations with development partners, governmental agencies, UN agencies, CSOs, academia, the private sector, media, etc. to develop the national position paper on the GCM.²⁹⁴

²⁹³ Statement by Hon. Pradeep Kumar Gyawali, Minister for Foreign Affairs and Head of Nepali Delegation to the 74th session of UNGA, 27th Sept. 2019, available at: https://www.un.int/nepal/statements_speeches/statement-hon-pradeep-kumar-gyawali-minister-foreign-affairs-and-head-nepali

²⁹⁴ Nepal National CSO Consultation on the Implementation of the Global Compact for Migration, Migrant Forum in Asia, available at: <https://mfasia.org/nepal-national-cso-consultation-on-the-implementation-of-the-global-compact-for-migration/>

Sustainable Development Goals

The 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development, adopted by world leaders in September 2015 at a UN Summit officially came into force on 1 January 2016 and serve as the blueprint to achieve a better future for all. They address the global challenges we face, including those related to poverty, inequality, climate, environmental degradation, and the challenges of securing prosperity, peace and justice.²⁹⁵

The work plan for the protection of migrant workers is included in Sustainable Development Goal 8 which relates to decent work and economic growth, and Goal 10 which relates to reduced inequalities within and among countries. Target 8.7 of Goal 8 is to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. Target 8.8 of Goal 8 is to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, and in particular women migrants, and those in precarious employment. Target 10.7 of Goal 10 is to facilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

Nepal is committed to the SDGs and has made substantive efforts towards achieving those goals. In December 2017, the National Planning Commission published a report - 'Sustainable Development Goals, status and roadmap: 2016-2030'.

²⁹⁵ 'About the Sustainable development Goals', Sustainable Development Goals official website available at <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

The targets to be achieved mentioned in the report include: achieving a per capita GDP growth of at least seven percent by 2030, lowering unemployment to less than 10 percent, and eliminating the worst forms of child labour.²⁹⁶ The proposed specific target for SDG 10 is to protect workers from deteriorating real wages.²⁹⁷ However, Nepal cannot attain this target without addressing the issue of labour and migrant workers. Thus, Nepal's commitment towards achieving SDGs is linked to and must also reflect its commitment towards ensuring safe, orderly, and dignified labour migration for Nepali nationals.

SAARC Declaration

The 18th SAARC Summit Declaration, known as the Kathmandu Declaration 2014, also included regional commitment towards safer migration. At the summit, the heads of SAARC countries agreed to collaborate and cooperate on the safe, orderly and responsible management of labour migration from South Asia to ensure the safety, security, and well-being of their migrant workers in the destination countries outside the region.²⁹⁸

²⁹⁶ Sustainable Development Goals, status and roadmap: 2016-2030, National Planning Commission, December 2017, p.31, available at https://www.npc.gov.np/images/category/SDGs_Report_Final.pdf

²⁹⁷ [Ibid, P.33](#)

²⁹⁸ 'Full text of Kathmandu Declaration', Asia Pacific Migration network, available at <http://apmigration.ilo.org/news/full-text-of-the-kathmandu-declaration>

Abu Dhabi Dialogue

The Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia or the Abu Dhabi Dialogue launched a collaborative approach to address development in temporary labour mobility in Asia.²⁹⁹ The broad purpose of the first meeting of the Abu Dhabi Dialogue held in 2008 was to provide a forum for the discussion of new ideas and concrete activities towards the development of a comprehensive and practical framework for the management of temporary contractual labour mobility in Asia.³⁰⁰

The Abu Dhabi Dialogue focuses on developing four key, action-oriented partnerships between countries of origin and destination for development around the subject of temporary contractual labour based on a notion of partnership and shared responsibility. This calls for:

- Developing and sharing knowledge on labour market trends, skill profiles, workers, and remittance policies and flows;
- Building capacity for more effective matching of labour supply and demand;
- Preventing irregular recruitment and promoting welfare and protection measures for contractual workers; and
- Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual work that advances the mutual interests of the countries of origin and of destination.

²⁹⁹ 'Abu Dhabi Dialogue', International Organisation for Migration available at <https://www.iom.int/abu-dhabi-dialogue>

³⁰⁰ 'Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia the "Abu Dhabi Dialogue"', Abu Dhabi, 21-22 January 2008 available at https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/abudhabi/abu_dhabi_dialogue.pdf

The fifth Abu Dhabi Dialogue ministerial conference was held in Dubai on 16-17 October 2019³⁰¹ and Minister of Labour, Employment and Social Security Gokarna Raj Bista represented Nepal at the conference.³⁰² Furthermore, a report on the implementation of ADD thematic programmes was submitted on 17 October 2019 at the conference.³⁰³ Nepal is a member of this dialogue³⁰⁴ and has participated regularly and actively in this process.

Colombo Process

The Colombo Process is a regional consultative process on the management of overseas employment and contractual labour for countries in Asia. The Colombo Process was established in 2003 in response to calls from several Asian countries that sent labour abroad and increasingly recognised the need to optimise the benefits of organised labour migration whilst protecting their migrant workers from exploitative practices in recruitment and employment.³⁰⁵

³⁰¹ 'Fifth Abu Dhabi Dialogue Ministerial Consultation, Abu Dhabi Dialogue among the Asian sending and receiving countries, 16-17 Oct 2019, available at <http://abudhabidialogue.org.ae/consultations/fifth-abu-dhabi-dialogue-ministerial-consultation>

³⁰² Ibid.

³⁰³ 'Abu Dhabi Dialogue 5th Ministerial Consultation Report on the Implementation of ADD Thematic Programs', Abu Dhabi Dialogue, 17 October 2019, available at <http://abudhabidialogue.org.ae/sites/default/files/document-library/ADD%205th%20Ministerial%20Consultation%20Report.pdf>

³⁰⁴ 'Abu Dhabi Dialogue consultations', Abu Dhabi Dialogue among the Asian sending and receiving countries available at <http://abudhabidialogue.org.ae/consultations>

³⁰⁵ Colombo Process, Migrant Forum in Asia available at https://mfasia.org/mfa_programs/advocacy/colombo-process/

The Colombo Process provides a forum for Asian countries exporting labour to:

- Share experiences, lessons learned, and best practices on overseas employment;
- Consult on issues faced by overseas workers, labour sending and receiving States, and propose practical solutions for the wellbeing of overseas workers;
- Optimise development benefits from organised overseas employment and enhance dialogue with countries of destination;
- Review and monitor the implementation of recommendations and identify further steps for action.³⁰⁶

Nepal has been a member of the Colombo Process since its inception and chaired the Colombo Process in 2017-2019.³⁰⁷ The government of Nepal also hosted the Sixth Ministerial Consultation of the Colombo Process on 16 November 2018 under the theme “Safe, Regular and Managed Migration: A Win-Win for All”.³⁰⁸ The event concluded with the adoption of the 27-point Kathmandu Declaration on making labour migration safe, managed, and dignified.³⁰⁹

³⁰⁶ ‘Objectives,’ ‘About the Colombo process, Swiss agency for Development and Co-operation available at <https://www.colomboprocess.org/about-the-colombo-process/objectives>

³⁰⁷ ‘Colombo Process,’ International Organisation for Migration, available at <https://nepal.iom.int/colombo-process>

³⁰⁸ ‘Sixth Ministerial Consultation,’ Colombo Process, Swiss agency for Development and Co-operation available at <https://www.colomboprocess.org/cp-meetings/detail/kathmandu-consultation-2018>

³⁰⁹ Ibid.

Landmark Public Interest Litigation Cases

The Supreme Court of Nepal exercises extraordinary jurisdiction in cases relating to the infringement of fundamental rights, on issues of public interest, and where there is an absence of legal or other legal remedies.³¹⁰ The Supreme Court of Nepal has decided positively on some key issues relating to the protection of rights of migrant workers in various public interest litigation brought before it.

In *Advocate Som Prasad Luitel on behalf of People Forum for Human Rights (People Forum) v. Office of the Prime Minister and Council of Ministers et al*³¹¹ the court issued a directive order to appoint labour attachés in all destination countries where 5,000 or more workers have been sent for foreign employment as per Section 68 of the Foreign Employment Act, 2064 (2007). Further, the court ordered the establishment of safe homes for women migrant workers in accordance with rule 29(d) of the Foreign Employment Regulation, 2008. Similarly, in other writ petitions brought by the same organisation, the court has issued the following directive orders to the government requiring it to:

- a. Take necessary steps for the review of FEA provisions of Sections 48-55 and make arrangement for the review of cases investigated and prosecuted by the Foreign Employment Board and Foreign Employment Tribunal;³¹²
- b. Conduct a factual study of the labour market, conduct bilateral agreements with the host countries, appoint labour attachés,

³¹⁰ The Constitution of Nepal (2015), Art. 133.

³¹¹ Writ No. 065-WO-0082.

³¹² Writ No.: 072-WO-0162.

monitor migrant workers' insurance, and to develop a resources-based Rapid Rescue Mechanism;³¹³ and

- c. Issue the required directives to bring necessary reforms to the foreign employment law to decentralise the justice process at the local level. This would require the establishment of (at least one) judicial institution in each province with the jurisdiction to investigate, prosecute, and hear cases.³¹⁴

In *Advocate Prem Chandra Rai on behalf of Law and Policy Forum for Human Rights (LAPSOJ) v. Nepal Government, Office of the Prime Minister and Council of Ministers et al*, the Supreme Court ordered respondents to take necessary steps for the promulgation of the required laws and the management of essential prerequisites to ensure that Nepali citizens in foreign employment as well as those living in a foreign country for other purposes had external voting rights.³¹⁵

In one of the most recent judgments, the court ordered the government to ensure effective implementation of the 'Free Visa, Free Ticket' policy.³¹⁶ It has also decided positively on the due-diligence obligation of government *vis-a-vis* migrant workers.³¹⁷

³¹³ Writ No.: 072-WO-0163.

³¹⁴ Writ No.: 071-WO-0109, Full text of the judgment available at: <http://www.peopleforum.org.np/wp-content/uploads/2018/06/Faisala-1.pdf> (in Nepali)

³¹⁵ Writ No. 073-WO-1149, Full text of the judgment available at: [http://supremecourt.gov.np/web/assets/downloads//judgements/%E0%A4%86%E0%A4%A6%E0%A5%87%E0%A4%B6_%E0%A5%A6%E0%A5%AD%E0%A5%AB_%E0%A5%A6%E0%A5%AB%E0%A5%A7%E0%A5%AD\(%E0%A5%A6%E0%A5%AD%E0%A5%A9-wo-%E0%A5%A7%E0%A5%A7%E0%A5%AA%E0%A5%AF\).pdf](http://supremecourt.gov.np/web/assets/downloads//judgements/%E0%A4%86%E0%A4%A6%E0%A5%87%E0%A4%B6_%E0%A5%A6%E0%A5%AD%E0%A5%AB_%E0%A5%A6%E0%A5%AB%E0%A5%A7%E0%A5%AD(%E0%A5%A6%E0%A5%AD%E0%A5%A9-wo-%E0%A5%A7%E0%A5%A7%E0%A5%AA%E0%A5%AF).pdf)

³¹⁶ *Advocate Prem Chandra Rai on behalf of Law and Policy Forum for Human Rights (LAPSOJ) v. Nepal Government, Office of the Prime Minister and Council of Ministers et al*, Writ No.: 074-WO-0111.

³¹⁷ *Case concerning the death of migrant workers*, Writ No. 075-WO-0916, writ issued on Nov 2017.

There are ongoing public interest litigation cases relating to migrant workers, and they relate to a variety of issues ranging from matters concerning legal aid and sentence transfer,³¹⁸ ban on domestic workers,³¹⁹ and the regulation of agents.³²⁰

Challenges and Concerns beyond the Legislative and Institutional Framework

Although Nepal's current legal and institutional framework is instrumental in governing and protecting the rights of migrant workers, it still falls short in various aspects. The framework is found to be ineffective, inadequate and generally inaccessible to migrant workers. This is largely due to the inefficiency of the government institutions responsible for governing the migration process and the dubious role played by private recruitment agencies. These have contributed to placing migrant workers in a precarious and vulnerable situation both at home and in destination countries.

Some of the major concerns relating to foreign labour migration relate to a range of human rights violations, the need to prevent the abuse of migrant labour, the need to decentralise the regulation of migrant labour, and to focus on implementing laws and policies to ensure protection of migrant workers' rights. It is recognised that the exploitation of the vulnerability of migrant workers begins at home and that there are alarming increases in the deaths of migrant workers and in undocumented workers. It is also recognised that there is an emerging nexus between migrant workers and human trafficking. Women migrant workers are particularly vulnerable to all of these concerns.

³¹⁸ Writ No: 073-WO-1090.

³¹⁹ Writ No: 076-WO-0134.

³²⁰ Writ No:074-WO-0559.

The most popular destinations for Nepalese migrant workers are the countries within the Gulf Corporation Council³²¹ and Malaysia. However, it is noted that in these countries Nepali migrant workers were forced to work in unsafe environments for low wages and in sub-standard living conditions.³²²

Human Rights Violations

While foreign labour migration has aided the Nepali economy, an increasing number of incidents of human rights violations affecting migrant workers are also taking place in the host countries.³²³ Migrant workers endure serious violations of their human rights at every stage of their journey – before departure, in transit, during their residence and employment in another country, and on return to their home country.³²⁴ The most commonly reported cases of violations include fraud perpetrated by recruitment agencies and abuse, exploitation, injury, and even death during employment in destination countries.³²⁵ The recruiting agencies often act unethically and provide misleading or fraudulent information to prospective migrant workers.

³²¹ The Gulf Cooperation Council (GCC) is a political and economic alliance of six countries in the Arabian Peninsula: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

³²² ILO (International Labour Organization), *Migration and Human Rights - Out migration from South Asia*, 2004, p. 11, available at http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_124657.pdf

³²³ NHRC (National Human Rights Commission), *Rights of Migrant Workers – An Overview*, 2012, p. 2. available at http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Rights%20Migrant%20Workers.pdf

³²⁴ Asia Pacific Forum (APF), *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, p. 86, available at <https://nhri.ohchr.org/EN/IHRS/Documents/APF%20publication%20-%20promoting%20and%20protecting%20the%20rights%20of%20migrant%20workers.pdf>

³²⁵ GoN, Ministry of Labour and Employment, “Labour Migration for Employment: A Status Report for Nepal 2014/15,” 2016, p. 23.

The working conditions and salaries of workers are frequently not what was promised/notified to them.³²⁶

The Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal notes that, “The practice of charging fees to migrant workers for recruitment services renders them more vulnerable to human trafficking and forced labour. Deceptive and coercive recruitment practices increase the vulnerability of migrant workers, as they pay recruitment fees up front.

As a result, they are less likely to report violations of the Foreign Employment Act, abuse or exploitation. There is a need to ensure greater federal governmental oversight on the migrant labour process at all stages for in many cases, the situation of migrant workers amounts to debt bondage, forced labour or human trafficking.”³²⁷

Abuse and Exploitation of Vulnerability at Home

The Amnesty International report, ‘Turning People into Profits’ states: “entrenched patterns of abuse of Nepali migrant workers remain unaddressed. During recruitment processes, local agents and recruitment agents in Nepal are still able to deceive and exploit migrants without significant fear of being caught or punished.”³²⁸

³²⁶ Amnesty International, *Turning People into Profits: Abusive Recruitment, Trafficking and forced Labour of Nepali Migrant Workers*, AI London, 2017, available at: <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>

³²⁷ Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal from 29 January to 5 February 2018, A/HRC/38/41/Add.1 HRC, 38th, 18/04/2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/121/49/PDF/G1812149.pdf?OpenElement>

³²⁸ Amnesty International, *Turning People Into Profits: Abusive Recruitment, Trafficking And Forced Labour of Nepali Migrant Workers*, Amnesty International, 2017 available at <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>

The report further states that despite the government's attempts at policy reform, migrants remain at risk of crippling indebtedness, forced labour, and various forms of exploitation throughout the migration process.

The 'Gulf Visit Report' of the International Relations and Labour Committee of Parliament finds that 80% of problems associated with Nepali migrant workers starts at their point of departure from home.³²⁹ The quality of the orientation training and the health screening process for migrant workers are questionable.

There are instances where the migrant workers received the certificates without even attending the training or health screening. The lack of proper orientation and health screening is increasing the vulnerability of the workers in the destination country.³³⁰ Both prospective and returnee migrant workers face various forms of vulnerability at home such as high recruitment fees, misinformation, dual contracts, debt bondage, lack of access to justice, forced labour, trafficking, etc.

³²⁹ Legislative Parliament, International Relations and Labour Committee, The Gulf Visit Report 2017. [*The seven-member parliamentary committee, led by Prabhu Sah, visited Saudi Arabia, Kuwait, Qatar, and UAE in March 2017.*]

³³⁰ Arjun Poudel, *The Kathmandu Post*, <https://kathmandupost.com/health/2019/06/06/with-heart-complications-the-leading-cause-of-death-among-nepali-migrants-doctors-recommend-blood-pressure-screenings-before-departure>

Concerns for Women Migrant Workers

According to official records, the number of women migrants is small when compared to that of their male counterparts, with female migrant workers amounting to just over 6 percent of all migrant workers leaving Nepal.³³¹

However, the trend analysis of labour permits obtained from FY 2008/09-2016/17 shows that the number of females migrating for work has increased from 8,594 to 20,105 in that period. On average, 20,000 female migrant workers obtain labour permits each year.³³² However, the actual number could be higher than the official estimates as a large number of female migrant workers use irregular channels for migration due to the ban on migration for domestic work.

