

Overseas Employment Scenario of Bangladesh and the Rights of Migrants Workers Under ILO Instruments

Md. Ashraf Hossain¹

Abstract: Bangladesh is the seventh remittance earning country in the world. About 7.7 million people including 182,558 women are employed abroad since 1976 to 2011. Bangladesh earned more than 90b. USD in that period. In 2011 Bangladesh received 12b. USD as remittance which is 11% of her GDP. Most of the migrant workers of Bangladesh are concentrated in Kingdom of Saudi Arabia, United Arab Emirates, Malaysia, Oman, Kuwait and Singapore. But very often migrant workers suffer from various problems like retention of passport, overcharging by the employment agencies, restriction on communication and movements, overloaded with works beyond the employment contract, under-payment or delay in payment, lack of rest days or holidays, accommodation, insufficient food, and even physical, verbal and sexual abuse. Although International Labour Organisation has necessary legal standards, host countries are quite reluctant to ratify those conventions and recommendations for their own sake. Some countries like Italy, Hong Kong SAR and South Africa have incorporated migrant domestic workers in their main labour laws and prescribed standard employment contracts having legal coverage. But most of the Middle East countries have not recognised migrant workers in their national instruments. That's why it is easy to exploit migrant workers by the employers or the employment agencies. In these circumstances, ILO state parties and policy makers especially of the Middle East should concentrate to the rights of migrant workers because they are contributing both the economy of the host country and the country of origin.

1.0 Overseas Employment Scenario of Bangladesh

1.1 Country-wise Overseas Employment

Overseas employment formally started in Bangladesh in 1976 with 217 in KSA, 1,989 in UEA, 643 in Kuwait, 113 in Oman, 1,221 in Qatar, 335 in Bahrain and 173 in Libya amounting 6,087 including 1,396 others. According to Bangladesh Bureau of Manpower Employment and Training (BMET) from 1976 to December 2011 about 7,699,996 people are employed abroad of which Kingdom of Saudi Arabia holds 33.7%, United Arab Emirates 26.93%, Malaysia 9.1%, Oman 6.99%, Kuwait 6.23%, Singapore 4.77%, Bahrain 2.95%, Qatar 2.35%, Libya 1.24, Lebanon 0.87% and others 4.87% (Figure 1).

¹ Senior Assistant Secretary, Ministry of Public Administration, Government of the People's Republic of Bangladesh. Now working as Cantonment Executive Officer, Jahanabad Cantonment, Khulna. Email: ashraf.bangladesh@yahoo.com

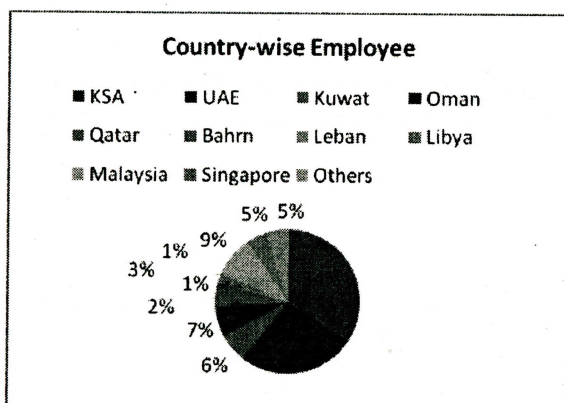


Figure 1: Country-wise Overseas Employment 1976-2011

Source: Bangladesh Bureau of Manpower Employment and Training (BMET)

Beyond this, 40,542 in Italy (2002)²; 31,391 in Jordan (2002); 26,366 in Brunei (1992); 26,134 in South Korea (1994); 22,598 in Mauritius (1992); 12,953 in Egypt (2000); 10,019 in UK (2003); 7,842 in Sudan (1998); 2,934 in Iraq (2009) and 770 in Japan (1999) migrated from Bangladesh which holds 4.85% of the total migrant workers. It is noted that Bangladeshi manpower started working in Lebanon, Malaysia and Singapore respectively 1992, 1978 and 1979.

1.2 Skill-based Migrant Workers Scenario

Overseas employment started in 1976 with 568 professionals, 1,775 skilled, 543 semi-skilled and 3,201 less skilled personnel amounting 6,087 and Bangladesh earned remittance 23.71 million USD in 1976. If 5-year cohort from 1977 to 2011 is made, it would be seen that professional holds 2.37%, skilled manpower 31.3%, semi-skilled 14.82% and less-skilled personnel 51.51% among the total of 7,693,909 people (Figure 2).

