

# Migrant Workers in SAARC: Dignity and Freedom Across Borders

Caroline Bates

December 2009



**Pakistan Institute of Labour  
Education & Research**  
ST-001, Sector X, Sub-Sector V  
Gulshan-e-Maymar, Karachi-75340, Pakistan  
Tel: (92-21) 6351145-7  
Fax: (92-21) 6350354  
Email: piler@cyber.net.pk



**South Asia Alliance for  
Poverty Eradication (SAAPE)**  
288, Gairidhara Marg, Gairidhara  
Kathmandu  
Bagmati Nepal  
Telephone: +977 1 4004813, 4004985  
Fax: 977-1-4004508 & 4443494  
E-mail: saape@saape.org.np

## **South Asia Alliance for Poverty Eradication (SAAPE)**

SAAPE is a network of like-minded civil society organisations, mass-based groups and movements, academics, trade unions, community based organisations and activists from Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Afghanistan and Sri Lanka, working to jointly strategize and take actions to contribute towards poverty eradication and achieve effective changes in the economic and socio-political arena to combat the harmful economic policies of globalisation, privatisation and neo-liberalisation. The Alliance aims to build solidarity and a shared civil society vision for the region, strengthen and support national level organisations working on key issues. The Alliance facilitates research to support advocacy and lobbying activities aimed at regional and national level decision-makers of the South highlighting the concerns and perspectives of marginalised groups and advocate pro-poor policies and to consolidate their struggles and experiences to influence the international players, particularly of the North. The SAAPE Secretariat is based in Kathmandu at the office of Rural Reconstruction Nepal.

## **Pakistan Institute of Labour Education and Research (PILER)**

Pakistan Institute of Labour Education and Research (PILER), established in 1982, is a not-for-profit, citizen sector organization engaged in research, education, policy advocacy and networking in the areas of labour rights, social justice and human development, and regional solidarity and peace. PILER, as a resource centre, facilitates the labour movement in building a wider social consensus on core labour rights through advocacy and linkages with local, national, regional and global partners. PILER considers militarization, state conflicts and social intolerance as major barriers to realizing labour rights, and engages with peace movements at national, regional and global levels. PILER is active in a number of peace initiatives at regional level.

### **Caroline Bates**

Ms Caroline Bates has a BA (Law) from the Cambridge University and an LL.M from the School of South Asian and African Studies (SOAS) specializing in sharia law and women's rights.

Currently based in Islamabad, as a consultant on Law and Justice at the Asia Foundation, Ms. Bates has worked as solicitor and a barrister, undertaking legal consultancy in London. She has also served as a senior lecturer in Labour related courses.

Ms Bates also worked as a partner at the Rowley Ashworth Solicitors, UK and as an associate at the Hempsons Solicitors, and the Mayer Brown Roe and Maw. She regularly lectures on employment and European issues at national and international forums.



### **Pakistan Institute of Labour Education & Research**

ST-001, Sector X, Sub-Sector V  
Gulshan-e-Maymar, Karachi-75340, Pakistan  
Tel: (92-21) 6351145-7  
Fax: (92-21) 6350354  
Email: [piler@cyber.net.pk](mailto:piler@cyber.net.pk)



### **South Asia Alliance for Poverty Eradication (SAAPE)**

288. Gairidhara Marg, Gairidhara  
Kathmandu  
Bagmati Nepal  
Telephone: +977 1 4004813, 4004985  
Fax: 977-1-4004508 & 4443494  
E-mail: [saape@saape.org.np](mailto:saape@saape.org.np)

# Section I

## Migration Issues Within SAARC

This paper aims to analyse the control of migration across five South Asian Association for Regional Cooperation (SAARC) states; India, Pakistan, Bangladesh, Nepal, and Sri Lanka; assess the protections afforded to migrants, and restrictions and burdens placed upon migrants and potential migrants. It also seeks to identify deficiencies in the existing systems and put forward proposals for reform of the current structure. The position of three other SAARC states, the Maldives, Bhutan and Afghanistan is beyond the scope of this study.

The paper examines the rights of migrants in international law and goes on to examine the policy and legal frameworks of the various states concerned. It further analyzes the effectiveness of various regulatory regimes and the effects of those regimes upon migrants and potential migrants. The effectiveness of the various regimes is then tested against the international framework of rights for migrant workers. Deficiencies and lacunae are identified.

The paper will examine voluntary and regular/documented migration. Detailed consideration of the issue of irregular/undocumented migration and trafficking is beyond the scope of this paper, although links between the two phenomena are examined where appropriate.

Research undertaken for this study has been paper-based, examining treaties, legislation and policies, as well as reviewing literature relevant to the subject. The direct experiences of individual migrants from the various states are beyond the scope of the research undertaken.

The conclusions reached by the study indi-

cate that the priority for states should be the facilitation of free movement of labour, whilst ensuring the welfare of migrants within their borders and of those migrating to other states. It is essential that each state (if it does not already do so) has in place a national plan for migration and, it ratifies, implements and monitors adherence to the various applicable human rights conventions affording rights to migrants, and in particular the International Convention on the Rights of Migrant Workers and Members of Their Families.



Further, it is clear that each state examined must take steps to simplify and reduce the costs of its migration system, minimising the opportunity for corruption and widening the scope of those having access to regular migration to poorer sections of the population. Finally it is clear that states must take into account the particular impacts of migration upon female populations and take appropriate steps to support both their independence and welfare, whether they are themselves migrants or whether they remain in the sending state.

# Introduction

---



On 22 January 2008, at a meeting of the International Organisation of Migration in Dubai as part of the Colombo Process, the Human Rights Watch called for officials to discuss and address the widespread violations of migrant workers' rights.<sup>2</sup> They drew attention to practices such as the non-payment of wages, physical violence, confiscation of passports and deception arising as part of recruitment processes.

The vulnerability of migrant workers is well documented and continues to be of concern despite a broad range of both international and national measures in place to protect their rights. This paper seeks to examine the practices and protections existing in five South Asian states, India, Pakistan, Bangladesh, Nepal, and Sri Lanka, relating to migrant workers. As will be seen, these states contribute significantly to the world's pool of migrant labour and are, to varying degrees, dependent upon the remittances received as a result of migration. However, their national and international responses to the issue of protection of migrants vary and all fail to fully ensure the basic rights of their citizens. Of particular note is the failure of the SAARC, of which the states are members, to have in place any coherent strategy on migration despite its ambitious aims for a move towards a South Asian free trade and common currency regime.

## The Historical Context of Migration

The United Nations estimated that as at 2005, there were 191 million migrants, approximately 3% of the world population, living outside their country of birth.<sup>3</sup> Levels of migration are predicted to rise to

230 million by 2050.<sup>4</sup> Half of the migrant population is estimated to be female.

Migration is not a modern phenomenon. Historically populations have moved, individually or in groups, for a variety of reasons, from economic to socio-political. However, the development of nation states led, in various areas of the world, to increased regulation of migration. Equally, the development of various colonial powers and the period of colonial expansion created a state-sponsored need for the transfer of workers from one territory to another for the purposes of labour supply. Additionally, across various areas in South Asia, traditional patterns of migration have developed, based around tribal affiliations, family networks and seasonal work. Independence saw mass migration across what are now the borders of India, Pakistan, Bangladesh, Nepal and Sri Lanka, estimated at between 35 and 40 million people.<sup>5</sup>

Post-partition states have sought to regulate the flow of populations both into and out of their territory. This has been done by the imposition of visa controls for those entering and, in various states, exit controls for those seeking to leave. As will be seen, the states examined in this study have adopted this model, restricting the exit of labour through various levels of control. This approach contrasts sharply with that of states within Europe and North America, which do not seek to restrict the outflow of labour, regarding emigration as a component part of the right to freedom of movement.

In South Asia, the political reality of relations between states has significantly restricted the ability of migrants to move from one SAARC state to another. Poor

political relations between states such as India and Pakistan have led to restrictive visa policies and, as will be seen, levels of migration between SAARC states (at least in formal, documented terms) have been extremely low. However, migration continues within the region, largely undocumented, in response to various factors.

## Current Levels of and Trends in Migration

Accurately monitoring migration levels and trends has proved to be difficult, as figures are reliant upon individual states' definitions and internal monitoring of migration. Irregular/undocumented migration creates further difficulties in the accurate collation of figures.

However, it is clear that South Asia contributes considerably to the pool of migrant labour. The World Migration Report<sup>6</sup> estimates that Asia as a whole produces 49.7 million migrants, with Bangladesh alone producing 4.1 million migrants.<sup>7</sup> Patterns of migration have developed over time, with initial migration to the UK and Europe to accommodate post World War II labour shortages. This migration was largely long-term, with migrants being joined by family members and settling permanently. However, the Middle Eastern oil boom of the 1970s saw a major change in migratory patterns in South Asia, with a move to short-term migration by single males to work in the construction sector. Large-scale but short-term migration to the Middle East by low skilled workers has continued to dominate migration from South Asia, although with increased participation of women engaged in domestic work.<sup>8</sup> Seventy five percent of India's migrant population is estimated to be based in the Middle East.<sup>9</sup> Similarly, the majority of Pakistani,<sup>10</sup> Bangladeshi, and Sri Lankan<sup>11</sup> migrant workers are Middle East-based. Nepal has typically followed a different model, with the majority of workers migrating to India, but the country has seen a large increase in migration to the Middle East.<sup>12</sup>

Levels of documented migration as between India, Pakistan, Bangladesh, Nepal, and Sri Lanka remain negligible in comparison to the Middle Eastern position.

## Factors Influencing Migration

The indicators influencing those who migrate are often referred to as "push" and "pull" factors. Push factors are widely recognised as including: economic factors, lower living standards and restricted life chances; political and social instability; conflict and warfare; ecological degradation; natural disasters; family networks; seasonal patterns of work; and porous borders. Pull factors are regarded as including: higher wages; improved job opportunities; better



living conditions; freedom from instability and persecution; aging populations in receiving countries; and gaps in the labour market.<sup>13</sup>

Countries have also traditionally been divided as between sending and receiving states i.e. those exporting and those importing labour. Bangladesh, Nepal, and Sri Lanka are sending states, exporting labour. However, as will be seen in the context of both India and Pakistan, some states function as both sending and receiving states, exporting labour whilst receiving considerable numbers of refugees and

States too benefit from migration. The sending state has a clear interest in the remittances received from migrant workers. However, it is also important to recognise the benefits to receiving states.

workers from neighbouring states.

A significant factor influencing levels of migration is the stance taken by individual state governments. Those states exporting labour in the developing world frequently do so with two explicit aims: to reduce unemployment (and thus increase internal stability) and to increase foreign exchange income. These two factors have, as will be seen, influenced the regulatory regimes put in place to control and monitor migration in the various states reviewed.

Remittances are a vital form of income, representing the second largest source of external funding in the developing world.<sup>14</sup> A detailed analysis of the importance and management of remittances is beyond the scope of this report. However, it is important to note the general background. Forty percent of the world's poor are estimated to reside in South Asia and forty five percent of the population of the South Asian countries live on less than one dollar a day.<sup>15</sup> Poverty figures for the sample states show a clear economic imperative for migration: India (28.6%); Pakistan (32%); Bangladesh (49.8%); Nepal (32%); and Sri Lanka (25%). Twenty percent of the world's remittances are sent to South Asia, with 78% bound for India, 12% for Bangladesh, 2.1% for Pakistan, and 1.1% for Sri Lanka.<sup>16</sup>

## Benefits and Negative Aspects of Migration

Migration provides opportunities for migrants, their families and the various states concerned. There is, for the migrant, obvious scope for securing remittances, savings and investment, the possibility of widening his/her skills base and diversifying the economic risks he/she may face in the future.

States too benefit from migration. The sending state has a clear interest in the remittances received from migrant workers. However, it is also important to recognise the benefits to receiving states. Stereotypical ideas suggesting that existing indigenous workers are disadvantaged by

displacement or depression of wage levels have not been borne out by research and it is clear that migrant labour instead fills skills gaps and shortages.<sup>17</sup>

However, whilst migration is most frequently driven by survival issues,<sup>18</sup> and can be poverty-reducing, international migration can be seen as increasing inequality between migrants and non-migrants.<sup>19</sup> Whether this increased inequality occurs is largely dependent upon the opportunities afforded to returning migrants to invest productively, a factor largely determined by state policy, infrastructure and job opportunities upon return.<sup>20</sup> Whilst migration can be utilised to reduce inequality, it can be seen that state policy is vital in maximising the benefits of migration beyond the individual migrant.<sup>21</sup>

Additionally, the position of women requires particular note. Women have not evenly benefited from migration. As will be seen, some states, particularly those in South Asia, have restricted women in terms of migration on the grounds of protection. However, those women who do not migrate but are left behind by migrating partners have reported mixed outcomes; some find new independence within family/social structures, whilst others become more vulnerable in the absence of a partner.<sup>22</sup> Further, the increase in female migration to the Middle East in the domestic sector has led to the establishment of 'Global Care Chains', in which women are removed from their own families and instead provide care for families of employers abroad. This can leave families without adequate support beyond the provision of finance through remittances. As is argued below, states should provide freedom of choice to women in terms of migration, but must ensure that, given their particular vulnerabilities once outside their home state, adequate protections are in place for their safety.