Although the FEA includes provisions relating to non-discrimination, female migrant workers often faced discrimination in various forms. During the period 1985-1998, women required the consent of a guardian (i.e., parent, husband or other relatives) to go abroad for foreign employment.

The government of Nepal has imposed various forms of bans on female migrant workers, citing the need to protect the women from exploitation and abuse in the destination countries. The period of 2003-2010 saw a full and partial ban on female workers to a Gulf country.³³³

³³¹ Ministry of Labour and Employment, *Labour Migration for Employment A Status Report for Nepal: 2015/2016 – 2016/2017*, Government of Nepal: Ministry of Labour and Employment, p. 9, available at <http://www.dofe.gov.np/report.aspx>

³³² Ibid.

³³³ Barun Ghimire, *Ensuring the Rights of Women Migrant Workers of Nepal; Need of Integrated Approach Beyond the Protectionist Ban*, 2017, available at: <https://lapsoj.org/ensuring-the-rights-of-women-migrant-workers-of-nepal-need-of-integrated-approach-beyond-the-protectionist-ban/>

There were other country-specific bans and partial bans on female migrant workers. In 2017, a ban was imposed after the Parliamentary International Relations and Labour Committee directed the Council of Ministers to completely ban sending female Nepali workers to Gulf countries (as domestic workers) until the Gulf countries formulate substantive laws relating to domestic help and enter into a bilateral labour agreement with Nepal.³³⁴ However, this ban was recently challenged in the Supreme Court of Nepal.

Timeline of policies adopted by the Government of Nepal on Women Migrant Workers.³³⁵

Date	Provisions adopted
Before 1985	No restriction on the movement of women migrant workers.
1995-1998	With the adoption of the Foreign Employment Law in 1985, women are required to obtain the consent of a “guardian” (parent, husband or other relative) to go abroad for employment.
16 May 1997	A decision is adopted to permit women to work in certain organised sectors abroad.
5 March 1998	A ban on international labour migration for women is introduced.

³³⁴ “RSS Report, Ban sending Nepalis to Gulf as domestic workers: House panel”, *Himalayan Times*, 2017 <https://thehimalayantimes.com/nepal/ban-sending-nepalis-gulf-domestic-workers-house-panel-govt/>

³³⁵ Uddhab Pd. Pyakurel, Restrictive Labour Migration Policy on Nepalese Women and Consequences, *Sociology and Anthropology* 6.8 (2018) 650 - 656. doi: 10.13189/ sa.2018.060803

Date	Provisions adopted
16 November 2000	The ban is lifted with the condition that women must obtain a guarantee for their security from the Nepali mission in the destination country. This provision was not available in the Gulf countries, which effectively meant women could not lawfully seek work in the Gulf.
21 January 2003	The provision requiring a guarantee for security from the mission is extended to Gulf countries.
27 March 2003	Additional conditions are imposed on women migrants, such as getting re-approval from the government after temporarily visiting Nepal.
8 May 2003	A requirement for women migrants to obtain approval from the local government and family members before departing for foreign employment is introduced.
31 May 2005	Migration for foreign employment to Malaysia for women migrants is opened in the organised sector.
17 January 2007	The various restrictions in place are lifted to permit female workers to migrate for foreign employment in the organised sector.
5 September 2007	All additional conditions for female migration (i.e., age, working condition in destination, etc.) are withdrawn.
5 September 2008	Women migrant workers are permitted to work in Gulf countries and Malaysia except for domestic work.
January-May 2009	Female domestic workers are no longer permitted to go to Lebanon.

Date	Provisions adopted
December 2010	The government allows women to go to Saudi Arabia, Kuwait, the United Arab Emirates, and Qatar for work, and protection measures are put in place.
October 2011	The ban on women migrant workers going to work in the domestic sector to Gulf countries is lifted and Nepal aims to send about 150,000 female workers to the region.
9 August 2012	Women under the age of 30 years are barred from migrating as domestic workers to Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates.
July 2014	Nepal imposes a temporary ban on sending housemaids citing the need for stronger “regulation to protect them from widespread abuse and exploitation” except for those who have already obtained a permit.
April 2015	Women migrant workers under the age of 25 years are prohibited from migrating to Gulf countries as domestic workers and new protection measures are put in place.
13 May 2016	Women migrant workers above the age of 24 years are permitted to migrate for domestic work to Gulf countries and Malaysia with the assistance of selected recruitment agencies on the basis of signing a separate labour agreement with the host country.
August 2017	Women (domestic) migrant workers are once again prohibited from working in the domestic sector in Gulf Countries, following a parliamentary committee field visit report.
August 2019	The ban imposed in 2017 is challenged in the Supreme Court.

Whether migrating through regular or irregular channels, women migrants face the risk of violence and abuse from intermediaries, employers, as well as from their partners and others. The Gulf Visit Report of the Parliamentary Committee also revealed that women are now being trafficked but in the disguised form of labour migration.³³⁶ Furthermore, due to the ban, female migrant workers tend to migrate using irregular channels and this isolates them and makes them more vulnerable to the risks of exploitation, abuse, violence, forced labour, and trafficking.

Alarming Deaths

In the last decade, a total of 6,708 Nepalese who had gone abroad for employment returned home in coffins. These deaths, recorded between 2008 and 2018, took place across 34 labour destinations.³³⁷ A significant number of deaths were recorded as due to an unidentified cause, or as sudden unexpected deaths, while sleeping, or due to a traffic accident. For instance, more than 800 deaths in that period were due to traffic accidents, and in the case of 900 deaths, the cause of death was unknown.³³⁸ The numbers involved and the circumstances of their deaths are causes for alarm.

³³⁶ Legislative Parliament, International Relations and Labour Committee, The Gulf Visit Report, 2017. Trafficking in Person National Report, National Human Rights Commission (NHRC), Office of the Special Rapporteur on Trafficking in Persons (OSRT), 2018, P. XIX available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_National_Report_TIP_in_Nepal_September_2018.pdf

³³⁷ Chandan Kumar Mandal, "This fiscal year, Nepalis are already dying in foreign lands at a rate of two every day", *The Kathmandu Post*, Oct 4, 2019, available at: <https://kathmandupost.com/national/2019/10/04/this-fiscal-year-nepalis-are-already-dying-in-foreign-lands-at-a-rate-of-two-every-day>

³³⁸ Ministry of Labour and Employment, *Labour Migration for Employment A Status Report for Nepal: 2015/2016 – 2016/2017*, Government of Nepal: Ministry of Labour and Employment, p. 30, available at <http://www.dofe.gov.np/report.aspx>

The migrant workers who died in their destination country were subjected to a medical test and pre-departure orientation training and were deemed healthy and fit. Furthermore, data suggest that a large number of deaths could have been prevented through better diligence on the part of the government of Nepal. For instance, the more than 800 deaths in this period due to traffic accidents and the more than 900 workers whose cause of death is unknown³³⁹ should be probed.

Reacting to the alarming deaths of Nepali migrant workers, a case was brought to the Supreme Court of Nepal contending that “the number of migrant worker deaths could have been prevented through the proper pre-departure orientation and health screening both physical and mental”. The Supreme Court reaffirmed this obligation in a writ petition filed by the Law and Policy Forum for Social Justice on November 16, 2017, seeking actions by the Nepali government at home, to reduce the death of migrant workers abroad.³⁴⁰

Undocumented Workers

It is difficult to estimate the number of undocumented migrant workers from Nepal due to the open border with India and the lack of proper data management by the government. Studies suggest that many Nepalese migrants fall into the category of undocumented workers, either because of the forged documents provided to them by their manpower agencies or because they travelled abroad through irregular channels.³⁴¹

³³⁹ Ibid.

³⁴⁰ Case Concerning the Death of Migrant Workers, Writ No. 075-WO-0916, writ issues on Nov 2017 (full text of the judgment not available to date).

³⁴¹ Anurag Devkota, “Undocumented—not illegal,” *The Kathmandu Post*, Dec 4, 2018, available at: <https://kathmandupost.com/opinion/2018/12/04/undocumentednot-illegal>

Although the basic rights of undocumented workers are protected under international law,³⁴² Nepal's legal regime does not secure even the most basic legal protections to undocumented workers.

The government has deliberately excluded undocumented migrant workers from the shell of access, security, and protection afforded to their documented peers as a strategy to curb undocumented migration.³⁴³ However, to deny legal protection to undocumented migrant workers only adds to their vulnerability leading to their exploitation – forcing them to work for low wages, in poor and often dangerous working conditions, with curtailed liberties, and likely to suffer disproportional repercussions for minor offences. Furthermore, migrant workers may also be undocumented due to the treacherous and exploitive practices by recruiting companies and hostile government policies.

Migrant Worker - Human Trafficking Nexus

One of the key concerns is to prevent human trafficking under the guise of labour migration. The increasing cases of fraud, deception, exploitation, and other grievances in foreign employment fulfil the definition of human trafficking. The National Human Rights Commission of Nepal (NHRCN) in its Trafficking in Persons (TIP) Report 2018 highlighted this nexus.³⁴⁴

³⁴² S. Cleveland, "Legal Status and Rights of Undocumented Workers: Advisory Opinion OC-18," 2005, *The American Journal of International Law*, 99(2), 460-465. doi:10.2307/1562510

³⁴³ Guidelines to Provide Legal Protection to Migrant Workers – 2018, expressly excludes undocumented workers from receiving legal aid rights.

³⁴⁴ National Human Rights Commission, *Trafficking In Persons In Nepal-National Report*, National Human Rights Commission (NHRC), Office of the Special Rapporteur on Trafficking in Persons (OSRT), 2018, available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_National_Report_TIP_in_Nepal_September_2018.pdf.

Furthermore, after an observation visit, the International Relation and Labour Committee of Parliament reported that Nepali women are trafficked to Gulf countries.³⁴⁵

The report made some alarming observations and claims: “The human traffickers have reached even the remotest of villages, luring innocent girls and women with false promises of better work, better life and good pay, transporting them to the UAE or Kuwait via Tribhuvan International Airport either directly or via a third country and supplying them to other countries from there. Officials in the Nepalese embassy in those countries gathered that Nepalese traffickers have been operating their business in Ajman of UAE and Kuwait City of Kuwait, supplying Nepalese domestic workers by selling them like animals on the basis of the buyers’ preference. Despite the open operation of such businesses, no attempts have been made by the Nepalese Government to prosecute them for such heinous crimes. The officials in the Nepalese embassy there revealed their doubts, stating that such individuals receive a high level of protection from the top political parties of Nepal itself.”³⁴⁶

The labour migration and human trafficking nexus is one of the crucial issues that need legal clarity in Nepal. The Human Trafficking and Transportation (Control) Act (HTTCA) and the FEA 2007 are not harmonised as required. The Acts do not have specific provision on matters of intersectional jurisdiction.

³⁴⁵ Legislative Parliament, International Relations and Labour Committee, The Gulf Visit (18-26 March) Report, 2017. The representative visited Saudi Arabia, Kuwait, Qatar and United Arab Emirates and prepared the report based on the visit. Also, refer, Chandan Kumar Mandal, “Two years on, Nepal continues to bar women from taking housemaid jobs in Gulf,” *Kathmandu Post*, available at: <https://kathmandupost.com/national/2019/05/12/two-years-on-nepal-continues-to-bar-women-from-taking-housemaid-jobs-in-gulf>

³⁴⁶ The representative visited Saudi Arabia, Kuwait, Qatar and United Arab Emirates and prepared the report based on the visit. Legislative Parliament, International Relations and Labour Committee, The Gulf Visit (18-26 March) Report, 2017.

There is no clarity, for instance, regarding the circumstances when foreign employment cases should be referred to the police in respect of a trafficking investigation, or the circumstances when trafficking cases should be referred to the DoFE.

Need for De-centralisation

The Constitution of Nepal 2015 introduced fundamental changes to the country's governance, the most prominent of which has been the restructuring of the Nepali State into a Federal State with 753 local government/bodies and seven provincial governments.³⁴⁷ This restructuring has allowed for the decentralisation of migration governance too. The decentralisation of the institutional apparatus related to migration governance has always been a core concern and recommendation of stakeholders. This issue was even raised in the Supreme Court through a writ petition before the adoption of the federal system in Nepal.³⁴⁸ One of the key challenges in the present context is to decentralise the laws and institutions related to labour migration in a functional manner. However, the Local Governance Operation Act (LGOA) 2017 fails to address the new labour migration-related structures, mandates, operational procedures, and responsibilities within federal administration.

³⁴⁷ Om Astha Rai, "Trial and error democracy," *Nepali Times*, 12-18 May, 2017, available at: <http://archive.nepalitimes.com/article/nation/trial-error-democracy.3713>

³⁴⁸ Writ No.: 071-WO-0109, Full text of the judgment available at: <http://www.peopleforum.org.np/wp-content/uploads/2018/06/Faisala-1.pdf> (in Nepali)

Implementation Challenges

The implementations of these legislative provisions pose significant challenges in the context of the everyday instances of exploitation of migrant workers. The major mechanisms established by the Foreign Employment Act, 2007, are the Foreign Employment Regulation, 2007, the DoFE and the Foreign Employment Tribunal. While the process of filing cases at the Foreign Employment Tribunal is already complicated, onerous, and time-consuming for victims,³⁴⁹ the other major challenge lies in the implementation of the decision of the tribunal. The tribunal does not have the power to enforce its decisions and so the victim has to make a separate application to a district court to implement the tribunal's decision. Mechanisms to address grievance through the DoFE and the tribunal have been improving, but only a very small number of workers are found to register cases with either of the two institutions —and that figure continues to fall. Between 2012 and 2015, the DoFE resolved only 19 percent of the cases against recruitment agencies and 13 percent of cases against individual agents.³⁵⁰

Even when the cases are filed, access to justice is not always guaranteed. Some of the most common claims are for compensation in cases of death or injury, and in these instances the victims' families may resort to two sources for financial redress, i.e., private insurance or the Foreign Employment Welfare Fund managed by the Foreign Employment Promotion Board. Both of these redress mechanisms cannot be utilised

³⁴⁹ Sarah Paoletti et.al, *Migrant Workers' Access to Justice at Home: Nepal*, Centre for the Study of Labour and Mobility (CESLAM), 2014, p. 113.

³⁵⁰ Laurent Bossavie and Anastasiya Denisova, *Youth Labour Migration in Nepal*, World Bank, p. 17 available at: <http://documents.worldbank.org/curated/en/428521522930811204/pdf/124999-WP-4-4-2018-16-2-18-YouthLabourMigrationinNepalFULL.pdf>

by irregular migrants, although they are the ones who most require this support.

Due to the government's inability and unwillingness to implement its policies and its indifference towards existing gaps in the law, the foreign employment sector has been a lucrative venture, prospering on fraud and the exploitation and abuse of migrant workers. Local agents and recruitment agents in Nepal are still able to deceive and exploit migrants without fear of being caught or punished.

Other Challenges

There are several other challenges relating to labour migration. There is no focus on labour diplomacy. There is no reliable database on labour migration and labour migration to India is unregulated. Migrant labour has no access to information and they face language barriers. The government's monitoring systems and procedures are weak and corruption in government institutions is rampant. The government has not addressed these concerns and the discontent surrounding labour migration. Governmental efforts are at best inefficient with very little or no follow-up on the implementation of its policies.

The socio-economic conditions and lack of domestic employment have made foreign employment a necessity and not an option for many aspirant migrant workers. This sense of desperation on the part of migrant workers makes them more vulnerable to exploitation by recruiting agencies, especially unregulated agents and others involved in the migration process.

Conclusion and Recommendations

Conclusion

In the last two decades, an unprecedented growth in foreign labour migration has taken place and today, families, communities, and the country rely on it. It is an intrinsic part of the life of a majority of Nepalese and its impact is clearly visible in the social, economic, cultural, and even political spheres of society. Foreign labour migration of the young Nepalese population is one of the most pressing issues in the present context. The contribution of remittances is more than 30% of GDP and an average of 1,200 youth leave home each day to seek foreign employment. These figures reflect the magnitude of labour migration in Nepal.

There is an existing legal and institutional framework and Nepal is a signatory to the overarching conventions that protect migrant workers but there remain several concerns relating to the rights and well-being of Nepali migrant workers. Although the government has adopted new policies and amended laws, the implementation of policies and the continuous follow-up required have not lived up to the required threshold.

It is not the lack of legislative or institutional apparatus that has primarily undermined the protection of migrant workers at home and abroad but the non-implementation of existing law and the failure of institutions to perform their required roles and functions. The strengthening of the institutional apparatus in terms of increasing resources, capacity building, improving regulation and supervision, and monitoring the implementation can address the plight of migrant workers at home to a large extent.

Recommendations

- i) The law, regulations, and policies must be implemented effectively and institutions must function effectively as envisioned in governing laws. The government must act upon the Supreme Court orders including the directive orders.
- ii) There must be a significant improvement in data management on labour migration as it is one of the prerequisites for effective policy reform. The current level of data management is incomplete and inadequate.
- iii) The government institutions must harmonise their efforts in the intersectional areas of migration. The government institutions must adopt a holistic approach to address the dynamics of migration and the several institutions that are part of this process. These include strengthening local governance bodies, addressing labour diplomacy, human trafficking, the implementation of SDGs, and Nepal's human rights commitments.
- iv) FEA 2017 is at the core of the primary legislation governing labour migration, but it aims at managing the foreign employment business rather than ensuring the rights of migrants and creation of safe, orderly, and dignified migration. Thus, there is a need to amend or even repeal the existing framework and to move towards a right-based approach to labour migration.
- v) There is a need for a clear and specific government narrative regarding labour migration. In recent times, conflicting narratives regarding foreign labour migration have emerged. On the one hand, the government claims that foreign labour migration will be non-existent in the coming years, and on the other hand the government aggressively signs MoUs with destination countries to create space for foreign labour migration.