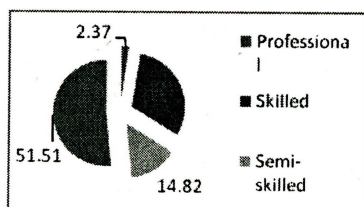


Figure 2: Percentage of Professional, Skilled, Semi-skilled and Less-skilled Manpower
Source: Bangladesh Bureau of Manpower Employment and Training (BMET)

² Years in bracket of this paragraph refers the beginning year of Bangladeshi migrant workers in that country.

Since 1977-2011 in the professional category manpower 182,347; skilled 2,408,137; semi-skilled 1,139,968 and less skilled person 3,963,457 were migrated from Bangladesh. From the cohort analysis as depicted below, total number of migrants has been increased since 1977 although little up and down in specific category of workers is in different times. It is noticeable that Bangladesh professional was highly demand in the years 2002-2006 amounting 45,384 but it was drastically fell to 5,545 in 2007-2011. In other cases it was chronologically increased with a little decrease in 1982-86 and 1997-2001. Skilled labour is always upward tendency. Although the professionals fell drastically in the cohort 2002-2006 years, skilled, semi-skilled and less-skilled labour migrated from Bangladesh 133% more in 2007-2011 years than the immediate previous years.

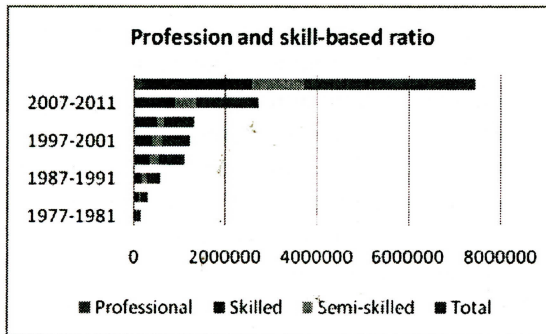


Figure 3: Five-year Cohort Analysis of Manpower 1977-2011

1.3 Cohort Analysis of Remittance 1977-2011

In the cohort 1977-81 years Bangladesh earned remittance only 968 million USD which increased 178.31% in 1982-86 years. Next three cohort (1987-2001) it increased respectively 41.80%, 47.15% and 59.35%. In the years 2002-2006 it increased 115% to 19,325m USD from 8,957m USD of 1997-2001, and in 2007-2011 remittance again radically increased 155.78% than the previous cohort. Although over all employment decreased from 475,278 in 2009 to 390,702 in 2010, remittance increased from 10,717.73m USD to 11,004.73m USD in the same period. In 2007, 2008 and 2011 both employment and remittance flow was upward slopping. Even the drastic fall in professional category of manpower didn't affect the remittance. The remittance was increased from 19,325m USD of 2002-2006 to 49,429m USD in 2007-2011 years.

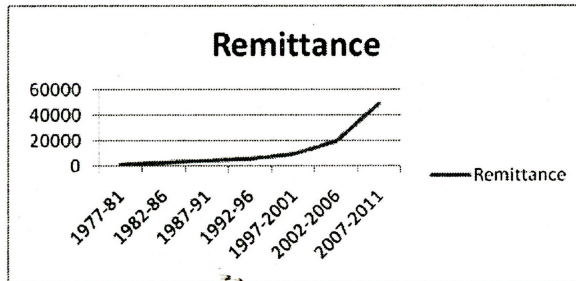


Figure 4: Remittance in flow from 1977-2011

Source: Bangladesh Bank

1.4 Women Employment Scenario

Bangladesh started overseas women employment in the year 1991 with 12 countries: KSA, UAE, Oman, Bahrain, Lebanon, Malaysia, Singapore, UK, Pakistan, Brunei and Mauritius. The number of migrant women workers was 2,189 including others in 1991. Women migrant workers moved to countries like Italy, Hong Kong SAR, Cyprus, Qatar, Jordan and Libya respectively in 1992, 1993, 1994, 1997, 2001 and 2007. Till December 2011, 182,558 women migrant workers are working in abroad of which Lebanon holds 30.73%, UAE 27.46%, KSA 17.24%, Jordan 6.86%, Mauritius 4.72%, Kuwait 4.19%, Oman 2.07%, Bahrain 1.91%, Malaysia 3.54%, Singapore 0.31% and others 1%. Women migrant workers hold 7.09% and 5.38% in the year 2010 and 2011 respectively.