## Section 2

# The International Position in Relation to Migrant Workers

### General Provision

**M**igration is a phenomenon affecting the international community as a whole. The status of migrants has therefore received attention in terms of various international treaties. The rights of migrants have been addressed by both the International Labour Organisation (ILO) and the United Nations (UN). As will be seen, however, the rights of migrants remain of particular concern.

The various UN instruments make few explicit references to the rights of migrant workers and there is need to ensure their rights in each of the treaties forming the basic framework of rights. These include the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Rights of the Child (CRC); the Convention

on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); and the Convention on the Rights of Persons with Disabilities (CRP).

However, the Human Rights Committee has made clear that states are required to provide the rights set out to individuals within their territory/jurisdiction without discrimination and such rights must not be limited to nationals of the state. Despite these broad-ranging protections, the precarious position of migrants in many states has continued to give rise to cause for concern. In consequence, a Special Rapporteur on the Human Rights of Migrants was approved by the Commission on Human Rights in 1999, currently a position held by Mexico's Jorge Bustamante.



## ILO Framework

The ILO has produced a wide-ranging framework of non-binding standards for labour provision in general, and for migrants, in particular.

The major ILO provisions in relation to migrant workers can be found in the Migration for Employment (Revised) Convention 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143). These instruments outline principles of non-discrimination, equality of treatment in various areas, such as remuneration, accommodation, social security, taxation and address abusive working conditions. Additionally, in 1998, the ILO issued the Declaration on the Fundamental Principles and Rights at Work, applicable to both national and migrant workers, setting out four fundamental principles: freedom of association; the elimination of forced and compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

## The CRMW 1990

Despite the framework of human rights set out above, it was recognised that the international system was required to provide something beyond general rights to equality and non-binding guidance. In consequence, the Convention on Protection of the Rights of All Migrant Workers And Members of Their Families 1990 (CRMW) was drafted. It came into force on 1 July 2003. The Convention was designed to make clear the applicability of human rights to migrant workers, and to fill gaps and lacunae identified in existing general protection.

The basic framework of the CRMW mirrors that of other UN rights treaties. It establishes a Committee to monitor and comment upon the performance of member states and establishes a state's ability to voluntarily agree to both state and individual complaints.



The rights enunciated by the CRMW are essentially divided into those which are applicable to all migrants, either documented or undocumented, and those which apply solely to documented migrants.

The Convention seeks to provide a minimum floor of rights available to all migrants and their families regardless of their legal status. These rights encompass: the right to life; not to be subjected to torture, forced labour or arbitrary deprivation of property; freedom of thought, conscience, religion and opinion; privacy; liberty and security; equality before the courts; and not to be





imprisoned for the failure to fulfil a contractual obligation. Additionally, there are rights not to have travel documents confiscated or destroyed; to consular access; to recognition before the law; to take part in trade union activities; to receive access to social security and emergency medical treatment; to transfer earnings; to equality with nationals in terms of remuneration and basic terms and conditions; and not to be subjected to collective expulsion. The children of migrants are given rights to be registered at birth and access to education. These rights do not, however, regularise

the status of undocumented migrants.

Documented migrants and their families benefit from an array of enhanced rights, in addition to those set out above. These include liberty of movement; the rights to take part in the public affairs of their state of origin; equality of treatment in education, housing, vocational training, health and social services; participation in cultural life; single taxation arrangements; and the right to choose their remunerated activity. In the field of employment law, migrants shall benefit from equality in terms of protection



against dismissal, unemployment benefits and access to anti-unemployment measures. There is additional protection in relation to expulsion.

Importantly, various categories of workers, not covered by the general human rights provisions discussed above, are defined as migrants for the purposes of this Convention. These comprise frontier, seasonal, itinerant, project-tied, specified-employment and self-employed workers.

The various member states are required to respect and ensure to all migrants and their families within their territory or jurisdiction the rights set out without discrimination.

Whilst a number of the rights set out are contained in the other UN instruments described above, a number are new and contentious. For instance, Article 8 sets out the right of a migrant and his/her family members to leave any state, including their state of origin, such right not being subject to any restriction save in respect of national security, public order, public health or morals, or the rights and freedoms of

others. The right of unrestricted free movement is one which runs contrary to the policies of many South Asian states, which seek to restrict and regulate free movement by exit control. As will be seen, all of the states in this study seek to do so to some extent.

Further, Article 66(1) sets out that the right to undertake operations with a view to the recruitment of migrant workers shall be restricted to a public service or body established under a bi- or multi-lateral treaty. However, Article 66(2) does provide that private agencies may undertake such activities subject to authorisation, approval and supervision by public authorities. It is likely that states operating an essentially privatised system of recruitment with minimal or ineffective state supervision would find this obligation problematic.

## Adoption of International Standards in South Asia

Despite the importance of political and economic migration in South Asia, states have been reluctant to accept international standards related to migration of labour. The ILO Conventions (97 and 143) have not been ratified by India, Pakistan, Bangladesh, Nepal, and Sri Lanka. Of the five states, only Sri Lanka has acceded to the CRMW. Bangladesh signed the CRMW on 7 October 1998. Whilst signature is intended to be a preliminary step to ratification, no further steps have been taken.

The UN commented in its Report on International Migration in October 2008:<sup>23</sup>

"Despite the growth of migration in Asia and the Pacific, protecting the rights of migrants remains at the fringes of discussion...Whilst there are some bilateral agreements between some countries of origin and destination in the region, mostly through memoranda of understanding, those primarily regulate the movement of workers and have little impact on the treatment migrant workers receive in the country of employment."

## Section 3

# The National Positions of the Sample States

### General Models

**F**our distinct models can be identified in terms of national migration policies: laissez faire; state-regulated; state-regulated and managed; and state monopoly.<sup>24</sup> The laissez faire model, in which emigration is left entirely to the market, is generally adopted by high-income states such as the UK. The state-regulated model, in which sending countries use law to regulate the recruitment of nationals for work abroad but the actual recruitment is left to the market has been adopted in some South Asian states, notably India. The state-regulated and managed model allows both state and private enterprises to recruit and place workers within a system of state regulation. This model has, as will be seen, been adopted by Pakistan. Finally, some states, such as China, hold a state monopoly on recruitment and placement of workers.

As will be seen, the success or failure of these models is largely dependent upon the ability of the state to provide an affordable and properly regulated service to migrants, which maximises their choices and minimises costs. The opportunity for corruption and the failure to provide regulation increases cost, excludes the poorest sections of society from opportunities to migrate and encourages undocumented migration.

The following section will analyse the models of migration management adopted by India, Pakistan, Bangladesh, Nepal and Sri Lanka, the protections afforded to migrants and the restrictions placed upon them.

### General Critiques

As will be seen, each of the states analysed seek to restrict migration by their citizens



for work purposes. They do so in the guise of seeking to protect the actual and potential migrants concerned in the context of mass migration. However, the mechanisms adopted, in fact, place significant constraints on the freedom of movement of migrants, whilst affording little real protection from exploitation.

All of the states examined restrict freedom of movement by imposing restrictions on migrants' ability to exit their state of origin without appropriate clearances and formalities. These restrictions range from limiting migration to listed and approved states to the imposition of visa restrictions based upon the terms of the work offered.

Additionally, each of the states surveyed provides migrants on a mass scale to the world labour market, largely in the Middle East/Gulf, along with, increasingly, South East Asia. The methods adopted in managing mass migration have varied in their success but, as will be examined, the complexity in nature of the controls, the number of contacts with officialdom and the expenses incurred by migrants have rendered the processes problematic for migrants. The processes operated by states can be seen as income generating as opposed to protective in nature, and the failure of states to implement the protective measures that do exist, particularly in relation to the regulation of recruitment agencies, leave migrants vulnerable to unchecked abuse and exploitation.

Finally, the issue of income generation for states will be seen as a significant driver in states' failure to increase levels of protection for migrants once they are successfully placed abroad. States which rely significantly upon remittance income (all of those reviewed save for India) have demonstrated a marked reluctance to render their stock of migrant labour "uncompetitive" in comparison with other labour-providing states. This failure, coupled with these states' lack of commitment to adopt and adhere to international labour standards, leaves migrants vulnerable to well-documented abuses once placed abroad.

# India

## Overview

India is, as commented above, not a party to the ILO conventions on migrant workers nor the CRMW. It has been, however, a member of the International Organisation on Migration (IOM) since June 2008. India rates 126/177 on the Human Development Index.

Despite India receiving a significant proportion of the world's remittance income (23.7 billion dollars<sup>25</sup>), the impact of international migration on its overall population is insignificant, representing just 0.5%. Women make up half of its international migrants. However, the impact of international migration in a number of states within India, particularly Kerala, is very significant.<sup>26</sup> Sixty percent of India's international migrants originate from three states: Kerala; Tamil Nadu; and Andhra Pradesh. The vast majority of these international migrants travel to the Middle East, with Saudi Arabia and the UAE alone accounting for fifty five percent of all international migrants.<sup>27</sup>

India has adopted a national plan of action on migration, much of which is concerned with internal migration and which is beyond the scope of this study. Legislation also regulates internal migration in the form of the Inter-State Migrant Workmen (Regulation and Conditions of Service) Act 1979.

## Regulation

Emigration from India was, until 1983, regulated by the Emigration Act 1922. India in common with Pakistan and Bangladesh inherited this regime on independence. The 1970s oil boom and the consequent exponential rise in migration to the Middle East exposed the inadequacies of the existing regulatory system. The Government then enacted the Emigration Act 1983<sup>28</sup> and introduced accompanying Emigration Rules.

Migration issues straddle two main ministries in India, the Ministry of Labour and the Ministry of External Affairs. The former operates the system set out in the Act and described below, and now works through a sub-ministry of Overseas Indians. The latter deals with passport issues, bilateral negotiations and also operates a system of Labour Attachés in the main receiving countries in which India maintains foreign missions.

Essentially, the Act and Rules provide for a regulated system of emigration, with recruitment and placements being made by private agencies or individuals, licensed and regulated by the state.

The starting point of the legislation is that no citizen may emigrate for the purposes of work without exit clearance.<sup>29</sup> The system of recruitment and placement is to be undertaken by licensed agents under the supervision and monitoring of a Protectorate of Emigrants.<sup>30</sup>

The Protectors of Emigrants, appointed by the Protectorate, are required to provide advice and assistance to emigrants and those intending to emigrate, inspect con-

veyances, inquire into the treatment of migrants on their voyage and during their stay abroad, and aid and advise emigrants on their return to India.<sup>31</sup>

The Act prohibits unlicensed agents from carrying on a recruitment business<sup>32</sup> and puts in place a system of licensing based upon various factors such as financial soundness, trustworthiness, adequate premises and experience, along with the ability to pay a fee and security.<sup>33</sup> A licence is issued for a period of 5 years,<sup>34</sup> renewable for up to 25 years and it may be cancelled on various grounds, such as a deterioration in the financial position of the holder, recruitment contrary to public policy, conviction of an offence of moral turpitude, drug related convictions or violating the terms of the licence. Licensing is carried out by the Protector General of Emigrants.<sup>35</sup>

The Act puts in place a procedure for recruitment by foreign employers, which requires the use of a recruiting agent or the obtaining of a permit,<sup>36</sup> granted on similar criteria to licences for recruiting agents, and valid for one year.<sup>37</sup>



The most common problems encountered by international migrants are violations of the recruitment process and breaches of agreed working/living conditions once abroad.