- vi) A functional devolution of authority and jurisdiction relating to labour migration and migration governance must be developed at the local and provincial levels in line with ideals of federalism.
- vii) The ban on domestic workers and other types of discrimination against female migrant workers, using the rhetoric of fostering a protectionist approach should not be promoted as it increases the vulnerability of female migrant workers.
- viii) The justice mechanism under the FEA must be improved and focus on ensuring better access to justice for migrant workers.
- ix) The actors involved in the exploitation and abuse of migrant workers at home, whether they are recruiting agencies, unregulated agents, or others, must be brought under the ambit of law and be prosecuted for exploitation and any other violations of the law.
- x) There must be clarity regarding the HTTCA and FEA. Law enforcement officials, immigration officers, and officers at an international airport and at border offices must be trained and informed about the crimes committed under the disguise of labour migration.
- xi) Ensure that Nepal's obligation under and arising from international laws, international and regional commitments, and bilateral agreements are acted upon. Also, the series of recommendations made by NHRCN, the UN Special Rapporteur and INGOs in relation to migrant workers must be implemented.

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5

LABOUR RIGHTS IN PAKISTAN

*Zulfiqar Shah**

Introduction

Pakistan does not accurately document the major flows of migrants. However, there are widely quoted figures indicating that there are over three million immigrants in Pakistan. This includes 1.5 million documented Afghans who started arriving in Pakistan during the Soviet-Afghan war and are now well settled in the country. There are a few hundred thousand undocumented Afghans who cross the border into Pakistan on a regular basis to engage in trade and other activities.³⁵¹ A small population of Bengali and Burmese migrant workers also live in the suburban areas of Karachi. The majority live in miserable conditions in shanty townships and lack basic amenities.

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³⁵¹ Pakistan Coercion, UN Complicity The Mass Forced Return of Afghan Refugees, Human Rights Watch, 2017 available at https://www.hrw.org/sites/default/files/report_pdf/pakistan0217_web.pdf

Pakistan has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The country also lacks any specific law that protects the rights of these workers. However, a number of these immigrants have found ways and means to acquire documents, by bribing local authorities for example, which entitle them to legal protection as citizens of Pakistan.

The internal movement of the labour force within the country (referred to as internal migration) is a common and significant phenomenon, with most internal migration taking place from rural to urban areas. There is migration to work in particular sectors such as mining which are labour intensive and hazardous. There is also the geographical dimension of this internal migration.

According to the Labour Force Survey of Pakistan 2017-2018, there are around 8.5 million people on the move within the country and most of them work as internal migrants, moving from one province to another and from one city or village to another city. Of these, a major proportion, i.e., 45% of the internal migrants work in the informal sector and are vulnerable to exploitation. Over 60% of the internal migrants work in 15 major cities.

Internal migrants are technically entitled to protection under all the labour laws and can seek remedies under the country's judicial system. However, in reality, they are not in the same position as the permanent residents of a particular area to access the system and are often exploited. They are paid low wages or denied other entitlements, they mostly live in urban slums, and are considered to be dispensable workers.

Pakistan is a major manpower exporting country, with over 6 million people working abroad as migrant workers. This figure represents 3% of the total population. The main destination countries for Pakistanis are Gulf countries, Europe and North America. An overwhelming majority of migrant workers are low paid, male workers.

Due to a weak framework of regulations and legal protection, Pakistani migrants face exploitation, at every step of the way. The exploitation begins from the time of recruitment, often through agents and sub-agents who trap them into unfavourable contracts. They face more challenges and exploitation in the destination countries too, particularly in Middle Eastern countries where rights for migrant workers are few.

The fundamental rights of Pakistan's internal migrants as well as migrants working abroad need more protection if they are to be aligned with the international conventions on human rights and core labour standards. These international conventions and the protections they accord will be effective only when the country has established a comprehensive legal framework that also provides effective remedies through an accessible justice system.

This chapter provides an overview of the general context relating to migrant workers in Pakistan, both internal and external migrant workers, along with an analysis of the existing legal framework in place to protect the rights of migrant workers.

Methodology

There is a dearth of materials available on the subject of migrant labour in Pakistan. The chapter is based on a review of data and reports available online and reports of labour organisations in Pakistan. Discussions were also held with some experts to record their perspectives. Thus, this chapter relies heavily on a review of secondary materials. There is a paucity of data or case reports available in accessible public forums in Pakistan.³⁵²

Overview of the Labour Market in Pakistan

According to the population census of 2017, Pakistan's total population was 207 million. This represents an increase of 75.4 million people or 57 percent since the previous census that was held nineteen years ago in 2008.³⁵³

According to the Labour Force Survey of Pakistan 2017-18, Pakistan has a total labour force of 65.5 million. The country's labour force participation rate was 53.3 percent in 2018, which demonstrates a slight increase from 53.1 percent or 61.04 million workers recorded in 2014-15.

Compared to other developing countries in the region, women's participation in the labour force is lower in Pakistan. This is largely due to social barriers, the lower literacy rates of women, and the fact that women receive lower remunerations than men.

³⁵² Any relevant case law appears to be centrally available only at the Supreme Court library in Islamabad and is not easily accessible in the public domain.

³⁵³ <https://tribune.com.pk/story/1490674/57-increase-pakistans-population-19-years-shows-new-census/>

Women's labour force participation has declined from 22 percent in 2014-15 to 20 percent in 2017-18.³⁵⁴

Although a large number of women work in agriculture and as home-based workers, their labour is missed in these calculations as the informal sector is not well documented in Pakistani labour statistics.

Out of the total 65.50 million labour force, 50.74 million were males and only 14.76 million females, despite the fact that the percentage of males and females is almost equal in the population census. Out of a total labour force of 65.50 million, 61.71 million persons (94.21 percent) are in some employment and the remaining 3.79 million persons (5.79 percent) are unemployed.³⁵⁵ The military runs many factories, banks, agribusinesses, and other enterprises that require labour. There is no separate category to record workers in military-run business and these figures are included in the general workforce of 65 million workers.

The gender gap in wages is also wider in Pakistan than in other countries in the region. In 2018, the average wage for men was PKR 19,943 while the average wage for women was PKR 11,884.³⁵⁶ The gender wage gap – the indicator of women's wages as compared to men's wages - was 40.4 percent in 2018, increasing from 38.55 percent in 2015.

³⁵⁴ Pakistan Labour Force Survey 2017-18.

³⁵⁵ Labour Force Survey 2017-2018, Pakistan Bureau of Statistics (<http://www.pbs.gov.pk/>).

³⁵⁶ The average conversion rate in 2018 to the USD was approximately PKR 130. Thus the average wage for men was USD 154 and for women USD 92

Informal labour

The majority of workers are employed in informal sectors of the economy, where labour laws are generally not applied. The informal sector accounts for 72 percent of non-agricultural employment and is more concentrated in rural areas (76 percent) than in urban areas (68 per cent). On the other hand, formal sector activities are more concentrated in urban areas (31.7 per cent only).³⁵⁷

The Labour Force Survey 2017-18 defines the nature and functions of the informal sector. Accordingly, the informal sector includes:

1. All household enterprises owned and operated by self-employed workers, irrespective of the size of the enterprise,
2. Enterprises owned and operated by employers with less than 10 workers. The enterprise includes the owner(s) of the enterprise, family workers, and other employees, whether they are employed on an occasional or a continuous basis, or as apprentices.

Agriculture workers

Agriculture accounts for 19 percent of the gross domestic product (GDP)³⁵⁸ of Pakistan's economy and 38.5 percent of Pakistan's labour force is engaged in the agriculture sector.³⁵⁹

³⁵⁷ Labour Force Survey 2017-2018, Pakistan Bureau of Statistics at p. 31. Available at <http://www.pbs.gov.pk/>

³⁵⁸ Pakistan Economic Survey 2019-2020, p. 17, available at http://www.finance.gov.pk/survey_1920.html

³⁵⁹ Labour Force Survey 2017-2018, Pakistan Bureau of Statistics, p. 21, available at <http://www.pbs.gov.pk/>

Pakistan's Labour Force Survey classifies agriculture as a separate category and consequently, agriculture workers are not covered under existing labour laws and are deprived of legal remedies when their labour rights are violated. There is a single legal provision known as "Tenancy Law" applicable to the agriculture sector but that only regulates the share cropping relationship between a landowner and tenant (*Hari*). This cannot be considered an adequate labour law, but even this weak set of regulations is not implemented. The absence of legal remedies leaves a large number of workers in the agriculture sector vulnerable to working as bonded labour – a contemporary form of slavery. Global reports estimate 3.1 million people work as bonded labourers in Pakistan, mainly in agriculture and brick kiln sectors.³⁶⁰ Similarly, fisher and forest workers and gig workers, including drivers associated with ride-sharing companies such as Uber and Careem, are also not classified as workers. A large number of freelance contractors or self-employed workers in the private sector are also excluded from the legal definition of 'worker'.

The Sindh province's Industrial Relations Act has made certain changes under which agriculture workers, fishermen, and home-based workers are included in the definition of labour and allowed to form unions, but the Act contains several loopholes and so the law fails to provide any significant entitlements to them.

³⁶⁰ Global Slavery Index 2019, <https://www.globallslaveryindex.org/2018/data/country-data/pakistan/>

Labour experts believe that the provincial government hurriedly added the agriculture sector in the definition of labour in the Sindh Industrial Relations Act (SIRA), 2013 without a proper review of the changes necessary in the entire body of that law or the changes required in other related labour laws.³⁶¹

A few people have tried to form unions in the informal sector and got the unions registered but the existing law may not be of any use to expand the right to association and collective bargaining in the agriculture sector.³⁶²

The major sectors of the economy that provide employment opportunities to workers include industry and services sectors and they comprise 24 percent and 38 percent of the workforce, respectively. The services sector includes banking, telecom, and insurance.³⁶³

Due to the increasing share of the services and manufacturing sectors and the declining share of agriculture in employment, the composition of the labour market in Pakistan is experiencing structural changes. This has also resulted in widespread internal migration from rural areas to urban slums, creating civic problems by straining services in the major urban centres of Karachi, Lahore, Islamabad, Faisalabad, and Multan.

³⁶¹ Interview with Shafique Ghauri, President of the Sindh Labour Federation.

³⁶² Human Rights Watch, “No Room to Bargain: Unfair and Abusive Labour Practices in Pakistan”, January 23, 2019

³⁶³ Iftikhar Ahmed, “The State of Labour in Pakistan,” *The News on Sunday*, Feb 2019, available at <https://www.thenews.com.pk/tns/detail/567182-state-labour-pakistan>

Labour Rights in Pakistan

According to the International Labour Organisation (ILO), only 3 percent of the total 61 million workforce (in 2016) were registered as belonging to trade unions in Pakistan. The figure may be even lower than what is reported by the ILO. The ILO report indicated that the total number of trade unions in Pakistan was 7,096, whereas the number of collective bargaining agents (CBAs) was 1,390.³⁶⁴

The low numbers of trade union participation are attributed to the fragmentation of the workforce on the basis of religion and ethnicity and the legal framework that makes registration of trade unions and the implementation of trade union rights challenging. Furthermore, the lack of genuine democracy in the country impacts on the rights framework in the country and the confidence with which workers can claim their labour rights.

Before the 18th Amendment to the Constitution enacted in 2010, the Industrial Relations Ordinance (IRO), 1969 was the only law that supported the registration of trade unions, but it also excluded a large portion of workers such as agricultural workers, home-based workers, and workers in informal sectors from its ambit.

After the 18th Amendment to the Constitution increased the powers of the provinces, four provinces drafted their respective industrial relations laws that also addressed registration of trade unions. However, with the exception of Sindh's Industrial Relation Act of 2013, no other law has provided agriculture workers, fisheries workers, and home-based workers the right to form trade unions. Sindh's law however, remains

³⁶⁴ Khalil Zakaullah Khan, *A Profile of Trade Unionism and Industrial Relations in Pakistan*, ILO Islamabad office, 2018. In Pakistan the terminology used is Collective Bargaining Agents (and not Collective Bargaining Agreements)

ineffective as its Rules of Business have not been framed and passed and to date informal sector workers are unable to form trade unions. Even when these rules are in place, the formation of robust trade unions in the agriculture sector is unlikely, given the feudal relations characterising the agriculture sector, with influential groups owning and controlling vast land holdings.

The National Industrial Relations Commission (NIRC) has been established under Section 53 of Industrial Relation Act, 2012 to regulate trade unions at the national level. The functions of the commission are to adjudicate and resolve industrial disputes, address the registration of trade unions, determine collective bargaining agents, and deal with cases of unfair labour practices and individual grievances in the provincial establishments and those located in Islamabad Capital Territory.³⁶⁵ However, under the 18th Amendment to the Constitution, labour issues became a provincial subject. As NIRC is a national commission, there is a lack of clarity with regard to its mandate, including the scope of its intervention in provincial labour matters.

³⁶⁵ <http://www.nirc.gov.pk/aboutus>

It has been argued that it should not interfere in provincial matters, but there is a vacuum in the law and it is recognised that this has led to considerable confusion and unease.³⁶⁶

Specifically, the main functions of NIRC are to:

- a) Adjudicate and determine industrial disputes pertaining to trans-provincial establishments confined to Islamabad Capital Territory.
- b) Register trade unions, industry-wise trade unions, and federations and confederations of trade unions;
- c) Determine collective bargaining agents (CBA);
- d) Try offences punishable under the Industrial Relations Act, 2012;
- e) Advise the government and trade unions regarding workers' education;

³⁶⁶ See: Implementation Of The 18th Constitutional Amendment: Briefing paper on "Regulatory Authorities" available at <https://library.fes.de/pdf-files/bueros/pakistan/14091.pdf>

Also see: See Air League of PIAC Employees v. Pakistan, Constitution Petition No. 24 of 2011,

2, 6, 29 (2011), available at http://www.supremecourt.gov.pk/web/user_files/File/Const.Petition_24_2011_dt02062011.pdf (holding that complainants had no cause of action under the IRA of 2008 because it was repealed in April 2010, but they still had a cause of action under IRO of 1969 which filled the vacuum until new Labour legislation was promulgated); see also Complaint Against the Government of Pakistan Presented by the Murtahida Labour Federation (MLF) and the Pakistan Workers Federation (PWF) and supported by the International Trade Union Confederation (ITUC), Report No. 359, Case(s) No(s). 2799 (2011), available at http://www.ilo.org/ilolex/cgi/conv.pl?host=status01&textbase=ilo_eng&document=5103&chapter=3&query=Pakistan%40ref&highlight=&querytype=bool&context=0 (addressing complaint filed against Pakistan for repealing IRA of 2008, passing the Eighteenth Amendment and not creating new federal legislation to address union rights in national industries).

Cited in Furqan Mohammed Protecting Pakistani Labourers Post-Eighteenth Amendment: Recognizing Rights after the Devolution of Power, Volume 9 Loyola University Chicago International Law Review 265 (2012). Available at: <http://lawcommons.luc.edu/lucilr/vol9/iss2/4>

- f) Deal with cases of individual grievances; and
- g) Conciliate among CBA unions and managements in matters of industrial disputes.

Pakistan has comprehensive labour laws to govern the industrial sector and provide institutional arrangements for the welfare of industrial workers. These have been in place since the '70s, but the main complaints of the workers is the poor implementation of the laws and inadequate facilities provided by these institutions in terms of social security and old-age benefits to address contemporary realities.

Pakistan has ratified 36 major conventions of the International Labour Organisation (ILO), including eight Core Labour Standards. However, the conditions of labour in the country are poor and the protections inadequate as the majority of workers are not registered with the State institutions and are unable to avail of the limited benefits of the labour laws and institutions.

The pension and social security coverage in Pakistan is limited only to workers in the formal sector and the workers in the informal or unorganised sector are excluded from the benefits being offered by statutory institutions. The government's structural adjustment policies have reduced social budgets and the privatisation of public sector enterprises and downsizing of the public sector has further reduced social security coverage.³⁶⁷

³⁶⁷ See: Decade of Adjustment : A Review of Austerity Trends 2010-2020 In 187 Countries, Isabel Ortiz Matthew Cummins, Jeronim Capaldo, Kalaivani Karunanathy, ESS working Paper No 53, The South Centre Initiative for policy dialogue (ipd), Columbia University, International Labour Office

<https://Www.Social-Protection.Org/Gimi/Gess/Ressourcepdf.Action?Ressource.Ressourceid=53192>

The Employees' Old Age Benefit Institution (EOBI), Workers Welfare Fund and Employees Social Security Institutions are the major State owned institutions for provision of social security benefits to registered workers. The concept of social security is based on the ILO Convention C102 (1952), which envisages nine contingencies and benefit categories. These include: medical care, sickness benefits, unemployment benefits, old age benefits, employment injury benefits, family benefits, maternity benefits, invalid benefits, and the survivor benefit.

According to the Labour Force Survey 2017-18, approximately 53 percent of all workers in Pakistan did not receive the minimum wage mandated in the country. The minimum wage set in 2017-2018 was PKR 15,000. The situation in rural areas is even worse, where according to estimates of official figures, approximately 89 percent of agricultural workers are paid well below the minimum wage.