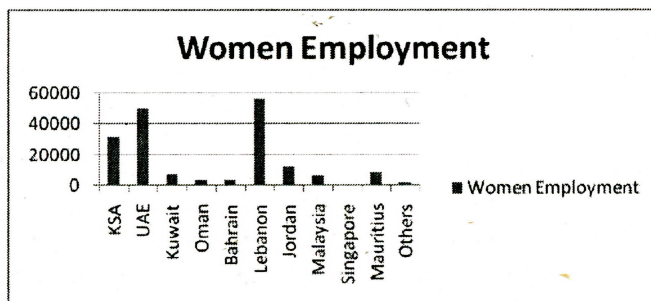


Figure 5: Countrywise Women Employment Scenario 1991-2011

1.5 Trend Analyses of Total Employment, Remittance and Women Employment

The table above shows that overseas employment of Bangladesh decreased at the rate of 15.14% from 222,686 in 2000 to 188,965 in 2001.

Then it was increased in subsequent 3 years again fell in 2005 at the rate of 7.42%. In the year 2006 and 2007 it was remarkably increased respectively 50.97% and 118.24% but it was drastically fall again after 3 years in 2009 and 2010 at the rate of 45.69% and 17.80% respectively. Although both positive and negative relationship in over all employment flow is observed, remittance flow was never seen decreased than any previous years in the whole range of 12 years. Women migrant workers radically increased 378.50% from 2,353 in 2003 to 11,259 in 2004 but the same year total employment increased only 7.38% as women workers held only 4.12% of the total employment. In 2005 total workers negatively fell by 7.42% but women workers' demand increased by 20.53. In Bangladesh percentage increase in women workers has little impact in over all overseas employment supply because the highest percentage of women migrant workers only 7.09% in 2010 which again decreased to 5.38% in 2011.

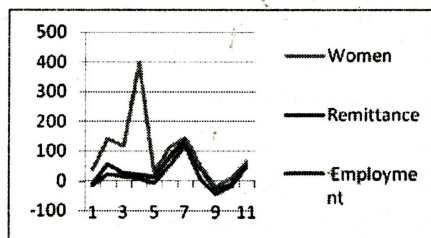


Figure 6: Total Employment, Remittance and Women Employment Trend (%), 2000-2011

1.6 Comparative Study of Employment and Remittance

The figure 7 shows that from January to June 2011 period 251,497 working people migrated from Bangladesh which has increased to 347,837 in the same period in 2012. The figure 8 exposes from January to June in 2011 Bangladesh earned 60,099.79 m USD which increased to 6,777.75 m USD in the same period of time. Total remittance increased 11.11% but the employment increased 49.04% in the aforesaid period.

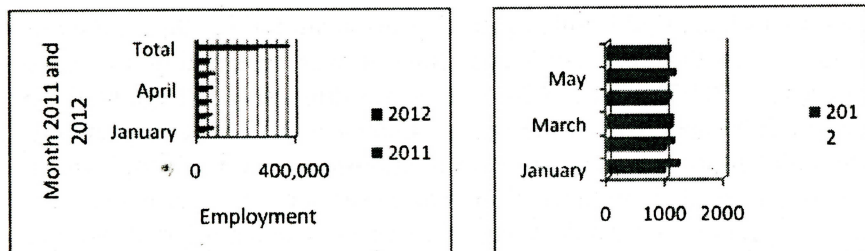


Figure 7: Employment Comparison 2011-2012

Figure 8: Remittance Comparison 2011-2012

2.0 Rights of Migrant Workers Under Ilo Instruments

ILO Declaration on the Fundamental Principles and Rights at Work identifies four main areas which are applicable to all workers irrespective of nationality and migrant status: freedom of association and the effective recognition of the right to bargain collectively, the eradication of forced labour, the effective abolition of child labour, and the elimination of discrimination in employment. Eight fundamental Conventions are formulated in recognition and protection of these rights:

- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105);
- the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182)

Beyond this, the rights are discussed for each stage of migration: pre-departure and during the journey, on arrival, during employment, social and civil rights in host country, and return and repatriation. ILO Conventions also include standards relevant to the regulation of domestic work. These include:

- the Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Convention, 1970 (No. 131);

- the Protection of Wages Convention, 1949 (No. 95);
- the Maternity Protection Convention, 2000 (No. 183);
- the Workers with Family Responsibilities Convention, 1981 (No. 156);
- the Termination of Employment Convention, 1982 (No. 158);
- the Private Employment Agencies Convention, 1997 (No. 181);
- the Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation (Revised), 1949 (No. 86);
- the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151)

2.1 Freedom of Association and Collective Bargaining

"Ensuring the freedom of association and collective bargaining can go a long way toward promoting labour market efficiency and better economic performance. And there are obvious economic and social for banning slavery and all forms of forced labour"- World Bank 2004.