Emigration by a worker requires emigration clearance sought from the Protector of Emigrants, such application being made through the licensed recruitment agent or employer.<sup>38</sup> Clearance applications must be accompanied by a copy of the terms and conditions of employment, along with evidence of the fee and security having been paid.<sup>39</sup> Emigration clearance may be refused where there is evidence that the terms of employment are exploitative; the employment would be unlawful; contrary to public policy in India; violate norms of dignity and decency; living or working conditions would be substandard; emigration would not be in the best interests of the emigrant; or that no provision has been made for repatriation costs.<sup>40</sup>

The Act also sets out a number of offences and penalties. These include an offence of emigration outside the provisions of the Act by a migrant,<sup>41</sup> along with offences of operating as an agent without a licence or recruiting without a permit, furnishing false information, altering documentation, and cheating or overcharging an emigrant.<sup>42</sup> Offences are punishable by imprisonment of up to two years and a fine of up to two thousand rupees. Importantly, no prosecution can be pursued without prior sanction of the Central Government.<sup>43</sup> Further, the Act retains the ability to exempt certain states, foreign employers and public undertakings from some or all of the provisions of the Act.<sup>44</sup>

Detailed Rules have also been produced dealing with the various procedures to be followed and the fees and securities required. The current registration fee for a recruiting agent is five thousand rupees and the security deposit payable varies (dependent upon the number of workers concerned) from three hundred thousand to one million rupees.<sup>45</sup> The maximum fee that may be charged by a recruitment agent to a migrant ranges from two thousand rupees for an unskilled worker to five thousand for a skilled worker.<sup>46</sup>

Detailed requirements are also set out as regards emigration clearance in terms of

the documents required and the factors to be considered. In particular the employment agreement must specify the period/place of employment; wages and other terms; food allowance; accommodation arrangements; working hours, overtime etc; transportation costs; repatriation arrangements in the event of death; and the mode of settling disputes.<sup>47</sup>

The most common problems encountered by international migrants are violations of the recruitment process (such as overcharging and the need to pay bribes) and breaches of agreed working/living conditions once abroad (such as premature termination, changed terms, delayed salary, forced overtime, and confiscation of passports). It is rare for migrants to complain, for fear of losing their jobs or facing difficulties in securing further work abroad. If however, they do so one of two mechanisms applies. If a complaint is made whilst a migrant is abroad, to a foreign mission, the Labour Attaché or other staff will refer to the Protector of Emigrants. If a complaint is made on a migrant's return, the Protector of Emigrants will hold a public hearing. If the complaint essentially concerns the foreign employer, the complaint will be referred to the Embassy and if no satisfactory response is received, an employer may be blacklisted. If the complaint relates to the conduct of the recruiter, the police may be notified and a case registered.<sup>48</sup> As noted above, however, the approval of the central Government is required for a prosecution.

## Additional Arrangements

The requirement for oversight of terms and conditions by Protectors of Emigration has been significantly reduced in terms of exemptions from emigration clearance, as a large number of fields have now been classified as 'Emigration Check Not Required'. Thus those emigrating who do not require clearance encompass managerial workers, professional degree, diploma and graduate degree holders, income tax payers, government servants, all persons who have been abroad for more than three years previously, diplomatic staff, seamen, nurses, and

persons over 60. Additionally those with permanent immigration visas valid in the UK, USA and Australia are exempt.

India has also, in the light of friendly relations with and traditional migration patterns between Nepal and Bhutan, put in place open border arrangements. Migration between India and Bhutan, and India and Nepal is therefore unregulated.

## Recent Developments

The lack of any centralised strategy has led the state government in Kerala to establish a specific department to deal with international migration issues, prompted largely by repatriation issues following the first Gulf war and the mass repatriations that ensued.<sup>49</sup>

The boom in technology service provision and outsourcing to India led to the creation of the Ministry of Information Technology, which deals with invitations from foreign governments for contracts covering IT skilled migrants. Its work is however, limited to the IT field.

In November 2008, the Indian Ministry of Overseas Indian Affairs announced an overhaul of the emigration system and commissioned a 20 million rupee study, 'Emigration in E-Governance'. In February 2009, the Ministry of Overseas Indians attempted to introduce an Emigration Bill, to amend the existing provisions, but was prevented from doing so by administrative delays in the Law Ministry.<sup>50</sup> The Bill aimed to increase the information to be provided to emigrants prior to departure and to restrict the ability of employers to alter terms and conditions following the emigrant taking up his/her post.

## Critiques of the Indian System

Anecdotal evidence of corruption and abuse of the licensing and fee charging system is widespread. Nair has noted that households would have benefited to a much greater extent from international migration had "adequate and effective gov-

ernment control and supervision" been in place.<sup>51</sup>

Significant criticisms can be made of the system currently adopted by India. These critiques are, however, hampered by the lack of available data.

The primary criticism of the current system relates to the restrictions placed upon individuals' rights of free movement and the complexities (and attendant opportunities for subversion and corruption) of the arrangements in place.

India restricts the right of free movement by rendering its citizens' migration rights subject to exit clearance and compliance with the Emigration Act 1983. Whilst the requirement for exit clearance has been significantly ameliorated by the increasing number of exempt categories, these exemptions relate largely to those who are educated, professionally qualified or previously internationally mobile. The barriers put in place in relation to migration and compliance with the Emigration Act therefore falls disproportionately upon sections of the society who are less wealthy or educated. This in turn widens the opportunity for exploitation of those who are least likely to be equipped to negotiate the complex process of migration, and who are least able to meet the fees and expenses involved in doing so.

The criminalisation of migration outside the Emigration Act System is of particular concern, particularly in the face of a setup the complexity of which may prove to be a driver towards undocumented/irregular migration.

The existing "protective" regime in place provides little evidence of adequately safeguarding the interests of migrants. The regulation of licensed agents appears minimal and the lack of data suggests that it is likely that the regulatory regime intended to check and approve the appropriateness of terms and conditions etc. is in fact seen simply as a revenue-generating bureaucratic process. The structure of the process,

The existing "protective" regime in place provides little evidence of adequately safeguarding the interests of migrants.

with its interactions between migrants, agents and bureaucrats is likely to produce significant opportunity for misuse and corruption. The lack of published data on investigations into compliance and complaints is likely to mask significant overcharging by agents and the payment of bribes to officials. The requirement for state sanction for any prosecution is clearly unhelpful and is indicative of a system which provides little accountability. The anecdotal evidence of overcharging and corruption clearly point to the state's failure to operate the system protectively.

In addition, the structure adopted by India to control and manage emigration fails to ensure the basic rights of migrants whilst in India and once they are abroad. India has failed, at federal level, to demonstrate any coordinated approach to the setting of or requirement for agreed labour standards. Its response to the issue of migration internationally has been ad hoc: with the Kerala state government taking matters into its own hands in order to establish basic minimum protections, such as repatriation arrangements. India's only national initiative has been in relation to the IT sector, which has benefited the better-educated and more internationally mobile groups in the society.

India has failed to make use of model contracts, bilateral agreements or international standards to improve protections for those of its citizens who are successfully placed abroad. The system of addressing grievances raised by migrant workers is of course limited by the constraints of international law. However, India has failed to put in place any form of joint liability in respect of agents for the wrongdoing of foreign employers, thus leaving its migrant workers exposed to significant abuse whilst employed abroad. This failure is worsened by the deficiencies in the current system to have in place any equivalent to the welfare funds provided by other states surveyed, further reducing the scope for protecting migrants by failing to establish a suitable fund to assist in cases of hardship of unexpected disaster.

# Pakistan

## Overview

Pakistan is, as commented above, not a party to the ILO conventions on migrant workers nor the CRMW. It has been, however, a member of the International Organisation on Migration (IOM) since 1992. Pakistan rates 134/177 on the Human Development Index.

International migration involves 2.5% of the population, with women representing 44.8% of international migrants, despite restrictions, discussed below, on female migration. It is estimated that four million Pakistanis reside abroad, the vast majority of current migrants, 94%, being placed in the Gulf States. The vast majority of Pakistan's international migrants originate from two provinces, Punjab and the North West Frontier Province.<sup>52</sup>

Fifty percent of Pakistan's migrants are illiterate/unskilled, forty percent are skilled and two percent are white collar/skilled. Eighty five percent migrate without their families.

In terms of state policy, Pakistan has no formally declared migration policy, although one is currently being considered. Pakistan does have in place a Labour Policy 2002 and Labour Protection Policy 2005, neither of which deals with the issue of migrant labour. Migration does however, play a significant part in the country's economy, bringing in 4.3 billion dollars per annum.<sup>53</sup>

## Regulation

The regulatory framework in relation to emigration from Pakistan is set out in the Emigration Ordinance 1979 and the Emigration Rules 1979, which were updated in 2004. As with India, these rules replaced the Emigration Act 1922, inherited on partition and independence.

The Pakistani system, unlike India's state regulated system, is a setup which com-





bines elements of both state regulation and management with the creation of a Board of Emigration and Overseas Employment (the Board), to control, regulate, and oversee the welfare of emigrants,<sup>54</sup> and the Overseas Employment Corporation Limited (the Corporation), to promote the emigration of Pakistani citizens.<sup>55</sup> The system also establishes a Protector of Emigrants<sup>56</sup> and the appointment of Labour Attachés<sup>57</sup> to safeguard and promote the interests of migrants at home and abroad.

The Act provides that lawful emigration can only be effected by a person who holds a letter of appointment, work permit, employment visa or emigration visa, or is selected for emigration by a foreign employer through an Overseas Employment Promoter or in accordance with a bilateral treaty.<sup>58</sup>

Overseas Employment Promoters are

licensed agents. The licensing process is supervised by the Protector of Emigrants and is subject to the payment of a fee and security.<sup>59</sup> Prior to emigration, both the emigrant and the Overseas Employment Promoter must appear in person before the Protector of Emigrants. The current licence fee is 10,000 rupees and the security payable is 300,000 rupees. Licences are issued for one year and are renewable thereafter in 3-year periods.

Failure to comply with the Act by an emigrant may result in a sentence of five years imprisonment and a fine. A migrant breaching the terms of an agreement with a foreign employer may incur a fine of up to 10,000 rupees.<sup>60</sup> Causing or assisting unauthorised emigration may result in a sentence of between five and seven years and a fine.<sup>61</sup> Fraudulently inducing emigration or charging in excess of the prescribed fee due from an emigrant may attract a sen-

As with India, significant criticism of Pakistan's system of emigration control can be made.

tence of 14 years imprisonment and a fine.<sup>62</sup>

The detailed processes to be followed, and fees and securities due are set out in the Emigration Rules. The process set out is complex. Demands for labour, once made by a foreign employer, must be approved by the Board or Protector of Emigrants. Once the request is approved, the recruitment of labour is undertaken by the Corporation itself or by an Overseas Employment Promoter (OEP). The OEP then conducts a recruitment exercise and any migrant selected must then lodge a fee with a bank in respect of the OEP's fee, and a bank certificate is produced and passed to the OEP. The migrant must then obtain insurance<sup>63</sup> and arrange to appear, with the OEP, before the Protector of Emigrants. The Protector of Emigrants must be satisfied that the migrant is suitably qualified, the terms and conditions of the offer have been explained to the migrant and are understood. The work agreement is then stamped and a fee paid, along with a deposit to the Welfare Fund discussed below. Once these requirements are satisfied, the agreement is registered and stamps placed on the migrant's passport. The Registration is then lodged with the bank, which in turn releases the fee paid by the migrant to the OEP.

The service charge payable by a migrant to an OEP is currently 4,500-10,000 rupees, dependent upon the salary of the employment concerned. The OEP may also charge for ticketing, medical, work permit, levy, visa and documentation expenses. Fees payable to the Government are in the form of stamp fees of 100 rupees, a fee of 2,500 rupees and a levy to the Welfare Fund of 1,050 rupees.<sup>64</sup>

The Rules establish a Welfare Fund,<sup>65</sup> which is to be invested and utilised by a further body, the Overseas Pakistani Foundation, whose role is to fund social welfare, housing and educational facilities for migrants and their families.<sup>66</sup>

The Rules also establish a Code of

Conduct for OEPs,<sup>67</sup> which ranges from general record keeping to detailed restrictions of the migration of women. Currently, Pakistan prohibits migration for domestic service by women under 35.<sup>68</sup>

Violations of the employment agreement by the migrant are a crime, as set out above. Violations by the employer are dealt within two ways.<sup>69</sup> Where a complaint is made whilst a migrant is abroad, he/she may seek the assistance of a Labour Attaché in reaching a settlement or pursuing the matter through local labour courts. Complaints may be made within Pakistan to the Protector of Emigrants, save that no complaint can be made about an OEP after six months of joining the service abroad. Where there is concern regarding an OEP, a show cause notice may be issued and serious cases matters may be referred to the Federal Investigation Agency.

## Recent Developments

Pakistan has recently developed a draft National Plan on Migration, which remains incomplete at the time of writing.

## Critiques of the Pakistani System

As with India, significant criticism of Pakistan's system of emigration control can be made, both in relation to the restrictions imposed upon freedom of movement and the failure to have in place measures which are genuinely protective of migrants' interests during the migration process and once abroad.

Pakistan significantly restricts the ability of potential migrants to exercise their right of free movement by adopting a mandatory requirement of exit clearance. Unlike India, this requirement has not been amended by a series of exemptions and applies therefore to the majority of foreign work placements. Additionally, the system criminalises those who seek to migrate outside the system of exit clearance. This criminalisation provides for further state interference into the rights of free movement.

In addition, Pakistan criminalises those breaching foreign employment agreements. Thus, an employee who leaves employment, refuses to work under the terms of engagement or does not meet his/her contractual requirements commits an offence. This arrangement, long abandoned in other legal systems, creates an obligation to an employer similar to bonded labour and outlawed in numerous international instruments. It is clearly in conflict with any aim to protect migrant workers once abroad and places a heavy obligation upon those who may find themselves in disadvantageous situations or changed circumstances once abroad.

In terms of the mechanism intended to regulate migrant labour, the system is extremely complex, requiring multiple contacts with state, private agencies, and banks. These multiple contacts maximise the opportunity for manipulation and corruption. Anecdotal evidence suggests that such manipulation of the system is frequent but little data is available.