In Pakistan, agriculture workers are not categorised as labour and they are treated as sharecroppers. Usually crops are cultivated in two seasons, the *Rabi* and *Kharee* seasons and the sharecroppers receive a portion of the crop at the end of the season when the crop is harvested. However, the portion received by the sharecropper varies in different areas in Pakistan. According to tenancy laws, this portion should be 50 percent of the crop (after deduction of all the costs), but landowners exploit the poor and mostly uneducated sharecroppers/agriculture workers and fix their own terms. In many cases only 25 percent of crop profit is paid to the workers after deducting the input of machinery costs. There is no concept of a minimum wage for agriculture workers.

The situation in urban areas is also dismal. According to the Labour Force Survey 2017-18, in most of the industries, particularly in the wholesale and retail trades of the manufacturing sector, approximately 54 to 65 percent of workers do not receive even minimum wages.

Migrant Workers: An Overview

In Pakistan there are flows of both internal and international migration of workers, but by and large Pakistan is not considered to be a significant migrant-receiving country as it is not attractive to foreign workers. Pakistan is considered to be one of the largest labour exporting countries in the region and most of the country's foreign exchange earnings come through remittances from the overseas workforce. During the fiscal year 2018-2019, Pakistanis living in Gulf countries, Europe and North America sent remittances amounting to US\$ 21.84 billion, which was 19.68% higher than the previous year.³⁶⁸ Remittances in 2018 contributed over 6 percent of the GDP, are an important source of foreign exchange earnings, and have a significant impact on the economy.³⁶⁹

There are about 8.84 million Pakistanis living, working, and studying overseas in many different countries around the world as of 31 December 2017.³⁷⁰ This situates Pakistan among the top ten emigration countries in the world. The majority of Pakistan's labour migrates to Gulf countries whereas the more educated and skilled Pakistanis

³⁶⁸ <https://www.thenews.com.pk/latest/496564-overseas-pakistanis-remit-2184-billion-during-fy19>

³⁶⁹ https://www.theglobaleconomy.com/Pakistan/remittances_percent_GDP/

³⁷⁰ Year Book 2017-18, Ministry of Overseas Pakistanis and Human Resource Development, Government of Pakistan.

move to Europe and North America.³⁷¹ The majority of the migrants are low-skilled workers and have received limited education. Most of the workers in Gulf countries are male and work under very difficult conditions. The workers are vulnerable to exploitation for a variety of reasons: the migration process is neither properly regulated by Pakistan nor in recipient countries such as Saudi Arabia and most of the workers are caught up in difficult situations because of their lack of awareness of the laws and migration procedures in the destination countries.

In 2019, there were around 7,000 Pakistani workers in jails in the Middle East.³⁷² Over the last few years, Pakistani newspapers have published several stories documenting the ordeals of Pakistani migrant workers who go to Gulf countries, particularly Saudi Arabia, in search of greener pastures but end up living and working in inhuman conditions. Their experiences include harsh work and low wages, delayed wages or even no wages at all. They are called upon to pay agents and visa issuers. They suffer extortion from those who sponsored their visas and they live in fear of arrest and deportation. The papers also report that a number of these workers have gone through unauthorised agents on open visas commonly known as *Azad Visas*. On landing, the holders of these visas become the targets of extortionists. A number of these poor workers have allegedly been used by smugglers and drug mafias to carry drugs while travelling as workers, and once caught they have faced severe punishment. For instance, over 15 Pakistanis were executed in Saudi Arabia alone in 2018, mainly on charges of drug smuggling.³⁷³

³⁷¹ Bureau of Emigration & Overseas Employment, Government of Pakistan available at <https://beoe.gov.pk/headquarters>

³⁷² Section 1, Through the Cracks, Justice Project Pakistan, available at: https://www.business-humanrights.org/sites/default/files/documents/Through_the_cracks_JPP.pdf

³⁷³ Yamna Razvi, "The Time to Demand Saudi Arabia to Treat Pakistani Workers Properly is Now," *Dawn*, 01 October 2018, <https://www.dawn.com/news/1436145>

Pakistani migrants in the Gulf countries also complain of the indifference of Pakistani embassies in these countries; they are not provided with effective consular services. The government of Pakistan has not been able to secure effective bilateral agreements to protect the rights of its citizens. For example, Sri Lanka has signed a bilateral agreement with Saudi Arabia to protect its workers from abuse and established a 24/7 hotline for them to seek assistance. However, there is no such agreement between Pakistan and Saudi Arabia or any other Gulf country despite the Gulf region hosting over 90 percent of Pakistan's migrant workers.³⁷⁴

Region-wise distribution of Pakistani immigrants who went abroad through official channels

Sr.No	Countries	1971-2019	%
1	GCC countries	10,685,438	96.14
2	Other Middle Eastern countries	110,368	0.99
3	Malaysia	108,638	0.98
4	Africa	101,154	0.91
5	EU	33,261	0.30
6	South Korea	15,497	0.14
7	Others	60,492	0.54
	Total	1,114,848	100.00

Source: Bureau of Immigration & Overseas Employment, Government of Pakistan, Annual Report 2019

³⁷⁴ Dawn, 12 March 2019 <https://www.dawn.com/news/1457157>; Hanya Javed, "How the Saudi Recession is Hurting Pakistani Labour," *Dawn*, 01 October 2018 <https://www.dawn.com/news/1436145>; Yamna Razvi, "The time to demand Saudi Arabia to treat Pakistani workers properly is now," *Dawn*, 01 October 2018.

The Emigration Ordinance, 1979 requires that all prospective migrant workers are provided with detailed pre-departure briefings so they are made aware of the relevant legal procedures and their rights in the landing countries.

The Overseas Employment Corporation (OEC) is Pakistan's official platform to manage migration. Its stated objective is the "Promotion of immigration of Pakistani manpower abroad and providing an exploitation free environment to Pakistani job seekers." The corporation has facilitated over 142,000 Pakistani workers in getting jobs in 58 countries in the world,³⁷⁵ but this figure reflects the reality that millions of Pakistanis have used channels other than OEC to find employment and travel to foreign countries as migrant workers. OEC has limited capacities to facilitate overseas employment for all the prospective migrants.

Other channels for Pakistani workers in search of greener pastures abroad, are overseas employment promoters (OEPs). These are private entities licensed by the Government of Pakistan. There are over 2,000 OEPs registered with official authorities in the entire country. Government licensed OEPs are required to provide a comprehensive brief to all prospective migrants. Each worker has to appear before a government appointed Protector to be given all information but this requirement is rarely fulfilled.

³⁷⁵ As per the data available at the website of the corporation available at <https://www.oec.gov.pk/functions>

However, there are large numbers of illegal, unauthorised agents and sub-agents who also operate and thrive on exploiting the vulnerabilities of people. The majority of less educated workers from rural and semi urban areas seeking unskilled employment are recruited through these agents.

Given that a large number of middlemen (both formal and informal recruitment agents) are involved in the process and are more focused on boarding these workers on airplanes and collecting their exorbitant fees, they are not focused on providing the departing workers with relevant information.

Though OEC claims that it runs a mechanism to redress complaints, it does not provide an effective remedy for those who suffer at the hands of agents at home. Neither does it offer remedies to workers in foreign countries, such as Gulf countries that have inadequate justice systems.

Until Pakistan updates its decades-old laws, refines its recruitment procedures, and introduces stringent checks and balances that can meet the migration requirements of the modern world, poor and desperate workers will remain vulnerable to exploitation and at personal risk.

Pakistan has ratified seven of nine UN core human rights treaties and conventions but as of 2019 it has not ratified the UN Convention on the Protection of All Migrant Workers and their Families. Though this initiative would be of greater benefit to foreign immigrants inside Pakistan, it remains important that Pakistan ratify this very important convention and bring its laws and legal procedures in conformity with this and other international requirements. These arrangements can go a long way in providing legal, judicial, and rights protection to prospective migrants back at home and migrant workers in destination countries.

Migrant workers in Pakistan

A number of people from Afghanistan, Bengal, and Myanmar who migrated to Pakistan decades ago are now settled in different areas in the country. During the Afghanistan-Soviet war (1979-1989), a large number of Afghan refugees entered Pakistan. Many refugees were put in special camps, mostly in Khyber Pakhtunkhwa province, but also in the capital Islamabad and in Karachi, the largest city in the country and the capital of Sindh province. By the end of 2001, there were over four million Afghan refugees in Pakistan. Since 2002, a majority of them have returned to Afghanistan but the United Nations High Commission for Refugees (UNHCR) reported in February 2017 that about 1.3 million registered Afghan citizens still remain in Pakistan.³⁷⁶

Although the majority of refugees have UNHCR identity cards, large portions of Afghan refugees do not. However, they are able to mingle with the local population as they share a common language, Pashto. A large number have even acquired Pakistan's Computerized National Identity Cards (CNICs) by taking advantage of the weak systems of control and paying bribes and have settled in urban areas. Furthermore, given the weak checkpoints at the Pakistan- Afghanistan border, a number of Afghan nationals enter Pakistan quite freely and work in the country as undocumented workers in the informal sector.

At the peak of the conflict, there was a large inflow of Afghans to Pakistan, and in 1990 Afghan immigrants accounted for 5.8 percent of the total population in Pakistan.

³⁷⁶ <https://unhcrpk.org/unhcr-welcomes-new-government-policy-for-afghans-in-pakistan/>

The Afghan migration inflow to Pakistan has since declined and by 2017 it had reduced to 1.7 percent of the population.³⁷⁷

The latest statistics (2017) indicate that there are 3.4 million migrants inside Pakistan including 1.5 million or 45% from Afghanistan and the rest 1.9 million or 55% from other countries i.e. India, Bangladesh, Myanmar, Iran, and Sri Lanka. The above-mentioned figures refer to documented migrants. However, there are a number of migrants inside Pakistan who are not registered and are thus not counted in any statistics; they are referred to as undocumented migrants. This is especially so in the case of Afghan migrants as Pakistan has a porous border with Afghanistan. Crossing the borders into Pakistan is easy and as they speak the same Pashto language, they are difficult to distinguish from Pakistani citizens. These Afghans, be they documented or undocumented migrants, work in various sectors in Pakistan, but particularly in construction, transport, mining, and other such low paid jobs.

The majority of Bangladeshi and Burmese immigrants resides in Karachi and mostly work in fisheries and garment factories. Due to their lack of proper documentation they are employed in low paid industries and receive little or no protection from the authorities concerned. They live in the slum areas of the metropolis without even basic amenities. There are minimal legal protections for undocumented migrant workers inside Pakistan.

³⁷⁷ Pakistan Migration Snapshot (Page No7), published by the International Organisation for Migration (IOM) in August 2019, p. 9 available at: <https://displacement.iom.int/sites/default/files/public/reports/Pakistan%20Migration%20Snapshot%20Final.pdf>

Internal migration

According to the Labour Force Survey 2017-18, there are 8.5 million internal migrant workers across Pakistan. The majority of them are in major industrial cities such as Karachi, Lahore, Faisalabad, and Rawalpindi. Also, a major chunk (45 percent) of the migrants work in the informal sector as labourers paid daily wages, as piece-rate workers, or contract labour. They have minimal rights and protections, as informal labour is not covered under Pakistan's labour laws.

Similarly, they are also engaged in sectors such as construction, manufacturing, retail, and services, that are less protected and out of the scope of government labour welfare schemes such as social security and old age pensions.

As the informal sector is outside the scope of labour laws, by default, informal sector workers are unprotected by labour laws. Internal migrants are doubly disadvantaged as they work in the informal sector and are migrants without a support network. They have no access to legal remedies and are at the mercy of their employers. For instance, a number of migrant workers in Karachi, the country's commercial hub, work in garment factories. The majority come from the Thar region in Sindh province and border India. The majority of them are also considered to be "low caste" Hindus. They either stay onsite in quarters provided by employers or in rented "bachelor" rooms. They are more vulnerable than other workers who are permanent residents of the city. They are dependent on their employer for accommodation and being informal workers, cannot establish proof of residency nor seek any legal remedy in case of a violation of their basic rights such as non-payment of wages.

The figures reflecting inter-provincial migrants indicate that Punjab attracts 48.4 percent of internal migrants, Sindh 31.4 percent, Khyber Pakhtunkhwa (KP) 18.9 percent, and Baluchistan 1.3 percent. Inter-provincial migration is on the rise in Punjab, Khyber Pakhtunkhwa, and Baluchistan, but is receding in Sindh province. In comparison with the proportions of male migrants, the proportions of female migrants are higher in all the provinces with the exception of Khyber Pakhtunkhwa.³⁷⁸

The proportion of inter-provincial migrants is co-related with the size of population; provinces such as Punjab with a high population density send more migrants to other provinces³⁷⁹. A similar pattern prevails with regard to intra-provincial migration, with more people in Punjab migrating from rural areas to cities.³⁸⁰

Similarly, the proportion of male migrants is higher than that of female migrants in all provinces except in Punjab.

³⁷⁸ Labour Force Survey 2017-18.

³⁷⁹ Migration from Punjab amounts to 76.9 percent, from the Sindh 14.4 percent, Khyber Pakhtunkhwa 7.9 percent, and Balochistan 0.8 percent.

³⁸⁰ With regard to interprovincial migration, migration from Punjab (74.6%, 76.9%) and Balochistan (0.6%, 0.8%) has increased reduced from Sindh (16.7%, 14.4%) and Khyber Pakhtunkhwa (8.2%, 7.9%).

Push–Pull Factors Driving Migration

Surveys have revealed several factors that determine migration³⁸¹ including migration that occurs when people marry (33.8 percent) and when called to move with their parents (21.1 percent). More women provide these responses as explanations for their migration. Migrating to accompany a spouse accounts for 10.8 percent of the migrant population and again, more females provide this as the explanation for their migration. Returning home (9.5 percent) also accounts for a significant number of migrations, and more males provide this as the explanation for their migration.

Other factors explaining migration trends include migration to take on employment (5.7 per cent) and migration to search for employment (5.3 percent) and more males than females offer these as explanations for the initiation of their migration.

More males than females also indicated that they migrated when they had job transfers (2.1 percent), to further their business (1.6 percent), to pursue education (1.4 percent), as a response to the security and law & order situation (1.1 percent), and in pursuit of better agriculture land (1.0 percent).

³⁸¹ Ibid

Rural to urban migration

Rural to urban migration accounts for about 15.1 percent of the total flow of internal migration. Males are more willing to go to urban areas (18.9 percent) compared to females (12.4 percent). The rural to urban migration from Khyber Pakhtunkhwa amounts to 37.6 percent, from Punjab 14.0 percent, from Balochistan 14.0 percent, and from Sindh 6.4 percent.³⁸²

The Labour Force Survey 2017-2018 indicated a decline in internal migration. However, the causes for this decline are not sufficiently captured or documented. Not only is rural to urban migration decreasing in all provinces except Khyber Pakhtunkhwa, it is so for both males and females.

Employment Status of Internal Migrants

More than eight out of ten (84.8 percent) migrants are employees (53.2 percent) and 31.6 percent are self-employed. Nearly 12.8 percent are workers contributing to family businesses and 1.6 percent run their own business out of which the share of women entrepreneurs was only 0.06 percent.³⁸³

³⁸² Pakistan Labour Survey 2017-2018, Pakistan Bureau of Statistics, Government of Pakistan, available at <http://www.pbs.gov.pk/>

³⁸³ Internal Migration and Labour Mobility in Pakistan, Sadia Ishfaq, Vaqar Ahmed, Danish Hassan and Asif Javed, in South Asia Migrant Report, Recruitment, Reintegration and Remittances, ed. S.Irudaya Rajan, Routledge, available at: <https://think-asia.org/bitstream/handle/11540/7227/Internal-Migration-and-Labour-Mobility-in-Pakistan.pdf?sequence=1>

More males than females are engaged as employees (56.8 percent males, 40.8 percent females) and as self-employed workers (34.2 percent males, 22.6 percent females) while more females than males work as workers contributing to a family business (36.4 percent females, 5.9 percent males).³⁸⁴

Internal migration is a major phenomenon in Pakistan and will only increase with rapid urbanisation. Consequently, less investment will be made in developing socio-economic infrastructure in rural areas leading to less economic activity. This would put more pressure on cities that are already facing severe over-population due to the large inflows of migrants and are unable to cope with the ever-expanding demand for civic amenities such as water, sewerage, and electricity.

Constitutional, Legislative and Policy Frameworks Impacting Labour Including Migrant Workers in Pakistan

Pakistan's legal and policy frameworks relating to labour are derived from the 1973 Constitution which was enacted after a long constitutional struggle stemming from 1947 when the country gained independence. Although this constitution was suspended and amended during two Martial Law regimes, it was reshaped by consensus after the 18th Amendment was passed by Parliament in 2010.

It is also shaped by the international agreements to which Pakistan is a signatory. Pakistan is an active member of the United Nations and was among the initial members who signed the Universal Declaration of Human Rights in 1948.

³⁸⁴ Pakistan Labour Survey 2017-2018.

Pakistan has ratified all the important UN and ILO conventions governing labour. Specifically, Pakistan has ratified seven of nine UN core human rights conventions — protecting civil and political rights,³⁸⁵ socio-economic rights,³⁸⁶ the rights of women,³⁸⁷ the rights of children,³⁸⁸ the rights of the disabled,³⁸⁹ and protections against torture.³⁹⁰ Pakistan has ratified 36 International Labour Organisation (ILO) conventions, including the eight core labour standards and the 21 labour conventions that are technical and specific, operationalising the conventions³⁹¹ and indicating governance priorities.³⁹²

³⁸⁵ ICCPR - International Covenant on Civil and Political Rights.