The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944). It is also a right proclaimed in the Universal Declaration of Human Rights (1948). Nevertheless, the International Confederation of Free Trade Unions (ICFTU) estimates that in 2003 some 300,000 in Asia and 6,566 in Africa were dismissed from because of their trade union activities. The majority of the 50 million workers in export processing zones do not enjoy the right to join unions. The ICFTU also reported that 129 trade unionists were murdered in 2003 and more than 200 were killed in 2002 for trade union activities (ICFTU 2003).

According to Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) the principal trade union rights include the right to:

- form and join unions or associations of the migrant worker's choice

- engage in collective bargaining on matters affecting conditions of work and terms of employment
- elect their representatives
- use machinery for arbitration and conciliation for the settlement of disputes
- strike

Migrant workers should also enjoy civil liberties essential for the normal exercise of trade union rights:

- the right to freedom and security of person, and freedom from arbitrary arrest and detention
- freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers
- freedom of assembly
- the right to fair trial by an independent body and impartial tribunal
- the right to protection of the property of trade union organisations (Bangkok 2008)

The Workers' Representatives Convention, 1971 (No. 135) ensures effective protection against any act prejudicial to them including dismissal. According to Rural Workers' Organizations Convention, 1975 (No. 141) freedom of association shall be fully respected; rural workers' organisations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. In some countries the public servants are denied the right of association. The Labour Relations (Public Service) Convention, 1978 (No. 151) ensures adequate protection against acts of anti-union discrimination in respect of their employment, and their organisation shall enjoy complete independence from public authorities in their establishment, functioning or administration (Rules of the Game, 2005). It also provides that disputes shall be settled through negotiations between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration. Beyond this the Collective Bargaining

Convention, 1981 (No. 154) defines collective bargaining and calls for its promotion in all branches of economic activity including public service.

2.2 Eradication of Forced Labour

Although forced labour is universally condemned, millions of people around the world are still subjected to it. Traditional slavery is found in some parts of Africa, while forced labour in the form of coercive recruitment is present in many countries of Latin America, in some parts of the Caribbean and elsewhere. Bonded labour persists in South Asia where millions of men, women and children are tied to their work through a vicious cycle of work. In the early 1990s approximately 1.2 million Nepalese were subjected to slave-like practices under a debt bondage system known as 'kamaiya'. In Europe and North America a number of women and children are victims of traffickers who sell them into forced prostitution or sweatshops (Rules of the Game 2005).

Forced Labour Convention, 1930 (No. 29) prohibits all forms of forced or compulsory labour, which is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily." Work must be based on choice and incentive, not on coercion or threat. This implies that:

- migrant workers must not be forced to work under threat of sanction
- migrant workers must not be physically confined
- migrant workers must be able to terminate their employment, serving notice to the employer as required by national law
- disciplinary action against migrant workers must not take the form of a compulsory work performance
- migrant workers who participate in a lawful strike must not be forcibly returned to work (Bangkok 2008)

Abolition of Forced Labour Convention, 1957 (No. 105) prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social and economic system. Additionally, forced labour is considered as one of the worst forms of child labour in the Worst Forms of Child Labour Convention, 1999 (No. 182).

2.3 Abolition of Child Labour

Child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical and psychological damage. A recent ILO study has shown that eliminating child labour in transition and developing economies could generate economic benefits nearly seven times greater than the costs, mostly associated with investment in better schooling and social services (Geneva, IPEC 2004). The ILO estimates that more than 186 million children between the ages of 5 and 14, and 59 million children aged 15 to 17, are engaged in child labour. An estimated 8.4 million children are trapped in one or more of the worst forms of child labour: 5.7 million are in forced or bonded labour; 1.8 million are used for prostitution and pornography; 1.2 million are trafficked and 300,000 are forcibly recruited for armed conflict (Geneva, IPEC, 2002).

Minimum Age Convention, 1973 (No. 138) sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.

Worst Forms of Child Labour Convention, 1999 (No. 182) defines child as a person under 18 years of age. This fundamental convention prohibits sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. So, children accompanying migrant workers and migrant children should not be admitted to employment or work before they have reached the minimum age for the specific type of work. Public authorities should maintain an effective system of birth registration and issuing birth certificate (Minimum Age Recommendation, 1973).