Despite its complexity, this system, in common with the others reviewed, fails to set clear and transparent standards for the approval of calls for labour or terms and conditions. There is, therefore, little evidence of actual policing by the Protectorate of the terms upon which employment is offered or the supposed level of protection afforded.

It appears therefore that, in common with the Indian system, the protective element of the mechanism is lacking and replaced by a bureaucratic revenue-generating process.

The level of license fees and guarantees sought from agents is low, in comparison to the potential available revenues. This gives additional scope to agents to operate in the business despite lack of expertise or potential contracts. This again leaves potential migrants vulnerable to abuse by agents who do not have in place any or sufficient genuine contracts. Further, in terms of licensing, there is little documented evi-

dence of investigations being carried out or licences being revoked for malpractice, indicating that review by the state is likely to be lacking.

Additionally, despite the establishment of a Welfare Fund to be administered by the Overseas Pakistani Federation, there have been criticism from civil society groups in relation to the uses to which funds have been put, and the target groups covered. For instance, Aly Ercelan of Pakistan Institute of Labour Education and Research, has commented that the organisation is one:

"for the support of emigrants and their families. However the [Foundation] focuses entirely on the skilled and high income emigrants — operating some and supporting other elite schools and colleges; specialised health facilities in major cities; reserving expensive land in urban schemes."<sup>70</sup>

Finally, the position of women remains restricted in relation to international migration, with Pakistan imposing legal restrictions on women under 35 migrating to take up employment in domestic service etc. Whilst Pakistan attempts to justify this restriction on grounds of protection, in reality this is an unjustified measure based solely on gender, and results in potential female migrants being forced into undocumented migrancy and thus increases their vulnerability.

In terms of protections afforded to migrants once abroad, the current system is again lacking. Pakistan has demonstrated little use of bilateral agreements or of any overall strategy for addressing concerns. It does not have in place any form of joint liability imposed upon local agents for abuses or failures by foreign employers and, despite its system of Labour Attachés, it has made no progress in engaging with major labour-receiving states to secure minimum standards, model contracts, access to labour courts or other realistic means by which migrants may seek redress whilst abroad.

In terms of the mechanism intended to regulate migrant labour, the system is extremely complex, requiring multiple contacts with state, private agencies, and banks. These multiple contacts maximise the opportunity for manipulation and corruption.

# Bangladesh

Bangladesh received 5.4 billion dollars of remittances in 2006, representing 11 percent of its GDP. Remittances make up the largest source of the country's foreign exchange income.

## Overview

Bangladesh has not ratified the ILO conventions but became a signatory to the CRMW on 7 October 1998. Since having done so, it has not taken steps to ratify the Convention. Bangladesh became a member of the IOM in November 1990. Bangladesh administers its migration policies through the Ministry of Expatriate Welfare and Employment. Irregular/undocumented migration is a significant problem in Bangladesh and the state is also developing a National Anti-Trafficking Strategic Plan of Action.

Bangladesh is currently ranked 140/177 on the Human Development Index. It relies heavily on migration as a source of foreign exchange income. The average annual flow of migrants from Bangladesh is estimated at 250,000.<sup>71</sup> The main flow of migration, some 90 percent, is currently to the Middle East, with 4.4 million short-term migrants transplanting to the Middle East from 1976 to 2006.

Women have traditionally played a minor role in documented migration from Bangladesh as the Government has imposed significant restrictions on their movement out of the country. As is discussed below, those restrictions have been largely removed and female migration figures have risen from one to six percent of the overall total in 2006.<sup>72</sup>

Bangladesh received 5.4 billion dollars of remittances in 2006, representing 11 percent of its GDP. Remittances make up the largest source of the country's foreign exchange income.

## Regulation

Bangladesh inherited, on independence from Pakistan in 1971, the Emigration Act 1922. As in India and Pakistan, this provision proved to be inadequate to deal with

the migratory pressures created by the Middle East oil boom of the 1970s. The Act was repealed and replaced by the Emigration Ordinance 1982. In 1990, a Welfare Fund was established.

Until 2002, migration issues were dealt with by the Ministry of Labour and Employment. A new Ministry of Expatriates' Welfare and Overseas Employment (the Ministry) was created in December 2002.

Also in 2002, Emigration Rules, made under the Ordinance, came into force. The Ministry is empowered to implement the 2002 Rules. It has a dual role; to create employment overseas and to ensure the welfare of expatriates. The Bureau of Manpower, Employment and Training (BMET), originally established in 1976, is now an executive agency of the Ministry and plays a role in implementing the Ordinance and Rules. In particular, BMET regulates and controls recruitment agencies, deals with the registration of job seekers, training, pre-departure briefings and the resolution of legal disputes.<sup>73</sup> BMET provides, for instance, two-hour pre-departure briefings to migrants covering cultural, social, and work issues. However, these are limited to preparation for departure to Saudi Arabia, Kuwait, Malaysia and South Korea.<sup>74</sup>

Bangladesh has attempted a number of policy models to control migration. Initially, in the 1970s, migration was Government controlled. In 1981, the market was opened to the private sector under licence. In 1984, the state again intervened with the creation of Bangladesh Overseas-Employment Services Limited, a state controlled company with a direct recruitment role. In fact, the company has had minimal impact, dealing with only 0.31 percent of international migration.

Bangladesh adopted a framework, 'Overseas Employment Policy' in 2006, with the stated aims of protecting migrant workers, supporting regular migration and reducing irregular migration, regulating

recruitment processes, addressing the need to reintegrate refugees, and promoting better coordination.<sup>75</sup> Its overseas missions play a role in exploring the potential labour market, providing consular services and seeking to ensure the welfare of migrants abroad.

The position of women in relation to migration has been changeable.<sup>76</sup> In 1981, the state introduced a ban on female migration, save for professionals. In 1987, this was replaced by a restriction on skilled and unskilled labour migration. In 1997, a total ban, including one on professionals, was introduced. Following strong protests, this ban was removed and replaced with restrictions that excluded professionals. In 2003, the restrictions were limited to skilled and unskilled women under 35. This has now been reduced to a limitation on those under 25 employed in domestic and garment work. There is no age limit for other groups.<sup>77</sup>

The Emigration Ordinance provides that only those with valid travel documents, in the form of a letter of appointment, work permit, employment or migration visa,<sup>78</sup> or having been selected by a recruitment agency<sup>79</sup> may migrate. Recruitment agencies are licensed by the government<sup>80</sup> and their licenses may be cancelled or suspended for improper conduct.<sup>81</sup> There are penalties for breaching a foreign employment contract and abandoning a contract.<sup>82</sup> Illegal migration is punishable by up to one-year imprisonment and a fine of up to 5,000 Taka. Similar penalties exist for those facilitating migration outside the Ordinance and for overcharging migrants in relation to fees.<sup>83</sup>

The Emigration Rules 2006 provide further details as well as Rules for the Conduct and Licensing of Recruitment Agencies and Rules for the Wage Earners' Welfare Fund. The Fund aims to provide services to migrants in the form of hostels/briefing centres and orientation programmes, to provide assistance to migrants in need and to assist families of deceased migrants.



Figures show that the breakdown of methods of migration is heavily skewed towards the use of personal/family networks, with 57.45% of placements being arranged directly, 41.10% arranged by agents and less than 2% by BMET and the Bangladesh Overseas Employment Services Limited.<sup>84</sup>

## Other Developments and Trends

Bangladesh has attempted a number of bilateral treaties with receiving states, such as Iraq, Qatar, and Libya, and reached a Memorandum of Understanding with Malaysia in 2003. However, the conditions agreed upon have been restrictive to migrants, in terms of job mobility and personal rights, and have not generally been viewed as successful.<sup>85</sup>

The large number of emigrants and returnees has prompted the formation of self-help groups, the most prominent of which are the Welfare Association of Bangladeshi Returnee Employees, the Bangladeshi Migrant Centre and the Bangladesh Women's Migrants Association. These groups have been active in supporting and campaigning for migrants.

## Critiques

Points raised above in relation to the Indian and Pakistani systems of exit clearance can be repeated in relation to the system operated by Bangladesh. Bangladesh imposes a legal requirement for exit clearance which limits the freedom of choice and movement of its citizens. Additionally, Bangladesh, in common with Pakistan, criminalises both migration outside the legislative framework and the abandonment of a contract once abroad. The latter restriction again, amounts to forced labour and follows a model which is not in conformity with most legal practice in other jurisdictions (outside South Asia) or various international instruments.

Similarly, concerns regarding corruption and manipulation, raised above in relation to India and Pakistan, can be repeated. However, the position in Bangladesh is particularly extreme. Commentators have noted high levels of corruption and, in particular:

"a nexus...between high level state functionaries of receiving countries, their recruiting agents, a group of expatriates Bangladeshis and a section of Bangladeshi recruiting agents."<sup>86</sup>

These levels of corruption have rendered migration through regular channels difficult as the entire system has been subverted. This subversion of the system may explain in part both Bangladesh's high level of direct/network-based recruitment -- avoiding the use of agents, and also high levels of undocumented migrancy by those unwilling or unable to meet the financial requirements of the system, taken together with

the bribes and additional fees levied.

These levels of corruption have replaced any semblance of protective aim behind the regulatory mechanism with an explicit aim of revenue generation, not only by the state, but also by individual agents, officials, and bureaucrats working within the industry.

A further complication in the regulation of Bangladesh's current system is its geographical base. All agencies are based in Dhaka and are thus largely inaccessible to those outside the capital. This necessitates a wholly unregulated layer of sub-agencies, known as *dalals*. The *dalal* system involves the re-selling of visas by licensed agents in Dhaka to unlicensed *dalals*, which exist entirely outside the legislated system of regulation. No steps have been taken to institutionalise this informal system or to address breaches of the licensing system as it currently exists. This informal system and the issue of re-sale of visas clearly add considerable scope for abuse, excess charging, and corruption. A 2001 strategy document to begin the registration of the informal *dalal* system remains unimplemented.<sup>87</sup>

The precarious situation in relation to Bangladesh's attitude to female migration is also problematic. Whilst the current situation has become more favourable towards female migration, limitations still exist and are a discriminatory restriction of women's freedom of movement. The past changes demonstrate volatility in the attitude of the state that leaves women's migration vulnerable to future changes to state policy.

In terms of securing the welfare of the Bangladeshi migrant workers placed abroad, Bangladesh's efforts have not been particularly successful. The various bilateral treaties and memoranda of understanding have been viewed as an exercise in rendering Bangladeshi labour "competitive" as opposed to safeguarding standards and welfare with Bangladesh accepting restrictions regarding job related rights as well as personal issues such as marriage rights on behalf of its citizens.

# Nepal

## Overview

Nepal is not a signatory to the ILO conventions or the CRMW. It became a member of the International Migration Organisation in November 2006. Nepal ranks 138/177 in the Human Development Index. It receives 1.2 billion dollars in annual remittances and its international migration rate is 3 percent. Women currently represent 69.1 percent of Nepal's international migrants.

Nepal maintains open borders and unrestricted migration with both India and Bhutan.

## Regulation

Nepal controls international migration through the Ministries of Home and Labour. The provisions relating to migration can be found in the Foreign

Employment Act 2007 and the Foreign Employment Regulations made under that Act.

The Act provides a state-regulated system of emigration control. Management is effected through the Department of Foreign Employment, the Board of Foreign Employment Promotion and Labour Attachés in foreign missions. The role of the Board is to study the international labour market, explore labour treaties with other states, specify the curriculum for appropriate training institutions and orientation programmes, advise on charges and fees, and the issue of remittances.<sup>88</sup>

The Nepali Government publishes a list of countries permitted to operate businesses employing Nepali nationals abroad. Nationals are sent abroad to fill job placements through licensed institutions, which are required to provide deposits and guarantees.<sup>89</sup> Emigration by under 18s is pro-



Complaints against foreign employers who fail to abide by terms and conditions in employment contracts may result in the licensed agent being ordered to repay to a migrant the amount incurred in taking up foreign employment as compensation.

hibited<sup>90</sup> and the Act makes clear that selection for emigration must not be made on gender discriminatory grounds (save where a call for labour specifies a particular gender).<sup>91</sup>

The Act and Rules set out a process for recruitment. When a call for recruitment is made by a foreign employer the call must be approved by the Department, which examines the identity of the employer, numbers involved, requisition letter and the contract of employment proposed. Where the terms and conditions offered are unsuitable for the qualifications of those called, or are contrary to dignity, values, health, or no suitable security is provided, a call may be refused.<sup>92</sup> Where permission is granted, a licensed agent, selected in open competition,<sup>93</sup> is then empowered to advertise for, and select workers.<sup>94</sup> Selection is carried out on the basis of qualification and experience, age, physical fitness, skills, training and any specific reservations in relation to gender or indigenous identity.<sup>95</sup> A list is then provided to the Department of those selected and the permission of the Department is required prior to an agent taking passports abroad in order to obtain appropriate visas. Following the provision to the Department of certificates in respect of training, health, insurance, the receipt of the fee paid and copies of the employment contract, a sticker giving permission to work abroad will be issued.<sup>96</sup> Personal applications, outside the agency arrangements, are permitted when supported by similar documentation.<sup>97</sup> Health checks<sup>98</sup> and training must be carried out at Government approved and licensed institutions,<sup>99</sup> with the Board setting the curriculum for such trainings.