³⁸⁶ ICESCR - International Covenant on Economic, Social and Cultural Rights

³⁸⁷ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

³⁸⁸ CRC - Convention on the Rights of the Child

CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

³⁸⁹ CRPD - Convention on the Rights of Persons with Disabilities

³⁹⁰ CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment;

CAT-OP - Optional Protocol of the Convention against Torture

³⁹¹ C001 - Hours of Work (Industry) Convention, 1919; C006 - Night Work of Young Persons (Industry) Convention, 1919; C011 - Right of Association (Agriculture) Convention, 1921; C014 - Weekly Rest (Industry) Convention, 1921 (No. 14); C016 - Medical Examination of Young Persons (Sea) Convention, 1921; C018 - Workmen's Compensation (Occupational Diseases) Convention, 1925; C019 - Equality of Treatment (Accident Compensation) Convention, 1925

C022 - Seamen's Articles of Agreement Convention, 1926 (No. 22); C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929; C032 - Protection against Accidents (Dockers) Convention (Revised), 1932

C045 - Underground Work (Women) Convention, 1935; C080 - Final Articles Revision Convention, 1946; C089 - Night Work (Women) Convention (Revised), 1948; C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948; C096 - Fee-Charging Employment Agencies Convention (Revised), 1949; C106 - Weekly Rest (Commerce and Offices) Convention, 1957; C107 - Indigenous and Tribal Populations Convention, 1957; C116 - Final Articles Revision Convention, 1961; C118 - Equality of Treatment (Social Security) Convention, 1962; C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983; C185 - Seafarers' Identity Documents Convention (Revised), 2003, as amended 185

³⁹² C081 - Labour Inspection Convention, 1947; C144 - Tripartite Consultation (International Labour Standards) Convention, 1976

The 1973 Constitution incorporated many international commitments and subsequently many relevant laws were passed to give effect to the constitutional provisions. Specifically, most labour rights are incorporated among the “Fundamental Rights” and “Principles of Policy” of the constitution. Following is a brief overview of the articles in the constitution pertaining to labour rights:

Article 11 prohibits all forms of slavery, forced labour, and child labour;

Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;

Article 18 prescribes the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;

Article 25 lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone;

Article 37(e) makes provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Pakistan has adopted the Millennium Development Goals and in September 2015, the United Nations General Assembly adopted the Sustainable Development Goals (SDGs) with the 2030 Agenda for Sustainable Development. Pakistan has started working on the implementation of SDGs with support from UNDP. If Pakistan is to uphold Sustainable Development Goal (SDG) 8 which emphasises a “Growth Strategy Focusing on Occupational Opportunities for All &

Decent Work Agenda,” it must make efforts to protect labour rights and promote safe and secure working environments for all workers, including migrant workers and in particular women migrants and those in precarious employment.

Pakistan is a parliamentary democracy today, but it has experienced a long history of military rule which has left its own legacy. Although powers are decentralised to provincial assemblies, the feudal elite, industrialists, and retired military and civil bureaucrats heavily dominate the national assembly and provincial assemblies³⁹³

There is hardly any representation of the working class in the legislative assemblies. This lack of representation at the fora where laws and policies are made has resulted in the framing of laws and policies that are insensitive to the needs of labour.

Even when progressive labour laws were passed, such as the Bonded Labour Abolition Act, these have not been implemented with legislatures failing to monitor their implementation. In some instances, laws and policies are made in violation of constitutional provisions and fundamental rights guaranteed.

Similarly, the executive has failed to implement labour laws and the international standards it has ratified by not allocating adequate resources and putting in place the required mechanisms. For example, the country has approximately 300 labour inspectors, which translates to one inspector for over 250,000 workers.³⁹⁴

³⁹³ <https://www.pakistantoday.com.pk/2016/08/21/feudal-lords-continue-to-dominate-the-democratic-system/>

³⁹⁴ “Only One Labour Inspector for 250,000 Workers: Report,” *Dawn*, December 13, 2014 <https://www.dawn.com/news/1150581>

The absence of proper inspection systems to check occupational safety and health (OSH) arrangements at workplaces has put the lives of millions of workers at risk. With only one exception, relevant ministries have also failed to host annual tripartite labour conferences to deliberate on labour issues and prepare recommendations for resolution.³⁹⁵

The role of the judiciary in securing labour rights has been mixed. The Supreme Court of Pakistan and the High Courts have delivered various historical judgments on labour issues, particularly with reference to the eradication of bonded labour.³⁹⁶ In recent years, the Supreme Court has issued instructions for the improvement of health and safety at hazardous workplaces.³⁹⁷ Similarly, for over a decade, the High Courts have passed orders for the release of bonded labourers.³⁹⁸ However, the problem lies with the lower courts and what is known as the “Labour Judiciary” where cases brought by workers lie pending for many years and there is hardly any relief provided to any of the litigants. Thus there is an urgent need for major reform of the labour judiciary.

Trade union leaders believe that until there are far-reaching reforms that include representation of labour in legislative assemblies so they have a voice in executive matters and the judiciary is sensitised to labour issues, workers will continue to suffer under the present conditions.³⁹⁹

³⁹⁵ “First Ever Sindh Tripartite Labour Policy 2018 Announced,” *Urdupoint*, 11 February 2018 <https://www.urdupoint.com/en/business/first-ever-sindh-tripartite-labour-policy-201-258750.html>

³⁹⁶ Zulfiqar Shah, *Effectiveness of Interventions for the Release and Rehabilitation of Bonded Labourers in Pakistan*, Institute of Labour Education and Research, 2008 [https://piler.org.pk/wp-content/uploads/2017/02/Effectiveness-of-Interventions-for.pdf\(Chapter#3\)](https://piler.org.pk/wp-content/uploads/2017/02/Effectiveness-of-Interventions-for.pdf(Chapter#3))

³⁹⁷ “Safety, Welfare of Mines, Factories Workers: Supreme Court Directs Provinces, Agencies to Follow Committee’s Recommendations”, *Business Recorder*, April 11, 2018, <https://fb.recorder.com/2018/04/20180411359691/>

³⁹⁸ <https://nation.com.pk/03-Aug-2019/lhc-orders-release-of-bonded-labourers>

³⁹⁹ Interview with Liaquat Sahi, President of the Democratic Workers Federation.

Pakistan's Labour Policies

The last National Labour Policy was introduced in Pakistan in 2010. However, after the 18th Amendment to the Constitution in 2010, the subject of labour was removed from the concurrent list, and was devolved completely to the provinces. As a consequence, the federal government dissolved its labour department and a new department for Overseas Pakistanis and Human Resource Development was created, mandated to serve Pakistani workers living abroad and sending remittances to their relatives in the country.

Since the devolution of powers regarding labour was vested in the provinces, the three provinces of Sindh, Punjab and Khyber Pakhtunkhwa have introduced their respective labour policies for their workers. However, these provincial labour policies make no mention of migrant workers.

Pakistan is a major labour exporting country and it has adopted measures to encourage the export of both skilled and unskilled workers to developed countries and to Gulf States in the Middle East. Pakistan does not encourage foreign migrant workers to come and work in Pakistan as the unemployment rate stands at 6 percent by December 2019.

Trade and industry is shrinking in the country, and this has reduced the gross domestic product (GDP) to 3.3 percent in 2019 as against 5.5 percent in the previous year.⁴⁰⁰

⁴⁰⁰ <https://www.brecorder.com/2019/11/21/546242/economic-growth-rate-remains-slow-at-33-percent-in-fy19-eng-hassan/>

National Labour Policy 2010

The National Labour policy has a chapter on the “Export of Manpower” which provides the policy parameters for Pakistanis working overseas. Accordingly, the highest source of foreign exchange earned by the country is through the remittances of expatriate Pakistanis.

The government has assured that procedures regarding the “export of manpower” will be simplified and streamlined via necessary amendments to Emigration Rules to ensure expeditious processing of demands for overseas jobs.

Interestingly, other policy documents prepared by the Bureau of Immigration and Overseas Employment (BIOE), the main official body regulating emigration, in its reports use the term “Export of Manpower” which reflects negatively as it describes the Pakistani worker as a commodity rather than a human being. It is quite important that such terminology is removed and Pakistani workers who emigrate to earn remittances for the country are described in a more respectable and dignified manner.

Following are the salient features of the National Labour Policy 2010:

- Support regular export promotion campaigns and visits to main sources of labour employment, especially in the Gulf region, will be encouraged;
- Regard return migrants as a potential asset (holding a package of labour skills, experience ,and investible resources) who will be tapped for the benefit of the economy;

- Expand and make more effective existing schemes to attract investments by migrants while abroad as well as on their return;
- Support the reintegration of returning emigrants and develop mechanisms for the effective use of diaspora resources.

Legislative Framework Governing Labour Laws in Pakistan

Pakistan inherited most of the laws made by the British when they controlled a united India. Some important labour laws such as the Indian Trade Union Act 1926 were scrapped by the first military regime to take over power in 1959. The Industrial Relations Ordinance was enacted in 1969 and it remained the only law for registering trade unions. During that gap of 10 years (1959-1969), there was no law dealing with registration and working of the trade unions.

Furthermore, after the 18th Amendment to the Constitution and abolishment of the concurrent list, labour is no longer a federal subject. Thus, all the federal labour laws are only applicable to the federal capital territory or the areas under control of the federal government. The four provinces of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan have mostly adopted the same federal labour laws with certain amendments and changes in nomenclature.

Pakistan has laws in place that cover basic labour rights such as those regulating employment, contracts, termination of employment, working hours, paid leave, maternity leave, minimum wage, minimum age, health and safety, protection from exploitation, freedom of association, equality, and industrial dispute resolution. There are also various categories of labour laws prevalent in Pakistan that address labour relations, wages and benefits, and workplace safety.

Laws that regulate the relations between an employer and an employee are governed by the Industrial Relations Ordinance, 2003. Laws that require contributions to be paid by employers include: Employees' Old Age Benefits Act, 1976; Provincial Employees Social Security Ordinance, 1965; Workers Welfare Fund Ordinance, 1971; West Pakistan Maternity Benefits Ordinance, 1972; Workers' Children (Education) Ordinance, 1972; Companies' Profit (Workers' Participation) Act, 1972; and Workmen's Compensation Act, 1923.

Labour Laws that fix standards for wages include: Payment of Wages Act, 1936; Minimum Wages Ordinance, 1961; and Minimum Wages for Unskilled Workers Ordinance, 1969.

Labour Laws setting standards for the workplace includes: Shops and Establishment Ordinance, 1965; West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968; Factories Act, 1934; Employment (Record of Services) Act, 1951; Employment of Children Act, 1991; and Apprenticeship Ordinance, 1962.

However, the major issue is that these laws are applicable only to a fraction of the labour force. Specifically, it applies to 23 percent of the labour force, in the formal sector. The majority of the labour force however is in the agriculture and informal sectors and out of the ambit of these laws.

Legal Framework Governing Migrant Workers

As noted earlier, Pakistan exports a large number of migrant workers and ranks among the ten largest exporters of manpower in the world. Pakistan also hosts immigrant workers. Furthermore, a large number - over 8 million - Pakistanis are categorised as internal migrants. There are various categories of laws that are applicable to each type of migrant workers.

Migrant Workers in Pakistan

As Pakistan has not ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, legislation required under the convention that protects the rights of migrant workers in the country has not been enacted. However, Pakistan established an exclusive registration authority, the National Alien Registration Authority (NARA), in 2000 to register foreign migrant workers in the country and to issue them with special cards that will entitle them to seek formal employment and safeguard them from exploitation, harassment, and coercion by police. Unfortunately, the authority has failed to fulfil its responsibilities and has registered only a few thousands of migrants. Consequently, NARA was merged with the National Database Registration Authority (NADRA) in 2015, which is now responsible for the registration of all citizens as well as migrant workers. However, even NADRA has not been able to fulfil this daunting task.

Pakistan has over 100 labour laws, but none of these are exclusively applicable to migrant workers. However, the national labour laws are also not exclusionary, and so technically even a migrant worker can seek remedies under general labour laws.

Pakistani Emigrants

According to official statistics, since 1981, 10 million Pakistanis have gone abroad for work.⁴⁰¹ The numbers could be higher as many more have used informal and illegal means and routes to travel abroad, often risking their lives.

⁴⁰¹ Bureau of Emigration and Overseas Employment (BE&OE)-<https://beoe.gov.pk/>

Unfortunately, there is no comprehensive legal framework or policy in place to safeguard the rights of prospective Pakistani migrants seeking overseas employment. The small number that use the official channel, migrating through the Overseas Employment Corporation, may have formal contracts and enjoy some degree of protection in the destination countries. However, large numbers are recruited and exported through private agents and employment agencies and lack these protections. They may end up in very difficult circumstances and face dire consequences in the absence of any stringent laws and regulations in the receiving country.

Pakistan has enacted the Prevention and Control of Human Trafficking Law, which is often mistaken as an emigration control law even though it deals with the smuggling of people and is applicable in only very specific situations.

The only law relevant is the Emigration Ordinance, 1979 which also deals with labour migration, illegal migration, and human smuggling from Pakistan to foreign countries. The problem with the law is that it is decades-old and hardly meets contemporary requirements. This law must be revisited and updated. Furthermore, even the outdated law has not been properly implemented. For example, the law requires pre-departure briefings to be given to every emigrant but this is not conducted.

Internal Migrants

Approximately 8.5 million people within Pakistan are categorised as internal migrants. The majority reside in major cities and a large portion of these internal migrants (45 percent) work in the informal sector. Technically, all the labour laws are applicable to internal migrant workers, but given that informal workers remain outside the scope of labour laws, in effect migrant workers in the informal sector receive no protection. The absence of exclusive laws for internal migrant workers is a grievous systemic failure.

Pakistan's international obligations under GSP+ requirements that Impact on Labour rights including the rights of Migrant Workers

Pakistan acquired GSP Plus status from the European Union in January 2014. This status provides the country an opportunity to export its products to EU member countries without paying duties, provided that it ratifies 27 UN and ILO conventions that relate to human rights (political and civil rights; economic, social and cultural rights; labour rights; environmental rights; and good governance) and fulfil the reporting requirements of these conventions. In effect, the recipient country agrees to uphold core human rights standards and is rewarded with preferential trade policies.

Pakistan has reaped the significant economic benefits of the scheme as its exports to the EU increased from EUR 4.538 billion in 2013 before GSP+ status was granted to EUR 7.492 billion in 2019, recording an increase of 65 percent.⁴⁰²

⁴⁰² "Pakistan wins GSP-Plus extension," *Dawn*, March 7, 2020, <https://www.dawn.com/news/1538967>

However, the continuation of the scheme is conditional on the ratification and effective implementation of the 27 international UN and ILO conventions and covenants. Pakistan had already ratified all 27 before it was granted GSP+ status in January 2014 but was lagging behind in reporting to treaty bodies on effective implementation and the conditions improved and/or fulfilled.

In accordance with GSP+ regulations, the European Commission (EC) monitors a country's performance on the effective implementation of these conventions. It is done through a bi-annual report that is presented to the European Parliament. This report provides details about the implementation status of each convention and covenant and also suggests a set of recommendations to operationalise each international commitment.

Based on the outcome of this report and a positive nod at the European Parliament, the European Commission would extend GSP+ status for another two years.

So far, the EC has presented three such reports covering the period of 2014-19. The latest report covering the period of year 2018 and 2019 was presented to the European Parliament early this year (2020) and as result of the positive outcome Pakistan's GSP+ status has been extended for another two years, until 2022, when the next bi-annual report would be prepared.⁴⁰³

⁴⁰³ <https://www.thenews.com.pk/print/625091-eu-extends-gsp-plus-status-to-pakistan-till-2022>

The last two monitoring reports have noted Pakistan's progress towards compliance on human rights and labour rights, particularly through legislation that advance such rights, establishment of Treaty Implementation Cells, preparation of a National Action Plan, and establishment of a National Commission on Human Rights.

However, these reports have also raised several serious concerns which include shrinking civic space with particular reference to restricting the space of international and national NGOs, rights to freedom of expression and restrictions on media, enforced disappearances, violation of the rights of minorities, unfavourable conditions for the right to unionise, and poor health and safety conditions at the workplace.⁴⁰⁴ The country now has another two years (2020-2021) to implement the recommendation of the last report and further improve its human rights and labour rights record.

Status of Implementation of International Treaties

Since acquiring GSP+ status, the Pakistan government has taken a number of legislative and administration measures to implement all 27 UN conventions and covenants. These include the establishment of a Treaty Implementation Cell (TIC) at the federal level in Islamabad to coordinate implementation of UN conventions. The government has also prepared a National Policy and Plan of Action on Human Rights, established the National Commission for Human Rights (NCHR), and the country's first independent National Human Rights Institution (NHRI) in May 2016, widely seen as result of compliance towards GSP+ conditionality. There has been significant improvement in the submission of periodic reports to treaty bodies.

⁴⁰⁴ https://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156544.pdf

In terms of compliance on labour rights, tripartite consultative committees have been established to coordinate on improvement in the situation. GSP+ has renewed government attention towards human rights and labour rights and there is general debate on these issues.

However, implementation of policies and laws need significant improvement as there is hardly any significant change on the ground in terms of labour conditions such as increase in wages, improvement in health and safety conditions, decrease in bonded labour or increase in union membership.

The 18th Amendment to the Constitution transferred many subjects and issues relating to human rights and labour rights to the provinces. Subsequently, all four provincial governments have also taken measures and adopted legislation in the provincial assemblies in order to fulfil the requirements of GSP+ conditionality. These include establishment of Treaty Implementation Cells (TICs) in each province, formation of a task force on human rights, and establishment of independent commissions such as the Provincial Commissions on Status of Women. However, implementation of laws and policies is an area that would require significant improvement including allocation of required resources.