2.4 Elimination of Discrimination in Employment

Millions of women and men around the world are denied access to jobs and training, receive low wages, or restricted to certain occupations simply on the basis of their sex, skin colour, ethnicity or beliefs, social origin, religion or political opinion without regard to their capabilities and

skills. In a number of developed countries, for example, women workers earn up to 25% less than male colleagues performing equal job (Women in Management, 2004). Equal Remuneration Convention, 1951 (No. 100) ensures the application of the principle of equal remuneration for men and women for work of equal value. According to Migration for Employment Convention, 1949 (No. 97) Article 6; Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Article 1 (a) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) Article 10 and 12(g), the following practices should be outlawed:

- differentiating between group of migrant workers and nationals with different complexion or racial or ethnic features or social origin;
- discrimination on the basis of sex and stereotypes, such as pregnancy, family status, and 'protective' measures which limit women's access to safe and productive migrant work.

The Civil Rights Act, 1964 of the US prohibits to favour migrant workers from one country over others. It also declares unlawful for an employer to require an employee to take pregnancy test or to discriminate against worker because she is pregnant (ILO, Multilateral Framework 2005). Besides, Workers with Family Responsibilities Convention, 1981 (No. 156) requires governments to take account of the needs workers with family responsibilities in community planning and to develop or promote community services, public or private, such as childcare and family services and facilities.

2.5 Pre-departure and during the Journey

Migrant workers often lack in accurate information about the jobs and the working and living conditions, charge for paperwork, genuine recruitment agencies, fraudulent agents or organized crime, human trafficking, confinement in so called recruitment centres, forced labour, etc which lead them undergo a life which is human rights concern. That's why before departing their home countries and while traveling to the destination country, migrant workers are entitled to the following rights:

2.5.1 Information about Working and Living Conditions

If we analyse the information of different countries, we will meet the following vulnerabilities for migrant workers at recruitment, pre-departure and during the Journey:

- Inadequate access to accurate and reliable information about the labour market abroad and legal channels of migration
- Illegal recruitment and trafficking
- Overcharging of fees for placement and documents
- Deception with regard to the nature of employment
- Falsification of documents
- Cheating and extortion by employment agencies and brokers
- Debt bondage
- Inefficiency and abuse of authorities
- Inappropriate and expensive training programmes
- Exploitation and abuse while waiting for the job (e.g., being detained in 'collection centers')
- Lack of knowledge about transit procedures and requirements
- Hazardous journey, including smuggling
- Victimization in transit (ILO Recommendation, 86).

The information should be provided in their language or dialect, or at least in a language they can understand with free of charge. Measures must be taken against misleading advertisement relating to migration and immigration. Public authorities should pay attention in this arena (ILO Convention, 97).

2.5.2 Recruitment

The recruitment of migrant workers should be carried out only by public authorities, prospective employers and authorized private agencies. Recruitment services rendered by a public employment service should be free of charge according to Article 7 of Migration for Employment Convention, 1949. Private Employment Agencies Convention, 1997 authorises private employment agencies to employ workers in certain specific types of services and they must be supervised by public authorities to protect the possible forms of exploitation such as: excessive fees, fraudulent contracts, attempts to evade immigration controls, etc.

Private employment agencies may only charge fees in relation to recruitment from workers under strict conditions. They should not charge directly or indirectly, in full or in part, any fees or costs to workers. Any deduction from wages as a direct or indirect payment for the purpose of securing employment is prohibited by Article 9 of the Protection of Wages Convention, 1949.

In 1997 after a meeting of international experts the ILO Governing Body recommended the following codes of practice for overseas recruitment agencies:

- Minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
- Provision of full and unambiguous information of all charges and terms of business to clients;
- The principle that private agents must obtain from the employer before advertising positions in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages salaries, and other benefits working conditions, travel and accommodation arrangements;
- The principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
- The principle that migrant workers are informed, as far as possible, in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment;
- Refraining from bidding down wages of migrant workers;
- Maintaining a register of all migrants recruited or placed through them to be available for inspection by the competent authority, provided that this information is limited to matters directly related to recruitment and with respect for the privacy of workers and their families. (ILO, Guide to Private Employment Agencies, 2007)

2.5.3 Contracts

Where governments maintain a system of supervising contracts of employment, migrant workers have the right to receive, before departure, a written contract of employment, covering conditions of work and terms of employment, particularly the rate of remuneration and the contract duration according to Article 5 and 6 of the Migration for Employment Convention, 1949.

The Government of the migrant worker's home and host country can also agree that a copy of the contract be given to the worker on arrival in the host country. In that case, the migrant worker should receive a document before departure that indicates at the minimum the occupational category in which the migrant worker is to be engaged and the other conditions of work, in particular the guaranteed minimum wage (Recommendation No. 86, Article 22).

It is noted that employment contracts or work permits should not violate the established migrant workers' rights which are recognized in law. For example, the contracts should not stipulate commitment of migrant workers not to join a trade union, not to marry or become pregnant or undergo periodic pregnancy tests, etc.