Agents are licensed by the Department, subject to suitability and the payment of a fee and security deposit.<sup>100</sup> Licences are issued annually and may be cancelled for misdemeanours including forgery, failures to reimburse deposits and other breaches of the Act or Regulations.<sup>101</sup>

The Government may issue a minimum wage applicable to migrant workers.

Maximum fees payable to licensed agents may be fixed. Insurance is compulsory in respect of death and injury.<sup>102</sup> The Act also established a Foreign Employment Compensation Fund, with the aim of providing social security and welfare to migrant workers and their families. The fund receives contributions in the form of deposits from workers, investments from deposits, licence fees, training institution licence fees as well as grants and other support.<sup>103</sup> Its main tasks are to provide skills training, to call back injured workers, to provide orientation for returnees, and to transport bodies of deceased migrants.<sup>104</sup>

Complaints against foreign employers who fail to abide by terms and conditions in employment contracts may result in the licensed agent being ordered to repay to a migrant the amount incurred in taking up foreign employment as compensation.<sup>105</sup> In addition, criminal penalties are set out in relation to operating an agency without a licence, sending minors abroad, sending migrants to countries unapproved by the Government, suppressing and altering documentation and excessive charging of fees.<sup>106</sup> A system of Foreign Employment Tribunals is established in which the government appears as the plaintiff.<sup>107</sup>

## Critiques

There is little published material available in relation to migration from Nepal or the implementation of its, relatively new, legislated system.

Clearly Nepal's system of regulatory control, like those of the other states reviewed, is restrictive of migrants, limiting not just exit clearance but also the countries to which a migrant may migrate. These restrictions infringe upon the freedoms of choice and movement of Nepali citizens in relation to migration.

The system adopted by Nepal appears to show a high level of state regulation/control, with state licensing of all levels of agents, training institutions, medical facilities etc. In the past, systems which have adopted highly regulated and controlled



models have not been particularly successful. However, Nepal presents a potentially unique situation. The vast majority of its international movement is through unregulated migration, using open borders to neighbouring India. Additionally, it is a socially cohesive state, with a relatively small population, in which international migration (to states other than India) will be unusual. In these circumstances, such levels of state regulation may prove to be more successful and operate to the benefit of migrants without them needing to have recourse to undocumented migration.

One important note is that Nepal is the only state reviewed which enshrines in its legislated system the principle of non-discrimination on gender grounds, and no additional limitation is placed upon the choices of female potential migrants. This is an important model, which should be considered and adopted elsewhere.

Additionally, the Nepali system adopts a limited form of joint liability between local agent and foreign employer. Whilst this is not in a form which ensures that all liabilities are shared, it does allow the migrant to, at least, recover, as compensation, the costs of migration where a placement is unsatisfactory.

Finally, a dedicated tribunal system is established to deal with complaints in which the state appears as a party, thus taking a direct interest in the proceedings. Whilst this state interest could ultimately operate to the disadvantage of migrants, should the state fail to take action, proactive use of the tribunal system by the state could significantly enhance the safeguards available to migrant workers in the event of unsatisfactory placements or exploitation.

Further research will be required to fully assess the impact of the Nepali system in due course.

# Sri Lanka

## Overview

Sri Lanka is a member of the IOM. Whilst it is not a party to the ILO conventions it has acceded to the CRMW. Sri Lanka ranks considerably higher than its fellow SAARC members on the Human Development Index, at 99/177.

Sri Lanka receives 1.1 percent of the total world level of remittances, representing 29 percent of the country's foreign exchange income.

Sri Lanka was a relative latecomer to the trend of mass migration from South Asia. Levels in 2007 are estimated to be at 217,306. Whilst women make up a majority of Sri Lanka's migrants, their proportion is falling, from 66 percent in 1997 to just above 52 percent in 2005, as the result of state encouragement for men to migrate.

The majority of Sri Lanka's migrants are literate but migrate to domestic service and unskilled labour. The largest destination remains the Middle East and the Gulf, but there has been an increase in numbers migrating to other Asian destinations, particularly Korea and the Maldives.

## Regulation

Migration to and from Sri Lanka is regulated by the Immigrants and Emigrants Act 1924. Regulation of emigration for work purposes is set out in the Sri Lanka Bureau of Foreign Employment Act 1985, as amended by the Sri Lanka Bureau of Foreign Employment (Amendment) Act 1994.

As its title suggests, the Act established a Bureau of Foreign Employment (the Bureau) to promote, regulate and manage foreign employment.<sup>108</sup> The objects of the Bureau are to promote employment opportunities; regulate a system of private, licensed employment agencies; set standards; maintain a databank of migration information and welfare fund; and, in col-



laboration with agencies, provide orientation and training to recruits.<sup>109</sup> The Bureau has power to enter into bi-lateral arrangements with other states<sup>110</sup> and may appoint foreign employment representatives, to be placed in foreign missions in receiving countries.<sup>111</sup> The main duties of the Bureau are promotion of the welfare of emigrants, employment, settlement of disputes and dealing with complaints.<sup>112</sup>

The Act requires mandatory licensing of

foreign employment agencies.<sup>113</sup> Specific statutory power is given to the Bureau itself to operate as a foreign employment agency.<sup>114</sup>

Licensed agents are required to be of good repute, to pay fees, guarantees and sureties, each currently standing at 10,000 rupees, and to take reasonable steps to ensure compliance with employment contracts by foreign employers.<sup>115</sup> Licences are issued for a 12-month period<sup>116</sup> and may be can-

celled where a licence holder is convicted of an offence, provides false information, or the Act or any regulations are contravened.<sup>117</sup>

The Act sets out a process for foreign recruitment. Calls for labour must first be authorised by the Bureau and agents must submit details of the employer, nature of employment, and terms and conditions offered.<sup>118</sup> Calls will be rejected if the terms offered are degrading, inhuman, or otherwise unsatisfactory.<sup>119</sup> If approved, the terms and conditions will be certified and registered.<sup>120</sup>

Payments by recruits are made to the Bureau, via banking arrangements.<sup>121</sup> The fee was originally set at 2,500 rupees, but was replaced in 1994 by a set of graduated fees dependent upon the type of work and skills involved.<sup>122</sup> If the agent subsequently arranges the placement, the Bureau then releases 70 percent of the fee to the agency and makes a further contribution of 10 percent to the Welfare Fund. Agents are required to pay a 'cess', effectively a 5 percent levy on all commissions received, on a monthly basis.<sup>123</sup>

The Bureau is empowered to inspect, enter premises and interrogate witnesses in investigating and monitoring agencies.<sup>124</sup> The Act sets out penalties for operating without a licence, making unauthorised agreements and assisting emigration outside the statutory framework,<sup>125</sup> an offence. The penalties for these were increased from 10-15,000 rupees to 20,000-100,000 rupees in 1994.<sup>126</sup> There is a separate offence for overcharging, punishable by fine and imprisonment.<sup>127</sup>

Significantly, the Act did not criminalise individual migrants who migrated outside the statutory framework. However, this position was reversed by the 1994 amendments and failure to comply with the provisions of the Act is now an offence punishable with a fine and imprisonment for up to two years.<sup>128</sup>

The Bureau is entitled to receive com-

plaints from Sri Lankan citizens in relation to breaches of terms and conditions of employment contracts by foreign employers, and against allegations that agents have failed to take reasonable steps to ensure observance. Agents found to have failed to take reasonable steps to ensure compliance by foreign employers may be ordered to pay financial compensation to the migrant concerned.<sup>129</sup>

The Act also establishes a databank of migrants and returnees<sup>130</sup> (migrants are required to register prior to departure), a welfare fund,<sup>131</sup> and an Association of Foreign Employment Agencies, membership of which is compulsory.<sup>132</sup>

### **Additional Arrangements**

Further regulations and policy initiatives have created a broader system of regulation by the state. Sri Lanka has established a system of pre-departure training and orientation for migrants, which, in some cases, is compulsory. The training covers specific industries and work areas, cultural and legal awareness, safe migration issues, health awareness, and has some gender-specific elements aimed specifically at female migrants. Training is delivered at 30 centres at district level and one large centre, catering for up to 1,500 migrants at any one time, in Colombo, over a 3-day period.

The Bureau has also developed a web portal carrying detailed information for migrants, which is now regarded as a model facility. It is intended to provide detailed guidance to migrants on the various requirements, processes, and training opportunities.

Sri Lanka has also adopted model contracts for use and has attempted a number of bilateral arrangements, through the Bureau or using the Association of Foreign Employment Agencies.<sup>133</sup>

### **Critiques**

Sri Lanka's system of regulation is considerably simpler than those adopted by other states surveyed, thus reducing the opportu-

In terms of the mechanism intended to regulate migrant labour, the system is extremely complex, requiring multiple contacts with state, private agencies, and banks. These multiple contacts maximise the opportunity for manipulation and corruption.

nities for overcharging and corruption. The state system also adheres more closely to a lifecycle of migration approach, with attention being paid to pre-departure measures and to returnees.

However, the Sri Lankan system displays a number of familiar deficiencies. First, the system requires exit clearance for those migrating for work purposes. This, as with the other systems reviewed, restricts freedom of choice and movement for migrants. Furthermore, the current system, as amended, criminalises migrants who use informal methods of migration. This is a regressive step, restricting individual freedoms.

The protective elements of the system, in regulating mass labour migration, are more evident in the Sri Lankan model. At the same time, there is little evidence of adequate regulation of the major force within the system, i.e the recruitment agents. As is familiar, there is little available data in relation to the application of the licensing requirements and the policing of agents once licensed. However, it is perhaps indicative of the level of compliance that, whilst regulatory measures are in place in relation to agencies such as the power to raid premises, it is estimated that some 20,000 unlicensed and unregulated agencies operate in Sri Lanka. The proliferation of unlicensed agencies, and the likely lack of policing even of those licensed, exposes potential and actual migrants to exploitation and overcharging.

Additionally, Sri Lanka's attitude to the migration opportunities of women gives some cause for concern. Sri Lanka has not restricted migration of women in the way other surveyed states have done in the manner described. However, there has been growing disquiet that high levels of female migration destabilise the social fabric of the Sri Lankan society. This led, in 2007, to an announced ban on women with children under 5 from migrating for work purposes. The ban, announced by the Ministry for Child Development and Women's Empowerment, led to an outcry

and was withdrawn for reconsideration by the Minister for Foreign Employment Promotion and Welfare a few days later. It was not put into effect. The proposed approach, however, showed a worrying view of women's empowerment and their role in the society.

The Sri Lankan model has, however, incorporated some positive approaches to supporting migrants and protecting their welfare whilst abroad. The framework adopted is considerably simpler than those seen elsewhere in this survey and information is more readily available to potential migrants. The use of model contracts and a web portal for the dissemination of information to migrants is progressive. The availability of a web-based system perhaps reflects the higher level of education exhibited by Sri Lankan migrants than elsewhere, allowing them easy access to written information through the use of technology.

The efforts made to secure the rights of migrants once placed abroad have been more proactive - although not broad ranging - than some of the other states surveyed. Some efforts have been at agreeing bilateral arrangements, either directly through government initiatives or indirectly through the Association of Foreign Employment Agencies. Whilst some progress has been made, initiatives have often been the subject of criticism by NGOs on the basis that, in reality, they have done little to ensure tangible rights.

Finally, the legislation, whilst not adopting the concept of joint liability between recruitment agents and foreign employers, does adopt some required standards to be applied by agents, which, if breached, can result in compensation being payable to the migrant. The standards require agents to take reasonable steps to ensure observance of foreign employment contracts and whilst this is less protective than joint liability, it is a useful step beyond the approaches of, for instance, India and Pakistan.

## Section 4

## Other Considerations and Issues

### The Philippines: A Model Approach

**W**hilst outside the scope of this study, the approach to migration management adopted by the Philippines is often regarded as a model and a brief assessment is therefore necessary.

The Philippines has adopted a proactive approach to migration management. It has in place a national migration policy, which is regarded as a model within the region.

It has also adopted a state-regulated system, after a period of state management, and proactively seeks bilateral, multilateral, and international agreements to facilitate migration of its nationals.

Importantly, the Philippines have adopted a holistic approach, which is often referred to as the "life cycle of migration" approach. This approach involves regulation and management of the migratory process pre-departure, in the receiving country, and on return. There is a detailed programme of pre-departure orientation and training, a framework of minimum rights prior to a placement being approved (including a minimum wage), an extensive network of Overseas Labour Officials in embassies (with a strong female representation), and support and services for reintegration on return.

The system is established under the Immigration Act 1940 and overseen by the Philippines Overseas Employment Agency (POEA), established by a presidential decree in 1982. The current regulatory regime is further outlined in the Migrant Workers and Overseas Filipino Act 1995. The Act saw the end of state management



and instead put in place a state-regulated scheme, which prohibits the direct recruitment of nationals by foreign employers and instead favours a state-licensed and monitored system.