Conclusion and Recommendations to Protect Workers' Rights in Pakistan

As Pakistan has a large labour force of over 65 million (LFS 2017-18) and 72 percent work in the informal sector, it is important that it reviews its current policies and legal framework to ensure they conform with the international conventions and legal standards that Pakistan has ratified and adopted.

The government should establish a task force to study the issues related to informal labour and present recommendations to be implemented. India has done so to benefit their migrant workers.

The realisation of labour rights is linked to the agency of workers. Pakistan's Constitution recognises the right to association as a fundamental right. The country has also ratified ILO Conventions 89 and 98, providing for the right to association and collective bargaining. However, official statistics indicate that only 3-5 percent of the 65 million strong workforce is unionised, leaving the majority of workers unprotected, reflecting an overwhelming majority who is denied this basic right. The government must review its laws and policies and restore the unconditional right to association for all workers.

Pakistan's labour welfare schemes such as Provincial Employees' Social Security Institutions (PESSIs), the Employees' Old Age Benefits Institution (EOBI), and Workers Welfare Fund (WWF) were launched in the 1970s. PESSIs are supposed to focus particularly on registering industrial and commercial workers and providing them with social security benefits, including cash payments in case of injury, disability, and death and medical facilities to registered workers and their dependents. EOBI is purely a pension insurance scheme for workers that provides a monthly pension to retired workers and an invalid pension in case of permanent disability. Workers registered with PESSIs and EOBI automatically qualify for Workers Welfare Fund (WWF) benefits which includes free education for children of registered workers, housing, a marriage grant, and a death grant in cases of a worker dying during his work.

However, these institutions have miserably failed to fulfil their main objectives. Despite the fact that these institutions have been in place for half a century, they have failed to register a sizeable number of workers and expand coverage. The data shows that only 4.4 million workers are registered with these institutions. Secondly, the benefits and benefit amounts they provide are insufficient. For example, the EOBI pension in 2019 was just PKR 6500 (\$40) a month.

These schemes are also marred by corruption allegations. The National Accountability Bureau (NAB) and the Supreme Court of Pakistan are both looking into several mega scandals. The Supreme Court took up a case of corruption in EOBI involving PKR 40 billion in 2013.⁴⁰⁵ Another case involving corruption of PKR 90 million has emerged in 2020.⁴⁰⁶ The Sindh High Court is hearing a corruption case involving PKR 250 million in the Sindh Employees' Social Security Institution.⁴⁰⁷ These are indicators of the scale of the corruption present in the institutions that were established to provide benefits to workers and clearly indicate that they have failed to fulfil their primary objectives and are in need of fundamental and far-reaching reforms. The government must expand the scope of these schemes to all workers and universalise social security so that every worker can seek assistance when in crisis.

Pakistan has a comprehensive package of laws that covers almost all aspects of work-related rights, terms and conditions of employment, wages, leave, overtime, and health and safety but implementation is

⁴⁰⁵ "Corruption charges: 'Rs40b EOBI scam' under the scanner," *The Express Tribune*, June 2013 <https://tribune.com.pk/story/570348/corruption-charges-rs40b-eobi-scam-under-the-scanner/>

⁴⁰⁶ "EOBI Corruption Case: SC Rejects Bail Plea of Former DG EOBI," *Newslead*, <https://newslead.net/eobi-corruption-case-sc-rejects-bail-plea-of-former-dg-eobi/>

⁴⁰⁷ <https://www.brecorder.com/2019/04/02/485231/shc-rejects-bails-of-three-accused-in-sssi-corruption-case/>

very poor. The laws are also outdated. It is important that appropriate revisions and implementation mechanisms are put in place including going beyond establishing institutions to oversee implementation and assigning the required human resources and logistic mechanisms to support implementation. Pakistan has only 334 labour inspectors for a labour force of 65.50 million. It is important not only that the number of inspectors is increased but that they are trained and assigned logistical support such as vehicles and staff to be able to visit and inspect factories.

Workers' health and safety is a crucial issue in Pakistan. Hundreds of labourers lose their lives due to poor health and safety arrangements at the workplace and thousands contract diseases.⁴⁰⁸ It is important that the Government of Pakistan update its laws related to health and safety and introduce Standard Operating Procedures, making it mandatory for employers to provide personal protective equipment (PPE) and ensure the necessary arrangements in all provinces.

The participation of women in the labour force in Pakistan is low (20-22%) compared to other South Asian countries.⁴⁰⁹ However, given Pakistan's large population, even this figure runs into millions. Women workers are the most vulnerable and discriminated at all stages. Pakistan's government must legislate to ensure equal employment opportunities and equal wages for women workers.

⁴⁰⁸ "Pakistan Garment Workers Need a Safety Accord, a report by Clean Cloths," Campaign available at <https://Labourrights.org/publications/pakistans-garment-workers-need-safety-accord>

⁴⁰⁹ Pakistan Labour Survey 2017-2018, Pakistan Bureau of Statistics, Government of Pakistan available at <http://www.pbs.gov.pk/>

Recommendations for the Protection of Migrant Workers within Pakistan

Pakistan should ratify the UN Convention on the Protection of Rights of All Migrant Workers and Members of their Families and other relevant ILO conventions and enact specific laws that protect the rights of migrant workers.

Pakistan must play its role within the SAARC mechanism and lobby for a regional protocol and an effective mechanism for the protection of migrant workers.

It is important that a comprehensive census of migrant workers is conducted and a credible database is maintained with details of the migrants in the country. Pakistan lacks such a database and this stymies informed policy decisions in relation to migrant workers.

The current number of migrant workers within the country is estimated at over three million. Many of them arrived decades ago from Afghanistan and other South Asian countries such as Bangladesh, Burma, and India. A number of them are still without papers and vulnerable to exploitation. The country must provide them and their families with the required documents and consider granting them citizenship given their long residence in Pakistan.

A number of migrants live in cities such as Karachi and reside in slums where the conditions are pathetic. They are regularly harassed and exploited by the police and other law enforcement agencies. This must be prevented.

Migrant workers are excluded from government schemes including those relief measures in times of crises because they lack documentation establishing residency. However, the government must ensure that people residing in its territory are entitled to fundamental human rights and labour rights and make the required legal and policy requirements to make this a reality.

During the last few decades, approximately 10 million Pakistanis who had been working abroad have migrated using official channels. However, a large number have gone abroad through unofficial channels and are not counted in the official figures. These workers too send a significant amount of remittances back to their families and it is important that their contribution to the economy is recognised.

Recommendations for the Protection of Migrant Workers from Pakistan

Pakistanis working abroad, irrespective of whether they left through official or unofficial channels, are vulnerable to financial and physical exploitation and it is important that appropriate mechanisms are put in place to ensure secure and protected migration.

The contribution of migrant workers requires recognition and they require protection to prevent them from being regarded as commodities. To this effect, the country needs a comprehensive immigration policy that addresses contemporary challenges and is compatible with the immigration standards and requirements of the modern era.

The government must ensure that migration occurs only through official channels, that every worker has all the required legal documents with him or her, and is briefed properly before going abroad. Private employment agencies may have efficient networks and knowledge of employment opportunities abroad, but they must be regulated to ensure that all applicants are finally processed through official channels and that the government has a record of all migrant workers going abroad, their employers, and the terms of their employment.

There are frequent reports of Pakistani migrant workers' exploitation abroad, particularly in Gulf countries. The Pakistan government must take appropriate measures by increasing the oversight role of its embassies in the protection of its migrant workers abroad.

The government should learn from the experiences of countries such as the Philippines, entering into bilateral agreements with receiving countries and negotiating better terms and conditions for Pakistani workers abroad. Only this approach can save workers from exploitation.

A number of Pakistani migrants are in prisons in destination countries. The government must take appropriate measures to support them by providing them with legal representation and fair trials. The government should ensure that workers are briefed on the laws and legal system that prevails in the various destination countries to ensure that migrant workers do not fall foul of their laws.

The government should launch welfare schemes to benefit the families and children of Pakistani migrant workers. This could include scholarships to the children of migrant workers and skill development programmes for female members of their families.

The government should also establish a special fund and provide financial aid and loans to those who return in desperate situations such as during recessions or the early and unexpected loss of their jobs.

Similar welfare schemes, such as a pension scheme, should be launched to support returning migrant workers and to reintegrate them into the economy.

Concluding Recommendations for the Protection of Internal Migrant Workers

Of the 65 million labour force in the country, about 8.5 million are recognised as internal migrants. However, there are no special laws or policies for such workers except within the general labour laws. They are simply regarded as part of the labour force and no regard is taken of their exceptional circumstances. Internal migrants are isolated from community support systems and are vulnerable to many forms of exploitation. The government must frame a policy and enact laws on internal migrant workers or specifically make it a part of the overarching labour policy.

Forty-five percent of internal migrants work in the informal sector and so do not enjoy special protections or any specific rights. While all informal workers have fewer rights and are vulnerable to insecurity and exploitation, internal migrants are more vulnerable as they lack community resources and protection.

Even the few internal migrants working in the formal sector and registered with labour welfare schemes are unable to enjoy all the benefits accessed by other formal sector workers.

This is so because their families reside in another location or because their computerised national identity cards (CNICs) show a different home address. The government must relax this rigid provision and allow registered workers and their families to access entitlements across the provinces.

Internal migrants often work in hazardous sectors such as mining, where many face severe injuries, diseases, and even death. When injured or sick, they are treated as disposable commodities and sent back to their native villages without any compensation or medical support.

A number of internal migrant workers also work in sectors such as brick kilns that are notorious for their abusive conditions. The government must ensure that they are not exploited by establishing their labour rights in these businesses and by monitoring the operations of these businesses.

Trade unions and civil society as well as the private sector must also change their attitude towards all categories of migrant workers. Trade unions should open up membership for migrant workers and give them space in leadership roles to represent their interests. Similarly, civil society organisations should come up with specific programmes to address the issues of migrant workers. Private sector employers have a key role to play by ensuring that migrant workers inside their factories are treated equally and there is no discrimination between them and other locally based workers.

These changes can only be effected through a concerted effort on the part of the government, business community (including manpower agencies), and NGOs that support migrant workers. They make a very significant contribution to the economy and their human rights must be protected.

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6

ORGANISING FOR AN EFFECTIVE LEGAL FRAMEWORK FOR SRI LANKAN MIGRANT WORKERS

*Devaka Gunawardena**

Response to the Rise of Migrant Work in Sri Lanka

Since 1977, many Sri Lankan workers have gone abroad to earn money overseas. In 2017 alone, 212,162 people departed abroad for work. Workers abroad earned Rs. 1,092,972 million in the previous year,⁴¹⁰ the equivalent of USD 75,373,793 million. Although more men have migrated for employment recently, accounting for 66% of departures for foreign employment in 2017, popular anxieties about migration continue to revolve around female domestic workers. The liberalisation of the Sri Lankan economy, which was initiated in 1977, has required more foreign exchange to cover the growing cost of imports. Although foreign investment was expected to aid local entrepreneurs in building an industrial base, much of the capital inflow has involved financial speculation.

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⁴¹⁰ Figures taken from the “Annual Statistical Report of Foreign Employment – 2017,” available at <http://www.slbfe.lk/file.php?FID=487>

Today, a significant chunk of foreign exchange earnings is covered by the remittances of migrant workers, and they have become a structural feature of Sri Lanka's post-liberalisation economy.⁴¹¹

The emergence of this new “hyper-exploited” workforce coincided with the decline of organised labour in Sri Lanka. For various reasons, organised labour faced political and economic setbacks, including the defeat of strikes and the decline of old union strongholds in key sectors of the economy such as the port, railways, and plantations that emerged during the colonial period. Trade unions shifted focus to new areas. Moreover, because of the predominance of young women from rural areas in the new workforce – who often work in places such as Export Processing Zones (EPZs), where efforts to unionise are often hampered by the lack of enforcement of labour laws - NGOs have become more involved in advocacy on behalf of workers. The same holds true for their activism on behalf of migrant workers. Debates continue about the relationship between trade unions and NGOs in the context of transnational campaigns around migrant workers' rights. On the one hand, NGOs highlight issues specific to youth and women workers, among others. On the other hand, the question of whether workers can organise in the workplace remains a critical issue. This chapter, which attempts to synthesise broad findings of the literature on Sri Lanka's migrant workers, focuses on the question of organising in order to understand the legal challenges facing migrant workers specifically.

⁴¹¹ This chapter was drafted before the global lockdown because of the COVID-19 pandemic, which has severely impacted migrant work abroad while continuing to expose the persistent vulnerabilities among migrant workers analysed in this chapter.

Generally, when scholars and policymakers discuss legal issues relating to migration, they frequently focus on the challenges faced by female domestic workers. As shown in the next section, female migrant workers migrating to West Asian⁴¹² countries continue to make the most complaints about workplace violations, although they have recently migrated in fewer numbers in proportion to men. Concepts such as the “feminisation of labour” have been used to describe a situation in which care workers, predominantly poor women, have achieved greater representation in the workforce, even as industrial manufacturing has declined.⁴¹³ Scholars and policymakers have identified multiple weaknesses of the labour movement, but issues facing female domestic workers appear representative of the many problems facing labour organisers in general.

The main consequence for workers themselves is that they often lack enforceable rights. Although much of the discourse on Sri Lankan migrant workers has concentrated on protection and vulnerability, this chapter seeks to outline the main trends by considering domestic workers not only as a hyper-exploited workforce, but also as a potential constituency for political change. What leverage does the legal framework offer them in asserting their rights and bargaining with employers? Because so much has only been formulated at the policy level and has not been legislated, we must exercise our imagination when discussing the potential ground for workers’ struggle on topics such as wage theft, enforcement of contracts, and more.

⁴¹² Throughout this chapter, I use the term West Asia to refer to what is popularly known as the “Middle East,” for the purpose of geographical specificity and to question the stereotypical representation of the region.

⁴¹³ Guy Standing, “Global Feminisation through Flexible Labour,” *World Development* 17, no. 7 (July 1, 1989): 1077–95.

This chapter will explore these questions by analysing the network of institutions that govern the migration of predominantly female Sri Lankan domestic workers. Although bureaucratic action is often discretionary, day-to-day oversight of the process also gives us a clue about the gaps in the legal framework, and the space that migrant workers must navigate to assert their rights vis-à-vis employers. The focus in the bulk of the literature on Sri Lankan migrant workers is on State and supra-State processes.⁴¹⁴ More research is needed on the basic relationship between employee and employer. But the challenge is that because of the micro scale of the workplace and nature of work, domestic work often performed by migrant workers makes them “invisible.”⁴¹⁵

The importance of workers organising in the “gig economy” or new groups of precarious workers responding to the challenges of labour flexibility, shows that these issues are not unique to domestic workers. Huguet (2010)⁴¹⁶ argues, “Migrant domestic workers are often the most likely to have their rights infringed because they are employed in private households where working conditions cannot be inspected”. The supposed invisibility of their work, however, is not a natural fact. Rather, it is the effect of a political process that is entailed by the excessive emphasis on individual workers’ grievances at the expense of highlighting the collective challenges facing migrant workers.

⁴¹⁴ On advocacy see Samanthi Gunawardana, *Labour Movement Responses to International Labour Migration in Sri Lanka. The Transformation of Work: Challenges and Strategies* (Washington DC: Solidarity Center, 2014).

⁴¹⁵ This invisibility occurs even though, in the aggregate, migrant workers provide critical support to the Sri Lankan economy by earning a significant chunk of foreign exchange. I thank Sakuntala Kadirgamar for helping clarify this tension.

⁴¹⁶ Jerrold Huguet, “Linking International Migration and Development in Asia,” presented at the Workshop on *Strengthening National Capacities to Deal with International Migration*, Bangkok, April 22, 2010, 29.

Demanding change in legal frameworks is necessary for consolidating a potential labour movement in Sri Lanka that includes and highlights the interests of migrant workers. But to take this issue up from the angle of organising requires confronting the narrow understanding of the solutions to challenges facing migrant workers that often shapes advocacy by NGOs and trade unions, in addition to the assumptions of policymakers. For example, Shaw (2007)⁴¹⁷ takes a restrictive view, arguing that “Civil society organisations have an important role to play in informing migrants about risks and opportunities, empowering women to control their income and providing support services for migrant families.”

In contrast, expanding the legal focus to include collective bargaining requires asking specific questions about the potential leverage migrant workers have as a political force within the Sri Lankan labour movement and beyond. Accordingly, this chapter concludes by proposing the nationalisation of the more than 700 private recruitment agencies into a single public sector agency, which could enable migrant workers to collectively bargain with, and put pressure on, the State in the process of devising and implementing stronger bilateral/multilateral agreements that can make migrant workers’ rights legally enforceable.

⁴¹⁷ J. Shaw, *Sri Lanka Country Study, Leveraging Remittances with Microfinance: Synthesis Report and Country Studies* (Canberra: AusAID, 2007), 168.

Challenges Facing Migrant Workers

The premise of this chapter is a focus on the issues facing predominantly Sri Lankan domestic workers (often problematically referred to as “housemaids”), many of whom migrate to countries in West Asia. This section provides a brief outline of the challenges facing this demographic. Because of the oil price shock in the 1970s and the increase of wealth in Gulf States, for example, countries such as Sri Lanka facing economic crisis during the same period found an outlet for underemployment by sending large numbers of workers to West Asia.⁴¹⁸ Initially, scholars and policymakers assumed that this process would lead to the upgrading of skills among workers who could return and work in more developed industries.⁴¹⁹ Instead, Sri Lanka’s push for economic liberalisation undermined State intervention in the economy in terms of implementing a coherent industrial policy.

The resulting focus on the export manufacturing industry, based on trade agreements and tax concessions for private investors, meant that export manufacturing industries, such as Ready-Made Garments (RMG), also continued to pay workers low wages.