An individual contract of employment should contain the following information:

- Full name of the worker, date and place of birth, family status, place or residence, place of recruitment.
- Nature of work, type of work (occupational category) and place of work
- Remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment
- Bonuses, indemnities and allowances, if any
- Conditions under which and to what extent the employer may be authorized to make any deductions from remuneration
- Conditions regarding food accommodation if food and accommodation are to be provided by the employer
- Duration of contract and conditions of renewal and denunciation of contract

- Conditions under which entry and residence in the territory of immigration are permitted
- Method of meeting the expenses of the journey of the migrant and the members of his or her family
- In case of temporary migration, method of meeting the expenses of return to the home country or the territory of migration
- Grounds on which the contract may be prematurely terminated (ILO Guide for Policymakers, Bangkok 2008).

2.5.4 Facilitated Departure

When migrant workers leave their own country, especially for the first time, they usually need help to cope with the practical and administrative steps involved. They should receive assistance from the public authorities to deal with documentation and other formalities relating to the immigration process. These services should be provided free of charge (Convention No. 97, Article 2)

2.5.5 Medical Care

Migrant workers and members of their families authorized to accompany them have the right to medical examination and attention before departure, during the journey and on arrival. Migrant workers must not be forced to undergo compulsory or non-confidential medical examinations, such as testing for pregnancy and HIV/AIDS. Migrant workers must not be disqualified or dismissed from the job on the basis that they tested positive to these tests (C. 97, Art. 5; R.86, para 12 &14; R. 100, para 8).

2.5.6 Free Travel

The recruiter or the employer should pay traveling expenses according to Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, para 7. Bilateral agreements between home and host country should establish methods for meeting the cost of travel for the migrants and the members of their families as per Recommendation No. 86, Art. 12.

2.6 On Arrival

Traveling to a foreign country can be daunting for migrant workers, especially for first-timers. It is doubly intimidating if they do not speak the language of the new country. Orientation services and briefings are

often necessary and should be provided before travel. On arrival, migrant workers also usually need language orientation as well as other practical assistance (ILO, Guide for Policymakers, Bangkok 2008).

2.6.1 Customs Exemption

According to convention No. 97, Appendix III, Article 1, migrant workers have the right to take their personal effects-including those of members of their families authorized to accompany or join them as well as the tools of their trades into their country of work free of customs duty.

2.6.2 Assistance in Finding Suitable Employment

As per Migrant Workers Recommendation, 1975 para 2(a); Convention No. 97, Article 2 and Appendix II, Article 10 and 11, migrant workers are entitled to have the services from the appropriate public authority in finding suitable employment, without payment of fees or administrative costs.

2.6.3 Settlement

The Migration for employment Convention, 1949 Article 6 and the Recommendation No. 100 para 21 and 22 entitle migrant workers to any necessary assistance in settling into their new environment. Possible types of service include interpretation, help with documentation and other formalities, and the supply of information and guidance on immediate personal and family concerns such as housing. Discrimination in access to accommodation should be prohibited.

2.7 During Employment

Migrant Workers (Supplementary Provisions) Convention, 1975 guarantees equal opportunity and fair treatment in employment for migrant workers and their family members who are residing lawfully within its territory. Migrants who are regularly admitted to the country are entitled to equality of treatment to nationals with regard to conditions of work, including remuneration, membership of trade unions, accommodation, social security (with certain limitations), employment taxes and legal proceedings (Convention No. 97, Article 6)

ILO Gender Promotion Programme, Geneva 2003 identifies that xenophobia and discrimination may lead to:

- Jobs not covered by labour or social protection

- Violation of employment contracts
- Confiscation of papers and documents
- Poor working and living conditions
- Forced labour and debt bondage
- Non-payment or delayed payment of wages and unauthorized deductions from wages
- Health and safety risk
- Physical, psychological and sexual abuse
- Limited freedom of movement
- Restrictions on free choice of employment
- Difficulties in sending remittances home
- Unlawful, arbitrary or unjust termination of employment
- Lack of information and access to services and redress mechanisms
- No embassy or inadequate services provided by embassy

2.7.1 Remuneration

Although the remuneration subject has widely dealt with in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (R.100), Convention No. 97, 111, 122 also give emphasis on the issue. According to Article 6 (1) (a) of Convention No. 97 remuneration must be objective characteristics such a skills, knowledge, working conditions and responsibilities, not the nationality of the majority of workers of a job, nor the basis of sex. Migrant worker should receive equal remuneration for work of equal value. The remuneration must be compared with the remuneration received by citizens in the same job category, as well as by citizens in comparable job categories.