A migrant will not be approved for departure without the terms of the placement conforming to a model contract and a minimum wage being satisfied, along with the migrant having completed compulsory pre-departure orientation. Benchmarks are set in relation to various industries and by reference to minimum standards in the Philippines itself.

In terms of enforcement, until the 1995 Act, the POEA had exclusive jurisdiction in respect of the adjudication of disputes relating to foreign labour contracts. However, this role transferred in 1996 to the National Labour Relations Commission, which now resolves and adjudicates disputes relating to violations of or non-compliance with overseas employment contracts. Migrants may be assisted by Overseas Labour Officers in bringing complaints. Importantly, the Act establish-

It will be important for states to resist popularist responses to the use of migrant labour. As was noted above, migrants ordinarily fill gaps in the labour marker rather than displacing indigenous workers.

es the concept of 'joint and solidarity' liability for breaches as between a foreign employer and a recruitment agent. In the event of non-compliance by a foreign employer, the migrant may successfully seek redress against the agent involved once he/she has returned to the Philippines. This concept of joint liability is an effective means by which a vulnerable migrant worker may gain redress without reliance upon the legal system of the receiving country. The system also allows for licences of agents to be suspended for abuse by the agent and for foreign employers to be barred from hiring for abuses abroad.

The Philippines operates a welfare fund to benefit migrants.

Whilst the Philippines' model does not eradicate restrictions on freedom of movement of potential migrants, it does establish a balanced system which monitors and protects the rights of migrants placed abroad, and following their return, more effectively than the models adopted by the states surveyed. It also better equips them for migration and reintegration upon return. The system also adopts a gendered approach, seeking to support female migrants, particularly in domestic settings. This is an important step, given women make up 60 percent of Filipino migration levels.

As can be seen, the approach adopted by the Philippines can provide useful and important guidance to other states within the region in terms of effective and efficient management of migration, the safeguarding of migrants' rights, and the protection of the position of women migrants.

## The Impact of the Global Economic Downturn

Any consideration of the current context of migration must take into account the likely effects of the current world economic downturn.

Migrant workers are particularly vulnerable in contracting markets, as they are general-

ly perceived to be the most disposable category of labour. The downturn is likely to lead to a significant reduction in the overall demand for labour, particularly in the construction sector, which relies heavily on migrant labour. The ILO has predicted 20 million global job losses across the global market place.<sup>134</sup>

In the past, countries have rapidly responded to economic difficulties by reducing and/or expelling migrant labour. During the Asian economic crisis of the late 1990s, protectionist measures were introduced by various states as a response to public resentment and adverse media coverage of the use of migrant labour. Thailand introduced an Unemployment Relief Scheme, with the express aim of replacing immigrant labour with indigenous workers.<sup>135</sup> Both Malaysia and Thailand instituted mass deportations of migrant workers in 1997.

The current downturn has already resulted in labour unrest and protectionist practices. The UK has seen demonstrations by trade unions against what was perceived to be the favouring of the use of foreign as opposed to indigenous labour. In Southeast Asia, Malaysia has adopted a 'Locals First' policy, seeking to limit and replace foreign migrant workers.<sup>136</sup> It is likely that other states will follow, taking steps to restrict or prohibit migrant labour as the downturn continues.

It will be important for states to resist popularist responses to the use of migrant labour. As was noted above, migrants ordinarily fill gaps in the labour marker rather than displacing indigenous workers. States should therefore adopt realistic responses to the contraction of the job market, rather than responding to media and public pressure that frequently fails to note the nuances of the labour markets and the realities of recruitment.

## Section 5

### Conclusions

#### Overview

**T**he current systems operating across the five SAARC states examined adopt approaches which seek to exploit labour migration in order to create both internal stability, through the reduction of unem-

ployment, and to increase foreign exchange revenue through remittances. As each of the states viewed receives significant remittances, and each, with the exception of India, is heavily dependent upon remitted income, migration forms an important element of economic stability and policy.



However, with the exception of Sri Lanka, few states appear to address the issue of migration in any systematic manner in terms of state planning.

Each has however adopted a policy of seeking to control migration by means of exit controls. Whilst the explicitly stated aim of these exit control policies is to provide protection to migrants, as can be seen, little real protection is afforded. The various systems adopted, whether state-regulated or state-controlled, aim to put in place regulated agencies, applying approved standards in terms of the selection, placement, and terms upon which foreign employment is provided. Whilst various of the states reviewed have legislated for differing degrees of state control and supervision, each has put in place a system which is in reality, revenue generating.

These systems, using the guise of protection, have created significant bureaucratic apparatus, which in turn produce opportunities for exclusion, exploitation, and abuse. Whilst poverty and restricted economic opportunities are major drivers of migration, the current predominant systems of state regulation or management, generate fee structures which exclude the poorest sections of the society, restricting migration opportunities of the most vulnerable to affect their own life choices.

This exclusion, taken together with ineffective and inefficient support for returnees in terms of job opportunities and investment of remitted incomes may, as Waddington suggests,<sup>137</sup> lead to a widening rather than a narrowing of inequality. A basic reconfiguration of the current systems of managing migration in the various states concerned is necessary to ensure a maximised benefit to migrants, their families and the community as a whole. Such an approach would require a rebalancing of regulation and competition-driven considerations. The ultimate aim must be to provide maximum opportunities to migrants, at low cost, whilst maximising rights protection.

## **A Reconfigured Approach**

This reconfiguration requires action both regionally and within individual states.

Each state has in place a system, which currently, to varying degrees, restricts the freedom of movement of its citizens by imposing exit controls. The right of individuals to move freely is enshrined in a multiplicity of human rights instruments. The right to move freely from one's own state to take up work elsewhere is explicitly recognised by the CRMV. The imposition of exit controls, in the guise of protection, provides significant restrictions on the rights of citizens. As Ronald Skeldon has noted:

"An underlying contradiction exists between any attempt to control the volume and direction of migration, and the basic human right of freedom of movement."<sup>138</sup>

## **Regional Action**

Any reconfiguration of movement and migration within South Asia will require regional action. The SAARC, to which each of the countries reviewed belong, has in place an ambitious programme for trade, customs and currency unions (current proposals aim towards a South Asian free trade area by 2010, customs union by 2015 and economic union by 2020).<sup>139</sup> However, despite the importance of migration to its members, to date, the SAARC has put forward no regional policy on migration (although a number of its members contribute to the IOM, the Colombo Process etc.).

There is currently limited documented migration between the SAARC states, the current dominant patterns remaining as migration to the Gulf and the Middle East. This, however, ignores the traditional patterns of migration, which continue to exist and are largely undocumented, through which migrants move within South Asia itself.

As has been noted above, open border arrangements currently exist between



India, Nepal and Bhutan, and have been successful in allowing free movement of migrants for work without creating difficulties for the states concerned.

These arrangements accommodate traditional family and community networks, seasonal and frontier work. These patterns exist elsewhere in South Asia with significant levels of undocumented migration between for instance India, Bangladesh and Pakistan, Afghanistan and Burma, particularly in areas with porous borders. The failure of states to accommodate formally these migratory patterns leaves undocumented migrants in a disadvantageous and precarious position, leaving them open to exploitation and abuse by employers and functionaries of the state.

The South Asia Alliance for Poverty Eradication (SAAPE) called for a visa free South Asia, at a meeting as part of the Colombo Process in July 2008.

The removal of visa restrictions within the SAARC would significantly advantage those, particularly the poorest in society, who wished to migrate between South Asian states. The aim of the SAARC states should be the maximisation of freedom of movement within the SAARC area by citizens of member states. States should address the idea of free and open borders in order to maximise the life choices and economic opportunities of citizens. The SAARC should be pressed to develop clear policies so as to incorporate this aim within its existing timetable of trade integration within the region.

## Individual State Responsibility

Whilst the issue of the removal of visa restrictions within the SAARC may be addressed regionally, the vast majority of migration from the states reviewed remains towards the Middle East and the Gulf. Methods of managing this migration without restricting the freedom of movement of individual citizens would require a more structured approach within each

individual state.

Skeldon suggests an approach by which:

"Governments should examine how immigration/emigration policy should be incorporated into existing bureaucratic structures in a manner which would avoid duplication and provide a fast, efficient and transparent service."<sup>140</sup>

The removal of all restrictions on the migratory process would be likely to lead to further exploitation of migrants and potential migrants. Individual migrants, save for skilled and professional workers, would be unlikely to have sufficient information and the ability to avail themselves of migratory opportunities, and the receiving states may continue to favour the use of agents to identify, screen and place potential migrant workers.

A number of measures could be considered in order to facilitate a suitably empowering but sufficiently protective approach.

The first consideration would be the removal of exit clearance requirements. This change would need to be accompanied by the removal of sanctions, currently criminal in several states, for migrants moving outside the regulatory schemes. This approach would empower individual migrants to avail themselves of their right to freedom of movement. It would be possible for states within South Asia to follow the model set out by many western states that allows free movement to citizens subject simply to the entry requirements of the receiving states. This western model, however, has developed in states in which migration has generally been of skilled and professional workers filling privately arranged vacancies in other states. Modifications to the model would need to be developed to accommodate the specific characteristics of mass and largely unskilled migration from the South Asians states.

These modifications would need to focus on two central issues: protection for

The removal of visa restrictions within the SAARC would significantly advantage those, particularly the poorest in society, who wished to migrate between South Asian states.

workers in terms of the use of recruitment agencies; and protections in terms of the standards, terms, conditions, and legal redress available to migrants once abroad.

## **Protection and Recruitment Processes**

The first of these issues, the regulation of agencies, requires a redrawing of the current regulatory regimes. Waddington comments that state monopoly models have rarely been successful in providing adequate opportunities and protections to migrants. Given the scale of migration, it is in any event unlikely that the task of recruiting and placing migrants could be successfully undertaken by the state without private sector assistance. Given the existing networks of private licensed agents across the region, it is likely that those would remain the most effective structure for the continued management of migration.

It is, however, clear that the existing structures for licensing, monitoring, and regulation are inadequate. The relatively low levels of licence fees, the sometimes lengthy terms of the licences once granted, and the low level of scrutiny and monitoring leaves potential migrants in a vulnerable position.

A significant increase in licence fee has been seen to be effective in the Sri Lankan context. Shortened periods of licence and a reinforced system of monitoring of performance would be likely to reduce unsatisfactory performance and corruption. It is clear that, for instance in Bangladesh, the basing of agents in Dhaka and the informal system of sub-agencies existing elsewhere in the country has remained unchecked by the existing regulatory regime. India's requirement for central Government's approval for criminal prosecutions is an obvious impediment to effective regulation.

The reality of the current situation demonstrates that the multiplicity of contacts with differing agencies of the state and in the private sector increases the opportunity for corruption and manipulation of the

system to the disadvantage of the migrant. In Pakistan's current system, with contacts involving agents, banks and the Protectorate, the need for payments for stamping, fees, expenses of the agent, Government charges along with the requirement for the issuance of multiple certificates and registrations poses numerous possibilities for misuse and manipulations, the existence of which are supported anecdotally.

It should also be noted that data and statistics on investigations, suspensions or cancellations of licences and prosecutions for breaches by agents and other officials are not readily available.

A stringently defined and monitored system of licensing, with adequately high licence fee and guarantees, and an enforced system of penalties for breaches, would assist in protecting migrants from exploitation by limiting the scope for unscrupulous agents and practices that develop and remain undetected. A system which was simplified so as to minimise contacts with state and private agencies would reduce opportunities for corruption. Such simplified systems could be operated within state-regulated or state-managed systems with appropriate safeguards in place. The model of the Philippines, following the 'life cycle' approach (whilst disregarding the element of exit clearance) would be a sensible starting point, ensuring an integrated and holistic system.

The Filipino model shows clear evidence of the advantages of a central bureaucracy (when properly managed and free from corruption opportunities), whilst building in appropriate flexibility. A more streamlined approach, reducing contacts with agencies and minimising opportunities for corruption would in turn lower the costs of migration, opening migration options to sectors of the community currently excluded.

## Protections for Migrants Abroad

A basic starting point in a sending state's ability to regulate and monitor the terms of employment and rights available to its citizens abroad are the constraints set out by the international law. State sovereignty prevents any direct right of influence or action by the sending state in the affairs of the receiving state. At the same time, there are a number of clear avenues open to more proactive states in order to encourage adequate protection of their citizens abroad and migrants within their own borders. However, in the past, states have focussed instead on competition with other states, choosing to minimise protection to ensure that migrants are marketable. This can result in a regrettable downward spiral of standards under pressure of the threat of losing market share to other, less protective states.