⁴¹⁸ Ali (2005) notes, “International migration to the Middle East began after independence in 1971. The infrastructure development boom, following the rise in oil prices in 1973, fuelled the demand of labour migrants, especially in the Gulf States.” (94-95).

⁴¹⁹ See Godfrey Gunatilleke, ed., *Migration of Asian Workers to the Arab World* (Tokyo: United Nations University 1986).

Figure 1.1

Country	Professional M	Skilled F	Skilled M	Semi M	Mid Level F	Mid Level M	Clerical F	Clerical M	Unskilled F	Unskilled M	Housemaid	Total	Percentage
Kuwait	0	12	32	1	0	0	0	0	4	12	717	778	92%
Oman	0	3	8	0	0	0	0	1	20	8	396	436	91%
Qatar	1	0	176	1	0	8	1	11	7	64	67	336	20%
Saudi Arabia	10	5	212	7	0	1	0	4	80	230	1,580	2,129	74%
UAE	1	12	16	10	0	3	0	1	47	37	245	372	66%
Total (Top 5)	12	32	444	19	0	12	1	16	158	351	3,005	4,051	74%
Total (23 countries)	12	64	518	19	3	14	1	21	185	415	3,074	4,326	71%
Breach of Contract	8	33	260	13	1	8	1	13	102	206	1,149	1,794	64%
Harassment	0	0	6	1	0	0	0	0	15	5	337	364	93%
Lack of Communication	0	5	24	2	1	0	0	3	17	26	319	397	80%
Non Payment of Agreed Wages	4	1	121	1	0	2	0	1	21	89	407	647	63%
Others	0	22	66	2	1	3	0	3	28	61	783	969	81%
Total (Top 5)	12	61	477	19	3	13	1	20	183	387	2,995	4,171	72%
Total (8 types of complaints)	12	64	518	19	3	14	1	21	185	415	3,074	4,326	71%

Figures taken from Sri Lanka Bureau of Foreign Employment Statistics – 2017, available at <http://migrantinfo.lk/2018/06/annual-statistics-of-foreign-employment-2017-slbfe/>

The resulting slack in the labour market meant that workers often had a choice between migration or low-paying jobs in the export manufacturing industry. Migrant workers, however, like export manufacturing workers, play a significant economic role in earning Sri Lanka's foreign exchange. While earning foreign exchange to cover the cost of imports previously depended on tea and other plantation exports in the several decades following independence in 1948, the shift to migrant work and manufacturing exports meant that these sectors became representative of the underside of the post-liberalisation economy. At the same time, the popular image of migrant workers as highly exploited female domestic workers must be contextualised by recent changes, including an increase in male migration and the boom in the West Asian construction industry. As Shaw (2007)⁴²⁰ puts it:

The increase in departures over the last decade has been driven almost entirely by men, whose numbers have doubled since 1995 (Table 3). The opening up of non-Middle East migration corridors has encouraged men to seek work overseas. At the same time, falling real wages for housemaids in the Middle East, coupled with growing concerns about job quality and the impacts of female migration on family welfare, have contributed to a slowing of female migration growth rates.⁴²¹

⁴²⁰ J. Shaw, *Sri Lanka Country Study, Leveraging Remittances with Microfinance: Synthesis Report and Country Studies* (Canberra: AusAID, 2007), 157.

⁴²¹ Huguet (2010) reinforces the point about increasing male migration: "The proportion of females among migrant workers deployed from Sri Lanka increased steadily and reached a peak at 75 percent in both 1993 and 1997 but has since declined steadily. It fell to below 50 percent in 2008, when it equalled 48.9 percent. That change has occurred not because fewer women are migrating but because the number of male migrants has increased rapidly. (4)

Female domestic workers, however, continue to make the most complaints about workplace violations, as observed in Figure 1.1. As in the export manufacturing industry, the feminisation of labour is constrained by social norms that continue to restrict women's mobility and participation in the workforce⁴²². Although women are forced to work because of economic pressures, they are nevertheless stigmatised in the wider society because of patriarchal assumptions about women's role in the economy, even though their families and the State derive household income and foreign exchange, respectively, from the exploitation of their labour. Accordingly, these stigmas reflect a way in which women are disciplined as workers.⁴²³

For this chapter, analysing challenges faced by female domestic workers migrating to West Asian nations is critical because they are a major section of the migrant workforce. Until their problems are addressed via collective bargaining mechanisms that consolidate their interests as workers, it is unlikely that their challenges will disappear. Sri Lanka is stuck in the same predicament imposed by liberalisation, requiring foreign exchange to cover the rising cost of imports vis-à-vis exports, in addition to new challenges such as repayment of foreign debt obligations. Thus, despite paternalistic attempts to control labour migration, the economic driving force remains and will likely push people into more unregulated forms of migration, including forms of modern slavery such as bonded labour.

⁴²² The composition of the workforce is also divided by age: Female migrants from Sri Lanka are older on average than male migrants. Among migrants deployed in 2008, 61 percent of males were less than 35 years of age but only 47 of the females were (SLBFE, 2009:41). (Huguet 2010: 6)

⁴²³ Samantha Gunawardana, "Labour Movement Responses to International Labour Migration in Sri Lanka," *The Transformation of Work: Challenges and Strategies* (Washington DC: Solidarity Center, 2014), available at <https://www.solidaritycenter.org/wp-content/uploads/2015/09/Labour-Movement.Responses-to-Migration-in-SriLanka.report.1.2014.pdf>

The danger when analysing this process however is that excessive focus on migrant workers as a hyper-exploited group may lead to emphasising “human rights” over “labour rights.” While the two concepts are related, we propose that labour rights are the specific way in which the broader concept of human rights can be operationalised in law. This formulation follows from more recent scholarship that has looked at the expansion of unfree work in the context of neoliberal globalisation.⁴²⁴ Domestic workers encounter severe difficulties because there is no legal framework to guarantee adequate rights in the workplace. Accordingly, the form of judicial intervention requires a shift from protecting a vulnerable yet docile subject, to recognising migrant workers’ agency in bargaining for better working conditions. The problem, however, is that much of the advocacy, in addition to policy, has focused thus far on remedial measures, including pre- and post-departure processes, rather than intervening in the workplace as such. What are the effects of this approach?

The Contractual Relationship Between Workers and Employers

The focus in much of the advocacy and policymaking efforts has been on handling migrant workers’ complaints before and after migration. As several studies note, NGOs and trade unions have been involved in raising issues with the relevant government agencies. The Law and Society Trust (2013) notes in the past (2017) Judicial Barometer: In the case of Special Mediation Boards at the District Level, for example, organisations and individuals can address specific issues, such as appeals to decisions taken on Family Background Reports (FBRs).

⁴²⁴ Lewis, Hannah, Peter Dwyer, Stuart Hodgkinson, and Louise Waite. “Hyper-Precarious Lives: Migrants, Work and Forced Labour in the Global North.” *Progress in Human Geography* 39, no. 5 (October 1, 2015): 580–600.

The FBRs are a more recent innovation to restrict women's mobility by appealing to the family structure. A Fundamental Rights case filed in 2013 was one of the few, if only instances, that took up an issue facing migrant workers at the national level. The ruling by the Supreme Court “dismissed the application and held that the requirement was for the protection of women and children, and reflected the culture and traditions of Sri Lankan society” (87).

The ILO Country Office for Sri Lanka and the Maldives (2018) notes the subsequent impact: It has given rise to irregular migration with numbers given by officials interviewed, stating at least 17,000 male and female workers are leaving Sri Lanka per year, using the visit visa option. The women and men are left vulnerable and susceptible to trafficking. Equally worrying is the number of female workers who are not registered with the Sri Lanka Bureau of Foreign Employment (SLBFE) and therefore fall outside the protection provided by the institution.

Accordingly, FBRs are an important example of the way in which government interventions displace responsibility onto women workers, rather than employers.

The primary reason is that employers in other countries cannot be held accountable according to Sri Lankan labour laws. This fact may also account for the shift of SLBFE, established in 1985, from the Ministry of Labour to the Ministry of Foreign Employment and Promotion of Welfare.⁴²⁵ The focus of government practice is less on guaranteeing migrant workers' rights—an impossible task within the current legal framework—and more about ensuring preparation for work abroad and reintegration of migrant workers. Ali (2005) notes⁴²⁶ that, for example, “Currently the Bureau operates 22 training centres in all provinces except Sabaragamuwa and the Northern provinces. As provided by law, training has also been entrusted to the private sector with nine centres at the end of 2003, making a total of 31 centres.” Many NGOs and unions operate within this framework of skills training.⁴²⁷

⁴²⁵ See Nisha Arunatilake et al., “Sri Lanka,” In *Migration, Remittances and Development in South Asia*, edited by Saman Kelegama (New Delhi: Sage 2011).

“In 1985 the Sri Lanka Bureau of Foreign Employment (SLBFE) was established by an Act of Parliament as a self-financed public corporation to provide for the systematic regulation of the process of migration, and to protect workers and provide for their welfare and their families” (Ali 2005: 99).

⁴²⁶ A. K. M. Ali, “Pre-Departure Orientation Programme: Study of Good Practices in Asia (A Comparative Study of Bangladesh, the Philippines and Sri Lanka)” (Geneva: International Organisation for Migration 2005), 110.

⁴²⁷ Ali (2005), however, notes that among workers, “Many do not appear to be interested in knowing about living and working conditions in the host country, as knowledge of these conditions would lead to further psychological stress. It is apparent that these women have innate survival skills, especially the capacity to tolerate harsh working conditions and to stifle emotions.” (111) This claim is an example of problematic “cultural” assumptions in the literature’s emphasis on migrant workers as a hyper-exploited labour force, ignoring their potential capacity to exercise collective agency in a politically visible way.

Additionally, policymaking has not resulted in legislative change as such when it comes to handling disputes within the workplace abroad.⁴²⁸ Policy proposals, such as the National Labour Migration Policy,⁴²⁹ highlight the need to establish legally binding mechanisms such as bilateral agreements to resolve migrant workers' grievances. The challenge is that signing these agreements requires leverage not just in the labour-sending countries, but also the labour-receiving countries. The latter often do not sign such agreements for multiple reasons. Primarily, labour-receiving countries argue that adopting legal norms and protections will undermine labour flexibility. This claim is representative of the neoliberal discourse on relations between capital and labour.⁴³⁰

⁴²⁸ Gunawardana (2014), however, is more optimistic, noting "deepening engagement at the policy level":

This is no small feat, given progressive policy such as the NLMP [National Labour Migration Policy] is dependent on reorienting attitudes toward workers, particularly women workers. Via prolonged engagement, the groups have been able to help shift the public discourse on migrants from stigmatised victimised women, to workers with rights in the global economy and local communities. (37)

This observation, however, must be contextualised by the NLMP's emphasis on increasing high skilled migration, rather than negotiating legally binding agreements between labour sending and labour receiving countries. As the NLMP mentions, "The State recognises that a key element in protection of all migrant workers is the possession of skills" (8). It further emphasises the State's "gradual and strategic approach to changing the profile of Sri Lanka's migrant worker population" (10).

⁴²⁹ "National Labour Migration Policy for Sri Lanka" (Colombo: Ministry of Foreign Employment Promotion and Welfare, 2008).

⁴³⁰ In a circumspect way, Hugué (2010) notes: In sum, in all of the main host countries in Asia except Singapore, there is a reluctance to view international labour migration (including that at all skill levels) as a permanent feature of the economy and labour force. As a consequence, migration policies are often not explicitly incorporated into development strategies and, sometimes, are inconsistent with broader development objectives. (36)

More importantly though, perhaps, is the fact that these countries have far more geopolitical power vis-à-vis countries such as Sri Lanka. As Shaw (2007) puts it, “In negotiations with labour-receiving countries, the Sri Lankan government has been extremely cautious in its approach to worker protection, arguing that that [sic] insistence on enforceable minimum standards will weaken Sri Lanka’s position in a fiercely competitive market.”⁴³¹

Unfortunately, attempts to introduce these issues at the South Asian and South East Asian regional levels have not been taken up with the required force and specificity to transform them into issues demanding political mobilisation in the respective labour-sending countries either. Forums such as Regional Consultative Processes (RCPs) have failed to introduce legal reform as a priority,⁴³² perhaps because of political differences between labour-sending countries. As a result, regional interventions are restricted to cross-border sharing of information between national unions. These unions may be able to intervene in the labour-receiving country where the primary violations occur, but it depends on their strength and the cohesion of the labour movement in each country.⁴³³

⁴³¹ J. Shaw, *Sri Lanka Country Study*, Leveraging Remittances with Microfinance: Synthesis Report and Country Studies (Canberra: AusAID, 2007), 187.

⁴³² Sepali Kottegoda and I. K. Ruhunage, *Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms* (Colombo: ILO Country Office for Sri Lanka and the Maldives, 2013), 43.

⁴³³ See, for example, a description of the Kuwait Trade Union Federation in Samanthi Gunawardana, “Labour Movement Responses to International Labour Migration in Sri Lanka,” *The Transformation of Work: Challenges and Strategies* (Washington DC: Solidarity Center, 2014), p. 27.

Governance of the Migration Process

Accordingly, what are the practical ways in which migrant workers' problems are solved in the existing legal framework? The main institution governing workers' affairs is SLBFE. Technically, SLBFE was instituted to regulate recruitment agencies. As local brokers between migrants and their employers in labour-receiving countries, they are to be held responsible in the event of violations of workers' rights. There are around 700 licensed agencies in the country, according to the Human Rights Commission of Sri Lanka.⁴³⁴ SLBFE has instituted model employment contracts, following best practice in the Philippines.⁴³⁵

Shaw (2007)⁴³⁶ notes, however, that "Model employment contracts developed by the SLBFE specify minimum pay and conditions and are mandatory for use by Sri Lankan migration agents, but have been found to be virtually unenforceable abroad." As a result, HRCSL has recommended that "SLBFE initiate action leading to the signing of bilateral agreements with host countries in order to ensure that the conditions laid down in the model employment contract are observed by the employer and other relevant authorities in the host country."⁴³⁷

⁴³⁴ "Report of the Committee on the Rights of Women Migrant Workers" (Colombo: Human Rights Commission of Sri Lanka 2005), 26.

⁴³⁵ "The contract is operative in the Middle East countries of Kuwait, Saudi Arabia, Oman, Qatar, the UAE, Lebanon, Bahrain, and Jordan. Through a series of memoranda of understanding signed between SLBFE and the recruitment agents in the Middle East, it has become compulsory for employers wishing to hire Sri Lankan housemaids to sign a contract which has to be endorsed by the Sri Lankan Embassy prior to obtaining the seal of approval for a housemaid to leave the country" (HRCSL 2005: 15).

⁴³⁶ J. Shaw, *Sri Lanka Country Study, Leveraging Remittances with Microfinance: Synthesis Report and Country Studies* (Canberra: AusAID, 2007), 187.

⁴³⁷ Report of the Committee on the Rights of Women Migrant Workers (Colombo: Human Rights Commission of Sri Lanka 2005), 57.

Other proposals such as joint liability provisions, withholding wages, and contracts, do not resolve the fundamental difficulty of preventing violations of workers' rights in the workplace itself.⁴³⁸ Instead, they prioritise the responsibility of recruitment agencies, rather than the primary employer. Moreover, it is extremely difficult to prove agencies' complicity in knowledge of abusive working conditions. Fundamental rights to freedom of association and collective bargaining depend on the legal regimes of labour-receiving countries, for which private recruitment agencies cannot be held accountable. These countries have not ratified the major ILO conventions pertaining to migrant workers, including Convention 97, which guarantees migrant workers the right of freedom of association, and Convention 143 on equality of opportunity and fair treatment of migrant workers.⁴³⁹

In this regard too, we must distinguish between migrant workers in construction industries and those performing domestic work in households. As HRCSL⁴⁴⁰ notes, "...Countries in the regions have ratified other relevant instruments. For example, the Labour Inspection Convention, 1947 (No. 81) has been ratified by five Gulf Cooperation Council (GCC) countries: Bahrain, Kuwait, Qatar, Saudi Arabia, and UAE" (20). Convention 81 specifies that "Each Member of the International Labour Organisation for which this Convention is in force shall maintain *a system of labour inspection in industrial workplaces*" (emphasis added). This contributes to the invisibility of migrants who work in private homes.

⁴³⁸ P. Wickramasekara, "Labour Migration in Asia - Role of Bilateral Agreements and MOUs," presented at the *JIPLT Workshop on International Migration*, Tokyo, February 17, 2006.

⁴³⁹ Ratification by Convention, <https://www.ilo.org/dyn/normlex/enf?p=NORMLEXPUB:12001:0::NO::>

⁴⁴⁰ Report of the Committee on the Rights of Women Migrant Workers (Colombo: Human Rights Commission of Sri Lanka, 2005)

The problems facing migrant workers run the gamut from violations of basic human rights to more complex challenges of labour law. Nevertheless, the latter is often the key to dealing with the former. Although advocacy can and should highlight the consequences of hyper-exploitation, including extreme abuse, harassment, and even death, the everyday situations in which workers are unable to exercise their leverage via collective bargaining leads to these hyper-exploitative working conditions. The space between extreme human rights violations, including frequent media reports about the torture of migrant workers,⁴⁴¹ on the one hand, and the demands for expanded labour rights, including freedom of association, on the other hand, is defined by issues such as breach of contract, wage theft, and more. These issues could potentially be topics on which to mobilise most migrant workers.