Several ILO Conventions ensure migrant workers further rights as regards remuneration:

- Minimum wage rates (fixed either by collective agreement, arbitration award or by the competent authority, under the same conditions as for nationals of the host country);

- Participation, through their representatives, in the operation of statutory machinery for fixing wages;
- Direct, regular payment in the form of cash;
- Freedom to dispose of their wage as they wish;
- Regular provision of food, housing, clothing and other essential supplies and services, if these form part of remuneration. Such 'payments in kind' must be fairly valued and adequate for needs of the workers and their family, as assessed by the competent authority (Wages Convention, 1949);
- Migrant workers who are not regularized should be remunerated for past employment to the same extent that citizens should be paid their arrears (C. 143. Article 9(1)).

2.7.2 Working Conditions

Convention No. 143, Article 12(g) ascertains migrant workers of their equal treatment with regard to working conditions as the nationals of the country in which they work. Usually remuneration and conditions of work commonly include:

- Hours of work (with some restrictions for young workers)
- Rest periods (including breastfeeding breaks)
- Overtime arrangements
- Holidays with pay
- Apprenticeship and training
- Protection against toxic substances or dangerous machinery, noise and vibration
- Protection against violence and sexual harassment at work
- Welfare facilities and other benefits.

Special attention should be given to women and young workers, who are entitled to special protection, including:

- Minimum age for employment
- Restrictions to protect young persons (e.g. prohibition of overtime)

- Restriction on night work
- Restrictions on women's work to protect their reproductive health (e.g. prohibition of exposure to hazardous substances during pregnancy)
- Maternity protection (including maternity leave, maternity benefits and protection against dismissal)

2.7.3 Maternity Protection

International women migrants often undergo obligatory pregnancy tests before they travel or are dismissed and deported when they become pregnant during employment. The first international labour instrument on maternity protection was adopted at the first International Labour Conference in 1919. Adequate maternity protection is vital for the future generation of societies, enabling women workers to successfully combine their reproductive and productive roles and prevent unequal treatment in employment due to their child bearing role. Key provisions in the first and later maternity protection conventions include protection against dismissal during and after delivery, and maternity benefits in the form of leave and income continuity.

The fundamental right to maternity protection continued to be breached even if almost all national legislations provide for it. For this reason, ILO member States adopted new Maternity Protection Convention in 2000 (No. 183):

- Broadening the coverage to all employed women, including those in atypical forms of dependent work.
- Explicitly prohibiting dismissal of women on the grounds of pregnancy, child birth and its consequences or nursing with the burden of proof resting on employers
- Encouraging countries to adopt measures to ensure that maternity does not constitute a source of discrimination at work including access to employment and prohibiting pregnancy tests at recruitment except in very specific circumstances.

2.7.4 Violence against Migrant Workers

According to ILO workplace violence includes any faction, incident or behavior that departs from reasonable conduct in which a person is

assaulted, threatened, harmed in the course of or as a result of his or her work (Violence at Work, Geneva 2006). It can take the form of murders, assaults, rape, sexual harassment, threats, bullying, mobbing and verbal abuse:

- 'Sexual harassment' means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men. This can include unwelcome physical, verbal or non-verbal conduct.
- 'Bullying and mobbing' consist of repeated, regular and persistent negative attacks on the personal and professional performance of an individual or group of employees (Sexual Harassment at Work, Bangkok, 2001)

2.7.5 Health and Safety

Recommendation No. 100 para 45 and 46 entitle migrant workers the same protection with regard to occupational health and safety as nationals of the country. Foreign migrant workers are commonly permitted into countries for jobs that are usually 'dirty', 'dangerous', and 'demeaning' which national workers no longer want to perform. The Migrant Workers Recommendations, 1975, (No. 151) asks member States "to take all appropriate measures to prevent any special health risks to which migrant workers may be exposed.

According to Occupational Safety and Health Convention, 1981 (No. 155), the employer of all workers has the following duty to prevent accidents, injuries and diseases at the workplace:

- Identify health hazards at work and develop adequate OSH procedures
- Provide health and safety information and appropriately label harmful products and warning symbols in a language that migrant workers can understand
- Train workers and make it compulsory for workers to comply with OSH procedures
- Keep the working environment safe and healthy by promoting a preventative culture and establish OSH as a routine management function

Workers have a duty to:

- Cooperate with the employer in determining safety and health hazards and develop proper procedures
- Observe established OSH procedures
- Report health and safety hazards forthwith to the employer

Workers have the right to:

- Investigate OSH-related incidents
- Withdraw from situations that present and imminent threat to their life and safety
- Call on labour inspection services without threat of victimization

2.7.6 Employment Opportunities and Freedom to Change Jobs

According to Convention No. 143, Article 14(a) after a maximum of two years of lawful residence in the host countries for the purpose of employment, migrant workers should be granted free choice of employment. If the host country permits fixed-term contracts of less than two years, free choice of employment should be granted after the migrant worker has completed his or her first contract.