What is required is a shift in state thinking, with the aim of protecting citizens' rights. Again, a regional approach, through for instance the setting of minimum standards involving SAARC institutions, could allay fears of undercutting and loss of market share. However, in the absence of regionally agreed action, individual states must act to protect the interests and rights of their nationals. Steps taken should include the range of options explored below comprising: accession to international labour standards and conventions protecting the interests of migrants; the securing of bilateral treaties, scrutiny of labour calls against transparent and fixed standards; the setting of minimum wage levels; the enforcement of penalties against agents for breaches by foreign employers in respect of whom labour supply was agreed; blacklisting of foreign employers who persist in violation of existing rules; use of welfare funds to compensate victims of abuse; and encouraging the involvement of trade unions in standard setting and monitoring.

## Accession

It is vital for securing of the rights of migrants that both sending and receiving

states ratify and adhere to the standards set out in the various ILO conventions and the CRMW along with more general rights set out in the general UN framework of human rights. General follow up of ratification has been poor both across South Asia and in the major receiving areas of the Gulf and the Middle East. Currently there is little pressure upon the main receiving states to ratify and such pressure cannot be exerted by states which have not themselves ratified. It would be an important step towards more widespread ratification if the SAARC states were to coordinate and follow up the process. This would then allow, singly or as a bloc, to exert increased pressure on the main receiving states to ratify and ensure minimum standards and equality. Given the current heavy reliance across the Gulf and the Middle East upon migrant labour (even in the face of various moves by individual states to increase levels of indigenous labour), pressure could be exerted for improved standards if group, as opposed to competitive, action were to be taken.

Individual states and the SAARC as a group should be called upon to ratify the various conventions discussed.

## Bilateral Treaties

In the absence of any regional approach, the use of bilateral treaties will be vital in securing the interests of migrating workers. The use of bilateral treaties has not, to date, been viewed as generally successful,<sup>141</sup> with states being reluctant to enter into arrangements which would make their nationals appear uncompetitive as opposed to those of other states. Several bilateral treaties (and memoranda of understanding) reached are regarded as restrictive and disadvantageous to the rights of migrant workers. States must take a more balanced, long-term, and rights-based approach.

The guarantee of minimum labour rights, access to the legal systems of the receiving state and protections from arbitrary and unequal treatment would be a useful first

In the absence of any regional approach, the use of bilateral treaties will be vital in securing the interests of migrating workers.

step in any such approach. The pattern, seen in several of the major receiving states, of excluding non-nationals from labour rights and the court systems is not a practice which should be permitted to continue. Sending states should, preferably in a coordinated approach with other sending states, prioritise the rights of their nationals over the short-term economic gains of an increased share of migrant labour contracts and remittances. Such an approach would, of course, be more effective if taken regionally, through organisations such as the SAARC, in order to minimise the risk of undercutting by other states.

### **Scrutiny of Labour Calls**

Whilst the systems described above involve an examination and approval of various labour calls from foreign employers, there is little evidence that these are effective, nor is it clear against what standards such calls are generally to be judged. Each sending state should have in place a clear, transparent and enforced framework of requirements for approval. Published standards in relation to basic terms and conditions, which are regularly reviewed and updated, would be a positive step forward. This would allow states to have in place a framework for foreign labour agreements which is known and applied by state functionaries, and would simplify the system of approval. The setting of basic minimum standards in relation to pay (discussed further below), hours, breaks, accommodation, food arrangements, travel and repatriation costs would streamline processes, add transparency and limit the discretion of and potential for abuse by state functionaries. The development of model policies and contracts, utilised in the Philippines and Sri Lanka, would be a useful way forward.

### **Minimum Wage Setting**

The setting of minimum wage levels either generally or for particular types of work undertaken by migrant workers would be a significant step forward in benefiting migrant workers. Nepal's governing legislation already allows for this step, unlike that

of other South Asian states examined. The setting of minimum wage levels for migrant workers would also allow for increased pressure on states to set similar minimum levels for workers within the state, thus benefiting workers more widely.

### **Penalties Imposed on Agents for Breaches by Foreign Employers**

One important step in redressing the migrant worker's relative vulnerability in the framework of international law is to shift the risk of breaches of employment contracts and labour standards from the worker (who may find that he/she has no rights of enforcement in the receiving country) to the sending country, and in particular to the agent arranging the foreign placement. Risk allocation within legal systems is a normal device, which allows, in various situations, for the wrongdoing of a person to be compensated by another. Given the lucrative nature of recruitment agency contracts and the relative financial positions of the migrants and agents it would be equitable to allocate the risk of breach and compensation payments to the agent as opposed to the migrant.

The Filipino system already provides for this possibility in the form of joint liability as between agents and foreign employers in various circumstances. Such a mechanism would encourage accountability and would be likely to reduce abuses as foreign employers would have little incentive to secure the repeat services of agents who had been compelled to make redress for abuses by the employer, or indeed of other agents who became aware of past malpractice.

### **Blacklisting**

Several of the systems examined allow for a system of blacklisting of foreign employers who have been found to have abused the employment contracts of migrant workers.

There is little documented evidence of the use of such blacklists and thus the effec-

tiveness of current arrangements is difficult to assess. However, a single, published and easily accessible source of complaints and blacklisted employers, perhaps available in a combination of paper form and web-based medium would advantage both agents and migrants. The model of Sri Lanka's web-based information service could be drawn upon and expanded to cover this function.

### **The Use of Welfare Funds**

The use of Welfare Funds, although useful as a concept, has not always ensured that funds are made available to migrants or their families.<sup>142</sup> In the absence of other redress for abused migrant workers (who have been unable to recover as against foreign employers or agents), Welfare Funds should be required to make provision for compensation. This would be a direct and relevant use of funds, collected from migrating workers prior to departure, and would provide a readily accessible source of compensatory relief for those with no other form of economic redress.

### **Wider Involvement of Civil Society Groups and Trade Unions**

Civil society bodies and trade union groups in particular can function as an important monitor of migrant workers' rights and protections, independent of state mechanisms. Currently however, a number of practical and organisational difficulties hamper this process.

Trade unions have traditionally demonstrated suspicion of migrant workers, accepting the now discredited views that migrant labour displaces indigenous labour and suppresses wage levels. Additionally, the activities of trade unions have been heavily suppressed in many of the major receiving countries. However, more recently, trade unions have sought a more active and integrated approach to the issue of migrant labour.

Unions have acknowledged a number of significant issues in relation to migrant labour, including the difficulty of assisting or

representing members abroad, fear of attracting attention on a political level, lack of resources and the restrictive policies existing in major receiving states. However, the ICFTU-APRO Social Charter for Democratic Development, set out in 1994, made recommendations representing a changing approach. The Charter urges unions to pay attention to migrants, engage in tripartite consultation in relation to the rights of migrants, to affiliate to various ILO organisations relating to migrants and to press for ratification of the various migrant labour conventions. Whilst the South Asian economic crisis of the 1990s caused a setback in trade union attitudes to foreign migrant labour, the unions recommitted themselves to furthering the interests of migrant workers at the ILO Asia Pacific Regional Trade Symposium on Migrant Workers, in December 1999.<sup>143</sup>

Trade unions and wider civil society groups have an important part to play in securing and ensuring the rights of migrant workers abroad, with the obvious starting point of ensuring strong labour networks in their home states, which can then be internationalised through networks and linkages with organisations in receiving states.

### **The Position of Women**

The position of women requires particular consideration. Women make up in excess of 50 percent of the world's population. The background of discrimination faced by women is well documented elsewhere and the need to recognise women's rights as human rights is reflected in the various equality provisions of the UN framework of Conventions discussed above, and the CEDAW in particular.

Females are affected by migration in a number of ways, as migrants; and the dependents of migrants; as those left behind by migrants; and as a group particularly vulnerable to undocumented migration and trafficking. Whilst a detailed analysis of the difficulties faced by women in particular is beyond the scope of this paper, mention should be made of the strategies currently

Trade unions and wider civil society groups have an important part to play in securing and ensuring the rights of migrant workers abroad.

adopted by the states reviewed and the need for reform.

As has been seen, a number of the states reviewed have and continue to restrict the rights of female potential migrants, by age and/or by job category. Only Nepal includes in its legislative framework a non-discrimination requirement in recruitment. Restrictions on female migration have generally been justified by states on two bases: protection from exploitation and the need to protect social stability and family life. The latter concept is based around stereotypical ideas of female roles, as caregivers and should not be used to justify the restrictions on women's life choices.

The risk of exploitation is real. Women are at increased risk when they work, for instance, in isolated domestic settings and they can become subject of abuses of a physical and sexual nature whilst working abroad. However, it is naive of states to base policy on ideas of protection which exclude women from migration choices. Given that one of the major drivers of migration is poverty, and that women often carry the double burden of poverty and

care, many choose or are forced to consider work options outside their own state. Where legal migration is prohibited, women are forced to utilise undocumented methods of migration, and thus the state increases their risk of exploitation and exposure to trafficking.

A rights-based approach would instead acknowledge the right of women to migrate, whilst providing, as part of the state's general protections, specific safeguards for women to address particular vulnerabilities. Education, publicity and pre-departure briefings would play an important role in managing vulnerability. Drawing attention to the risks of trafficking and sex work would be valuable, as would alerting women to their rights should they have travel documents confiscated or suffer abuse at the hands of employers. The provision of female staff, an important accommodation for women who may feel cultural constraints in approaching male staff, in consular offices/as labour attaches are measures already implemented to some extent by states with high levels of domestic service migrants.

## Section 6

### Recommendations

The following summary of recommendations is made in relation to the states surveyed. States should:

- **Adopt visa-free travel arrangements within SAARC.**

The adoption of visa free travel would facilitate freedom of choice and movement for citizens in accordance with the requirements of various international treaties. The current failure of the SAARC states to facilitate visa-free travel restricts space for recognition of the rights of individual citizens, and the traditional migratory ties between the SAARC states. Visa-free travel across the SAARC would better allow the SAARC citizens to avail themselves of the economic opportunities arising from migration, particularly at a time of global economic turbulence.

- **Remove limitations on migrants' freedom of movement in the form of exit controls.**

The imposition of exit controls forms a significant barrier to freedom of movement, impacting in many states on those less able to negotiate the complex procedures involved (as many states exempt professional/skilled migrants or define clearance requirements in terms of unskilled labour). The levels of manipulation and corruption involved in the administration are drivers towards undocumented/irregular migration, which in turn attracts criminal penalties. A reconfigured approach would provide for individual autonomy whilst retaining regulation of mass migration by licensing of agents and the proper policing of regulatory systems.

- **Have in place regulated and minimum cost agency-based systems**

**handling large-scale calls for migration, increasing potential access by the poorest sections of society.**

Mass, short-term, migration, to particular regions is likely to continue as a pattern of migration for the foreseeable future (even allowing for changes in demand due to the economic downturn). Whilst restrictions upon individuals should be lifted, the management of mass placements will need to continue to be regulated to prevent exploitation and abuse of migrants. It is likely that use of the prevalent existing systems of licensing agents, would continue. It will, however, be necessary to ensure that such systems provide low-cost access, in order to open the possibility of migration



with its attendant economic benefits, to the poorer sections of the society, who are currently excluded. Streamlining systems, limiting fees and costs, and properly policing systems to prevent overcharging/corruption will be necessary parts of widening migratory opportunities to the poor.

- **Increase the level of licence fees payable by licensed agents.**

Evidence has demonstrated that low levels of licensing fees and guarantees have allowed potentially unscrupulous and/or under-resourced agents to function in the market, widening opportunities for the exploitation of migrants. Raising fees and guarantee levels is likely to move such agents out of the market, increasing the reliability and trustworthiness of those who remain. Higher fee levels are likely to restrict the market to those agents with sufficient experience and contacts to ensure that successful placements are made.

- **Effectively regulate the market, eradicate unlicensed agents and enforce penalties for overcharging and other malpractice.**

Current levels of regulation, in terms of initial licensing, license renewals and policing of services, particularly in relation to fees, are clearly inadequate. The levels of available data on the licensing process and policing are minimal/non-existent. Transparency in the licensing system is required. The removal of limitations on prosecution (as is the case in India) and the effective prosecution of agents abusing the regulatory system are also required. The example of Bangladesh is the most extreme, requiring the regulation or removal of the current, unregulated, dalal system.

- **Simplify procedures in order to minimise opportunities for abuse and corruption.**

The systems of regulation across the various states surveyed are complex and require multiple contacts with agents, banks, bureaucrats and officials. These mul-

tiple contacts add complexity to systems aiming, theoretically, to protect those who are likely to be low-skilled and economically vulnerable. A simplified system, more navigable by those without higher levels of education, and minimising contacts with multiple agencies, will reduce opportunities for abuse and empower migrants to utilise mechanisms without additional exposure to abuse and risk.

- **Negotiate regional and bilateral arrangements, safeguarding labour rights of migrants and ensuring access to legal redress for victims of abuse.**

Whilst current attempts and bilateral agreements have proved problematic in safeguarding the position of migrants, instead being limited by competitive drivers and serving to restrict the personal rights of migrants, change in the existing order is possible. Bilateral arrangements have the potential to provide genuine advances in the protection of migrants, by avoiding the limitations of international law and issues of state sovereignty. In order to avoid state reluctance to agree to better standards and protections (on the basis of the fear that the state's pool of labour will be seen as uncompetitive), a regional approach could be adopted, ensuring consistency and increasing the bargaining position of the SAARC states in discussions with the major labour-receiving states. Major receiving states have been reluctant to engage in discussions on labour standards and access to basic labour rights. They are, however, heavily dependent upon migrant labour, the majority of which is provided by the states reviewed. Acting collectively would increase significantly the possibility for agreements, which would genuinely benefit migrants in terms of rights and conditions.