Currently, a network of institutions handles these issues. According to a detailed ILO report on grievance mechanisms, SLBFE works in conjunction with the Ministry of External Affairs (MEA). While SLBFE can handle complaints regarding recruitment agencies via its Conciliation Division,⁴⁴² the responsibility for legal issues in labour-receiving countries lies with Consular Services under MEA. Ali (2005) notes that “A special category of officers—Labour Attachés—has been created for embassies in countries with more than 25,000 workers from Sri Lanka.

⁴⁴¹ Abusive practices have been highlighted in the global press. See, for example, “‘Nail torture’ highlights maid abuse,” <https://www.smh.com.au/world/nail-torture-highlights-maid-abuse-20101116-17vq3.html>. Torture can be either physical or psychological, and aims at the “humiliation or annihilation of the dignity of the person.” See “Beyond Intractability: Violations of Human Rights,” https://www.beyondintractability.org/essay/human_rights_violations%20

⁴⁴² Sepali Kottegoda and I. K. Ruhunage, “Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms,” (Colombo: ILO Country Office for Sri Lanka and the Maldives 2013), 25.

From the passive and reactive stance of the pre-1985 era, the State had changed its attitude to protect workers and provide for their welfare.”⁴⁴³ However, as noted in the ILO report, there are only 20 Labour Welfare Officers in total for 1.6 million workers across labour-receiving countries.⁴⁴⁴

Moreover, the embassies vary in effectiveness depending on their informal relationships with government institutions in these countries. Thus, if workers face legal issues with the police, they may be able to intervene. If the Labour Departments in labour-receiving countries are functioning effectively, they may also offer opportunities for compromise and negotiation with employers. In the case of West Asian countries though, a key issue is that “migrant domestic workers are defined as foreigners under the Ministry of Interior rather than under the Ministry of Labour.”⁴⁴⁵

None of these processes are systematised. As Kottegoda and Ruhunage (2013) further note, “There is no single, standard procedure for complaint settlement at the Sri Lankan embassies/consulates in labour-receiving countries. Each embassy has devised procedures compatible with the host country’s legal and administrative system.”⁴⁴⁶ In contrast, they point to best practices in the Philippines, where duties and responsibilities are assigned to different government agencies.

⁴⁴³ A. K. M. Ali, “Pre-Departure Orientation Programme: Study of Good Practices in Asia (A Comparative Study of Bangladesh, the Philippines and Sri Lanka)” (Geneva: International Organisation for Migration 2005), 99.

⁴⁴⁴ Kottegoda and Ruhunage 2013: 40

⁴⁴⁵ Sepali Kottegoda and I. K. Ruhunage, *Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms* (Colombo: ILO Country Office for Sri Lanka and the Maldives 2013), 44.

⁴⁴⁶ *Ibid.*, 33.

As Kottegoda and Ruhunge (2013) argue, “The lesson learnt here from the Philippines’ Act [1995] is that it has legalised the participation of State agencies, naming a list of such agencies with specified roles to play, in order to provide a more managed and combined service to migrant workers.”⁴⁴⁷

Even if the labour-sending country has a more organised and efficient approach to migrant workers’ affairs however, it cannot solve many basic challenges due to the lack of legally binding mechanisms. The case of the Philippines, often hailed as a country where migrant workers have won more rights⁴⁴⁸ shows that the bargaining efforts of a labour-sending country is limited vis-à-vis labour-receiving countries. The Philippines, for example, has not been able “to make agreements with countries hosting large numbers of Filipino workers: Saudi Arabia, Singapore, Malaysia, Brunei,” and therefore depends on much weaker memoranda of understanding.⁴⁴⁹ As further noted in the ILO report: “none of the Arab States, where the migrant population exceeds the number of their nationals, has ratified the UN Convention on Protection of Rights of Migrant workers [sic] and their Family Members.”⁴⁵⁰

⁴⁴⁷ Ibid, 39.

⁴⁴⁸ See, for example, Iredale et al, “Impact of Ratifying the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family: Case Studies of the Philippines and Sri Lanka,” (Asia Pacific Migrant Research Network, 2005) 10 -11.

⁴⁴⁹ Samantha Gunawardana, “Labour Movement Responses to International Labour Migration in Sri Lanka,” *The Transformation of Work: Challenges and Strategies* (Washington DC: Solidarity Center, 2014), 15.

⁴⁵⁰ Sepali Kottegoda and I. K. Ruhunage, *Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms* (Colombo: ILO Country Office for Sri Lanka and the Maldives 2013), 47.

A Labour Movement Approach to Migration

Given these challenges, how do we enforce migrant workers' protections when they appear to be a fragmented workforce, apparently lacking the basic leverage to bargain collectively given the micro scale of the workplace and the nature of their work? This question is mediated by the public's perception of migrant workers, as shaped by organisations fighting on behalf of migrant workers. Specifically, the relationship between NGOs and trade unions has been reconfigured to the extent that the roles and functions of both types of organisation are increasingly ambiguous. On the one hand, trade unions have faced setbacks structurally and given their own organisational limitations. As Gunawardana (2014)⁴⁵¹ notes:

Not only were Sri Lankan unions structurally and politically weakened following economic liberalisation, they were critiqued for gender prohibitive political party-tied leadership structures, devaluation of women's work, and lack of gender sensitivity in addressing women workers' issues...At the same time, the vulnerability of the union movement during the 1980s and 1990s coincided with the feminisation of labour migration as more women took up positions in the unskilled domestic worker category.

On the other hand, new processes have also shaped NGOs and other civil society organisations that intervened in the space. As noted by Kottegoda and Ruhunage (2013):⁴⁵²

⁴⁵¹ Samanthi Gunawardana, "Labour Movement Responses to International Labour Migration in Sri Lanka," *The Transformation of Work: Challenges and Strategies* (Washington DC: Solidarity Center, 2014), 10.

⁴⁵² Sepali Kottegoda and I. K. Ruhunage, "Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms" (Colombo: ILO Country Office for Sri Lanka and the Maldives 2013), 20.

Recognising overseas migration as a relatively ‘high risk’ avenue of employment and the fact that women have been the majority of those who look to overseas migration as a means of income, most Non-Governmental Organisations in Sri Lanka that work on migrant rights issues tend to be women’s organisations or community-based organisations that have included this area as a key focus of their programmes. It has to be noted that women’s organisations that do not necessarily focus on the rights of migrant workers are often compelled to enter into this arena by the mere fact of being a women’s organisation, as there is an assumption that such organisations would be able to intervene in cases of grievances related to the migrant or her family.

The resulting challenges in coordinating between NGOs and trade unions have been addressed somewhat through the establishment of networks for coordinating practical work training and servicing migrant workers, along with advocating for policy changes on their behalf.⁴⁵³

The basic issue, though, as discussed up to now, is that beyond the fragmentation of the workforce and the consequent challenges of achieving political representation, the Sri Lankan State has been unwilling or unable to bargain on behalf of migrant domestic workers. State biases include the delegitimisation of migrant workers by classifying them as “unskilled”⁴⁵⁴ The State’s fundamental lack of capacity, however, is because of the competitive labour market and Sri Lanka’s geopolitical weakness vis-à-vis labour-receiving countries, especially those in West Asia.

⁴⁵³ See Gunawardana 2014 for an overview.

⁴⁵⁴ See Chhachhi 1999 for a useful discussion of the concept of skill as it applies to predominantly female workforces.

The question, then, is, *do the difficulties achieving cross-border collaboration between trade unions—and their subsequent influence on the policymaking agendas of labour-sending States—effectively prohibit collective action on migrant workers’ issues?*

Reviewing the gaps in the legislation and the difficulty negotiating bilateral agreements, we observe that a multilateral organisation capable of enforcing migrant workers’ rights is necessary in the long-term. In its absence, countries such as Sri Lanka are shaped by the demands of the migrant workforce and its representatives. Demands consequently may reshape our understanding of the political effectiveness of the migrant workforce, creating a potential space for mobilisation. Whatever the labour movement’s demand is, it must effectively consolidate workers to the extent possible, while guaranteeing their increased leverage over the State. To that extent, our primary recommendation can be summarised as follows: *the nationalisation of the more than 700 private recruitment agencies that currently operate in Sri Lanka, and their incorporation into a public agency for migrant workers that includes scope for collective bargaining with migrant worker unions.*

By establishing a public recruitment agency for migrant workers, the State would be recognising in explicit terms migrant workers’ economic function as a pillar for earning foreign exchange. At the same time, it would give migrant workers the leverage to push the State on policy demands, especially when negotiating legally binding agreements with countries. Those countries that do not abide by these agreements could be subjected to bans, which operationalise one of the principles of leverage identified by Wickramasekara,⁴⁵⁵ among others.

⁴⁵⁵ P. Wickramasekara, “Labour Migration in Asia - Role of Bilateral Agreements and MOUs,” presented at the *JIPLT Workshop on International Migration*, Tokyo, February 17, 2006.

Rather than penalising workers, including the current practice of stigmatising mothers who “abandon” their families, a public recruitment agency could acknowledge the economic pressure driving workers to migrate and enable them to negotiate for better conditions by pressuring the State to draw up, fight for, and implement bilateral agreements.

Making migrant work the fundamental responsibility of a public recruitment agency would also go a long way in solving challenges of the pre-departure and reintegration phases. Skills training could be provided in a manner that increases the prominence and visibility of Sri Lanka’s workforce in other countries while avoiding stigmatising “unskilled” workers. In addition, gaps in social security provisions, noted across the literature on migrant workers, could be rectified by covering workers under the same public recruitment agency responsible for verifying and contributing to workers’ pension funds. Once the proper agreements have been negotiated with other countries, these could include systematic ways to ensure workers are covered by social security arrangements in both the labour-sending and labour-receiving country. Finally, the development challenges many authors discuss regarding linking migrant remittances to savings could be dealt with by the public recruitment agency that effectively functions as the employer of last resort. Migrant workers’ role in earning foreign exchange could be explicitly harnessed to an industrial policy based on investing in domestic enterprise.

The organising strategy this would require is beyond the scope of this chapter, but it is at least noted here that a shift in focus would require going beyond existing approaches in advocacy and policy development. It would require theorising the political role of migrant workers in shaping the direction of the labour movement.

The method is asking, in legal terms, what is required for workers to exercise their rights—in theory, if not in practice—vis-à-vis employers? Answering this requires serious consideration of the daunting challenges facing the Sri Lankan State in attempting to negotiate legally binding agreements that cover migrant workers in the labour-receiving countries.

Making Connections between the Challenges Faced by Workers

In terms of low wage work created in the aftermath of the introduction of the open economy in 1977, a matrix could be drawn up of the contemporary types of working class occupations based on gender and the foreign/domestic location of employment. Given the significant parallels in the structural position of migrant workers and export manufacturing workers in the Sri Lankan economy, it is worth considering how female export manufacturing workers' experiences in the factory might shape their understanding of work in the household, and vice versa. One of the key challenges of the labour movement has been identifying methods of collective action among a fragmented workforce, such as migrant workers. Although work in households is different from work in factories, exclusive focus on industrial worksites may ignore the potential scope for collective action, insofar as migrant workers earn a significant chunk of foreign exchange and thus are an important stratum of workers.

Drawing these conclusions, we could argue that although the tactics might be different — in the case of the export manufacturing industry, for example, using existing laws on the books to defend workers' rights — in the case of migrant workers, requiring the establishment of a prior legal framework—theorising migrant workers as a core constituency of the Sri Lankan labour movement could go a long way in helping us conceptualise the legal framework that is required to resolve their problems. First and foremost, that means recognising that even if the actual work is done at the level of the household, workers themselves are hired by an agency. Therefore, joint liability is required.⁴⁵⁶ Wickramasekera (2006)⁴⁵⁷ identified issues in accountability, but we move one step further in this chapter by suggesting that the more than 700 private recruitment agencies be consolidated into a single public agency that functions as the employer of last resort.

In such a case, migrant workers could form their own unions to bargain with this agency. It could enable them to put pressure on the Sri Lankan government to establish, at the very least, stronger bilateral agreements, if not demand changes in existing or potential multilateral organisations that could enforce migrant workers' rights. Geopolitically, Sri Lanka is in a weaker position vis-à-vis West Asian labour-receiving countries. But facing pressure from its own domestic constituency could force it to take bolder stances on migrant workers' issues, especially in conjunction with other countries and international actors such as global union federations.

⁴⁵⁶ Ibid.

⁴⁵⁷ P. Wickramasekara, "Labour Migration in Asia - Role of Bilateral Agreements and MOUs," presented at the *JIIPLT Workshop on International Migration*, Tokyo, February 17, 2006.

In the meantime, it's clear that toothless memoranda of understanding have not solved the fundamental issues at the heart of the work relationship, including basic issues such as wage theft, as evidenced by SLBFE's own records and the specific complaints identified in Figure 1.1.

On the other hand, this approach means NGOs, whether pursuing policy or advocacy work, ought to reconsider the focus on pre-departure and reintegration phases of migration, to ask the difficult questions about what kind of mobilisation is needed to set up effective legal sanctions for employers who violate workers' rights. The problem is that excessive emphasis on "skills training" often dovetails with the State's paternalistic attempts to monitor and restrict young women from going abroad. This ignores the structural factors that force people to migrate. These issues require going beyond the immediate human rights perspective focusing on bonded labour and extreme cases, to considering the type of political work that would need to be done to build effective relationships between NGOs and trade unions that can campaign on a popular demand, with broad implications for diverse groups of workers.

In sum, the way in which to resolve migrant workers' challenges must be conceptualised politically before it can be implemented through legally binding frameworks. If much of the ambiguity in this chapter rests on the lack of laws on the books to protect migrant workers' rights, that itself is a sign that the challenges reflect the much bigger problem of reintroducing the concept of collective bargaining in a sector that often epitomises the challenge of organising labour in general in the context of neoliberal globalisation.

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Abbreviations and Acronyms

ADD	Abu Dhabi Dialogue
BAIRA	Bangladesh Association of International Recruiting Agencies
BBS	Bangladesh Bureau of Statistics
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BIOE	Bureau of Immigration and Overseas Employment
BMET	Bureau of Manpower Employment and Training
BOCW Act	Building and Other Construction Workers' Welfare Board (Regulation of Employment and Conditions of Service)
BOMSA	Bangladeshi Ovibashi Mohila Sramik Association
BRAC	Bangladesh Rural Advanced Committee
BTEB	Bangladesh Technical Education Board
CAG	Comptroller and Auditor General
CBA	Collective Bargaining Agents
CEDAW	Convention on Elimination the of All forms of Discrimination against Women
CESLAM	Centre for the Study of Labour and Mobility
CNICs	Computerised National Identity Cards
COVID-19	Novel Coronavirus
CPR	Centre for Policy Research
CRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CSO	Civil Society Organisations
CWFI	Construction Workers Federation of India

DEMO	District Employment and Manpower Office
DoFE	Department of Foreign Employment
EC	European Commission
EOBI	Employees Old-Age Benefits Institution
EPZs	Export Processing Zones
FBRs	Family Background Reports
FEA	Foreign Employment Act
FEB	Foreign Employment Board
FEP	Foreign Employment Policy
FEPB	Foreign Employment Promotion Board
FET	Foreign Employment Tribunal
FORUM-ASIA	Asian Forum for Human Rights and Development
GCC	Gulf Cooperation Countries
GCM	Global Compact for Migration
GDP	Gross Domestic Product
GFMD	Global Forum on Migration and Development
GOB	Government of Bangladesh
HIES	Household Income and Expenditure Survey
HTTCA	Human Trafficking and Transportation (Control) Act
ICC	Information and Counselling Centre
ICESR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILO	International Labour Organisation
IOM	International Organisation for Migration
ISMW Act	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act

LGOA	Local Governance Operation Act
LPG	Liberalisation, Privatisation, and Globalisation
LST	Law & Society Trust
MACI	Maldives Association of Construction Industries
MDN	Maldivian Democracy Network
MEA	Ministry of External Affairs
MFIs	Microfinance Institutes
MGNREGA	Mahatma Gandhi National Rural Employee Guarantee Act
MJF	Manusher Jonno Foundation
MoLESS	Ministry of Labour, Employment and Social Security
NADRA	National Database Registration Authority
NALSA	National Legal Services Authority
NARA	National Alien Registration Authority
NCCCL	National Campaign Committee for Central Legislation on Construction Labour
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission of India
NHRCN	National Human Rights Commission of Nepal
NIRC	National Industrial Relations Commission
NLMP	National Labour Migration Policy
NRN	Non-Resident Nepali
OCI	Overseas Citizenship of India
OEC	Overseas Employment Corporation
OEPs	Overseas Employment Promoters
OSRT	Office of the Special Rapporteur on Trafficking in Persons
PESSIs	Provincial Employees' Social Security Institutions

PKSF	Palli Karma Sahayak Foundation
PSHTA	Prevention and Suppression of Human Trafficking Act
RCPs	Regional Consultative Processes
RMMRU	Refugee and Migratory Movements Research Unit
RTO	Registered Training Organisations
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
SDC	Swiss Agency for Development Cooperation
SDGs	Sustainable Development Goals
SEZs	Special Economic Zones
SIRA	Sindh Industrial Relations Act
SLBFE	Sri Lanka Bureau of Foreign Employment
SUDs	Sudden Unexpected Deaths
TIC	Treaty Implementation Cell
TTC	Technical Training Centre
UAE	United Arab Emirates
UK	United Kingdom
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
UTA	Union Territory Administration
UWIN	Unorganised Workers' Identity Number
VSDTC	Vocational and Skill Development Training Centre
WARBE DF	Welfare Association for the Rights of Bangladeshi Emigrants Development Foundation
WEWB	Wage Earners' Welfare Board
WWF	Workers' Welfare Fund



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