- **Adopt the principle of joint liability as between agents and foreign employers in their domestic legal systems.**

The concept of joint liability as between local recruitment agents and foreign employers provides a significant safeguard in relation to migrants' rights whilst abroad.



The potential for abuse of terms and conditions is considerable and the failure to adhere to terms, in relation to pay, accommodation, food etc. is widespread. In the major labour-importing states, the exclusion of foreign migrant labour from labour rights and the judicial systems is frequent. Migrants therefore have little or no redress in the event of dispute or contractual breach. Even where access to rights can be secured, the transient nature of migrant placements and the cost involved will limit access to judicial systems in practice. The protection of such rights in the sending state represents a major advance in providing access to redress. Liability on the part of agents would represent a sensible placement of risk and would be likely to increase standards, with agents being unwilling to accept calls for labour from employers with a past history of malpractice or insufficient evidence of funds/arrangements/availability of work.

- **Establish education, training and information networks, based on the Filipino and the Sri Lankan models.**

Increased information and training will serve to protect migrants by empowering them with the knowledge and the tools to better negotiate life once placed abroad. Such networks also benefit the sending state, by increasing the potential pool of migrant labour beyond those with current access to information and will render migrants more competitive in the world market. Information increases transparency and accountability. The use of a web-based model, such as that seen in Sri Lanka, would be beneficial and provide wide scope for access. Education and training initiatives, monitored by the state, would provide standardised and relevant skills, which would equip migrants for life abroad and benefit them on their return.

- **End the discriminatory exclusion of women from migration.**

The various states surveyed have shown mixed responses to the issue of female migration. It is important for each state to recognise the right to migrate is equally applicable to female citizens and that

restrictions on female migration are discriminatory. There is need to provide protection for women in the migration process, given their particular vulnerability to exploitation and trafficking. Such protection is best achieved through regulatory regimes, education and training, as opposed to exclusion from migration rights which limits female choice and drives women towards undocumented migration.

- **Adopt a principle of non-discrimination in labour recruitment for migration.**

In order to further the rights of women within the sending state and upon migration, states should adopt the model of Nepal and enshrine in legal provision a principle of equality and non-discrimination in order to provide equality of choice and treatment in the migration process.

- **Encourage trade unions and civil society groups to become involved in the monitoring and mobilisation of migrant labour.**

In addition to state monitoring of migration and rights, it is important that states recognise the role and value of civil society groups, particularly trade unions. Trade unions are uniquely equipped to recognise and respond to labour issues. The strengthening of trade unions in sending countries and facilitating their ability to build links and operate internationally will be an important step in improving and safeguarding the rights of migrants. Trade unionism has been traditionally prohibited or tightly circumscribed in major labour receiving states. Efforts should be made bilaterally and regionally to increase the ability of labour to organise in receiving states in terms of both indigenous and migrant labour.

- **Ratify the ILO labour conventions and the CRMW.**

It is vital that all states take adequate steps to implement international labour standards for both indigenous and migrant workers.

Ratification of the various international treaties is an essential step in so doing. Whilst acceptance of obligations on paper is insufficient, the failure of a majority of the SAARC states to accept even minimum international obligations is unsatisfactory. Ratification is a required step in protecting the rights of workers within sending states, providing a benchmark for proposed terms and conditions for those migrating, and for leverage to apply labour standards in receiving states.

- **Adopt a "life-cycle of migration" policy.**

It is vital for states to recognise the importance of a holistic approach to internation-

al migration if their citizens are to fully benefit from the potential advantages of migration. This requires an approach which maximises the choices of migrants, empowers them through information and training, provides maximum protection for their rights both in the sending and the receiving state, and supports them upon return. Ensuring that there is in place a national plan for migration, a properly regulated system of control of those operating the migration channels and the opportunity of migrants and returnees to invest their remittances and skills in their home state is an important component of labour policy in the SAARC states, but remains one which is largely overlooked at present.

# Notes

1. Details of individual signature and ratification by each state of the various ILO and UN conventions are specified below.
2. Reported in the Dawn Newspaper, Pakistan, January 22, 2008.
3. "International Migration and Human Rights Challenges and Opportunities on the Threshold of the Anniversary of the Universal Declaration of Human Rights", October 2008.
4. UNFPA, 2004.
5. See Weiner, Myon "Rejected Peoples and Unwanted Migrants in South Asia," *Economic and Political Weekly*, August 21, 1993.
6. World Migration Report 2001.
7. World Migration Report 2005.
8. For a detailed discussion of the history of migratory patterns in South Asia, see Md. Shahidul Haque. "Migration Trends and Patterns in South Asia and Management Approaches and Initiatives," International Organisation for Migration.
9. As at 2002, see Rajan S Irundaya, "Dynamics of International Migration from India: Its Economic and Social Implications," ICFAI *Journal of Employment Law*, 2004, Volume II No2, pgs 25-45.
10. Gazdar, Haris. "A review of Migration Issues in Pakistan in Migration and Development: Pro Poor Policy Choices," Ed. Tasneem Siddiqui, University Press, Dhaka 2005.
11. INSTRAW: International Organisation for Migration "Temporary Labour Migration of Women: Case Study of Bangladesh and Sri Lanka," 2001
12. Migration to India reduced from 89% of total migration to 68% as at 2001. See Haque at 8 above.
13. For a broader discussion of various push and pull factors see "Migrant Workers and the Labour Market: Review of the LSC Research on Labour Market Participation, Skills and Skills Provision for Migrant Workers", January 2007; Haque at 8 above.
14. World Bank 2002.
15. World Bank figures 2003 available at [www.inweb18.worldbank.org.sar.sa.nsf](http://www.inweb18.worldbank.org.sar.sa.nsf)
16. World Bank Report.
17. Glover et al. "Migration: An Economic and Social Analysis," RDS Occasional Paper 67, London, Home Office, 2001; Gott and Johnstone "The Migrant Population in the UK: Fiscal Effects," RDS Occasional Paper 77, London. Home Office, 2002.
18. Nyberg Srenson et al. "The Migration-Development Nexus: Evidence and Policy Options," Centre for Development Research Studies, Copenhagen CDR, 2002.
19. De Haan and Rogaly, "Introduction: Migrant Workers and Their Role in Rural Change," *Journal of Development Studies*, 2002 38(5).
20. Murphy R, *How Migrant Labour is Changing Rural China*, Cambridge, Cambridge University Press, 2002.
21. Waddington, Clare. "Livelihood Outcomes of Migration for Poor People," Sussex Centre for Migration Research, December 2003.
22. Khan et al. "Breaking and Making the Chain: Livelihoods of the Female-headed Extreme Poor Households," Research Paper 7, the *Livelihoods of the Extreme Poor Study* IMEC/PROSHIRA, 2003
23. See 3 above.
24. Abella M. "Sending Workers Abroad," ILO Geneva, 1997
25. See IOM estimates
26. Wickramesekera P. "Asian Labour Migration: Issues and Challenges in an Era of Globalisation," *International Migration*, Paper 57, 2002, International Migration Programme, Geneva. ILO.
27. Ravi Srivastava and SK Sasikumar. "Migration and the Poor in India: An Overview of Recent Trends, issues and Policies," 2005.
28. As amended by the Emigration (Amendment) Rules 2004.

29. Section 22 Emigration Act 1983.
30. Section 3 supra.
31. Section 4 supra.
32. Sections 10 and 16 supra.
33. Section 11 supra.
34. Section 12 supra.
35. Section 9 supra.
36. Section 17 supra.
37. Section 18 supra.
38. Section 22(2) supra.
39. Section 22(3) supra.
40. Section 22(5) supra.
41. Section 24(1)(a) supra.
42. Section 24(1) supra.
43. Section 27 supra.
44. Section 41 supra.
45. Rules 7 and 8, Emigration Rules 1983 as amended.
46. Rule 25 supra.
47. Rule 15(2) supra.
48. For a general discussion see Srivastava and Sasikumar at 27 above.
49. See Waddington Clare "A synthesis of ILO and other literature on policies seeking to manage recruitment and protection of migrants and facilitate remittances and their investment," presented at the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, Dhaka, Bangladesh, June 22-24, 2003.
50. Available at NewKerala.com.
51. Nair, PG. *Asian Migration to the Arab World: Experience of the Returning Migrants*, Japan, United Nations Press, 1991.
52. Pakistan Institute of Legislative Development and Transparency, Briefing Paper 34.
53. See IOM figures on remittances.
54. Section 4 Emigration Act 1979 as amended.
55. Section 4A supra.
56. Section 5 supra.
57. Section 7 supra.
58. Section 8 supra.
59. Section 12 supra.
60. Section 20 supra.
61. Section 17 supra.
62. Sections 18 and 22 supra.
63. Rule 22A.
64. Rule 23,
65. Rule 26 supra.
66. Rule 26(2) supra.
67. Rule 25 supra.
68. Rule 25(2)(xi) supra.
69. Rule 27 supra.
70. Ercelan, Aly, "Freezing or Dissolving Poverty in South Asia: The Significance of International Emigration and Remittances in Pakistan," PILER, January 2008.
71. IOM figures.
72. Mohammad Jalal Uddin Sikder, "Bangladesh: Refugee and Migratory Movements Research Unit," Asian and Pacific Migration Journal, Volume 17.
73. For a detailed discussion, see Tasneem Siddiqui "Decent Work and International Labour Migration From Bangladesh," presented at the National Policy Dialogue 27-28 April 2004.
74. See Siddiqui above.
75. Announcement by the Government of Bangladesh 2006.
76. See Siddiqui above.
77. See Sikder above.
78. Section 7(3)(a) Emigration Ordinance 1982.
79. Section 7(3)(b) supra.

80. Section 10 supra.
81. Section 14 supra.
82. Section 24 supra.
83. Section 23 supra.
84. See Siddiqui above.
85. See Siddiqui above.
86. See Siddiqui above at page 12.
87. See Siddiqui above.
88. Chapter VIII of the Act.
89. Section 3 Foreign Employment Act 2007
90. Section 7 supra.
91. Section 8 supra.
92. Chapter VI supra.
93. Rule 3 Foreign Employment Regulations.
94. Section 17 supra.
95. Rule 16 supra.
96. Section 17 supra.
97. Section 21 supra.
98. Section 72.
99. Section 28 supra
100. Section 11 supra.
101. Section 13 supra.
102. Section 26 supra.
103. Section 32 supra.
104. Section 33 supra.
105. Section 36 supra.
106. Sections 43 to 53 supra.
107. Chapter XI of the Act.
108. Section 3 Bureau of Foreign Employment Act 1985.
109. Section 10 supra.
110. Section 20 supra.
111. Section 21 supra.
112. Section 22 supra.
113. Section 24 supra.
114. Section 25 supra.
115. Sections 26 - 28 supra.
116. Section 29 supra.
117. Section 31 supra.
118. Section 37 supra.
119. Sections 39 and 40 supra.
120. Section 40 supra.
121. Section 51 supra.
122. Section 51 as amended by section 4 of the Bureau of Foreign Employment (Amendment) Act (The Amendment Act).
123. Section 52 supra.
124. Section 60 supra.
125. Section 62 supra.
126. Section 7 of the Amendment Act supra.
127. Section 64 supra.
128. Section 67A supra.
129. Section 44 supra.
130. Section 53 supra.
131. Section 45 supra.
132. Section 54 su

pra.

133. Which has, for instance, reached a Memorandum of Understanding with agencies is Kuwait.

134. See *Business World* 2009.

135. See Wickramasekera at 26 above.

136. "Malaysia bans foreign labourers," See *Al Jazeera*, January 22, 2009.

137. Skeldon Ronald "Migration and Migration Policy in Asia: A synthesis of selected cases," in *Migration and Development: Pro Poor Policy Choices*, Ed. Tasneem Siddiqui, University Press, Dhaka 2005.

138. See Binod Khadria, "Migration in South and South West Asia." Global Commission on Industrial Migration, September 2005.

139. Skeldon R. "Exploratory Policy Paper in Labour Migration and Trafficking within the Greater Mekong SubRegion," ILO TICW Project and UNIAP, ILO IPEC, Geneva, 2001.

140. See Waddington "International Migration Policies in Asia in Migration and Development: Pro Poor Policy Choices," Ed. Tasneem Siddiqui University Press, Dhaka 2005.

141. See the criticisms of the use of funds by the Overseas Pakistani Foundation, Ercelan, Aly "Freezing or Dissolving Poverty in South Asia: The Significance of International Emigration and Remittances in Pakistan," PILER, January 2008.

142. For a more general discussion of the attitude of trade unions see Wickramasekera at 26 above.