2.7.7 Job Security

Recommendation No. 151, para 2(d) says all migrant workers have the right to 'equal treatment' in respect of job security. While no international labour standard establishes an absolute right to a job, migrant workers should not be discriminated against if the workforce has to be reduced, for example, for reasons of redundancy. Convention No. 143, Article 8 expresses migrant workers who have been dismissed should not automatically lose their residence or work permit as a result. They should be allowed sufficient time to find an alternative job.

2.7.8 Job Promotion

Recruited for a particular job does not mean that the worker must remain in the same position regardless of experience, ability or conduct. Migrant workers should be given the same opportunities for promotion and advancement as nationals of the country. Given equal qualifications, women should also be given equal opportunities to men in this regard (R.100, para 38-40; R. 151, para 2(c))

2.7.9 Access to Other Jobs and Vocational Training

Migrant workers have equal access to nationals to vocational guidance, job placement services, access to vocational training, etc. The employment opportunities of migrant workers are often reduced because the skills they have acquired at home are not recognized abroad [R. 151, para 2 (a) and (b)]. Mechanisms to assess, certify and recognize skills and qualifications enhance the job prospects of all workers, and migrant workers may claim special measures in this regard (R. 195, para 12).

2.7.10 Social Security

Migrant workers should not be treated less favourably than nationals with respect to social security benefits like unemployment, sickness, old age, family responsibilities such as maternity and childcare, invalidity, need for medical care, loss of the family breadwinner, and employment injury (C.118, R.100, C.143, R.151, and C.157). Conditions such as residency requirements may be imposed to the same extent as they apply to nationals. Exceptions are permissible only with respect to benefits which are payable solely from public funds, and benefits paid to persons who do not satisfy the conditions required for a normal pension (C.97, Art. 6).

If migrant workers or their family members leave their country of employment, they should not automatically lose their right to benefits when they claim them in another country or upon their home. Irregular migrant workers who cannot be regularized should, on the basis of their past employment, be able to claim social security benefits under the same conditions as nationals (C.143, Art.9). In the Philippines, a memorandum of agreement requires recruitment agencies which recruit workers for foreign ships to make quarterly payments to the Philippines social security system. Workers are covered by social security upon signing the standard seafarer employment contract with the recruiting agency and foreign ship owner as employers (ILO, Multilateral Framework, 2005)

2.7.11 Housing

Adequate and decent housing accommodation should not cost more than a reasonable proportion of the workers' income. In cases when housing is provided by the employer, profits should not be made on the rent or the rent should not be part of payment for work (R.115, para 4 and 12). In granting work permits, ministries of labour must take into account the capacity of employers to provide adequate housing

- How much space is allocated for each worker?
- Are rooms adequately ventilated?
- Do families proposing to employ a live-in-foreign domestic helper have an adequate room and toilet facility? (Guide for Policymakers, Bangkok 2008)

2.7.12 Access to Remedies in Law

Migrant workers should have the same right of legal recourse, including the right to legal assistance, as nationals when disputes arise with respect to working conditions, the exercise of trade union rights or social security entitlements (C.97, Art.6, C.143, Art.9, R. 151, para 33 and 34) In February 2004, the President of the Philippines issued Executive Order No. 287 to direct the deployment of social workers as Social Welfare Attaches beyond Labour Attaches in selected diplomatic posts with large concentration of Overseas Filipino Workers.

2.7.13 Freedom of Movement

Convention No. 143, Article 14 ensures freedom for migrant workers to move at any time from one place to another in the country of work, providing that they are lawfully within the territory. They should be allowed to, for example, go out for socialization or leisure outside of their workplace during their non-working hours including at night, and travel to visit family or friends in the host country or their home country during holidays or leave. Restriction to geographical mobility in 'zone', 'certain city' and 'province' is not in line with these provisions.

2.7.14 HIV/AIDS

According to ILO Code of Practice on HIV/AIDS and the World of Work, para 8.1, any routine medical testing, such as testing in either sending or receiving country for fitness carried out prior to employment, or on a regular basis for migrant workers, should not include mandatory HIV testing. Employers, migrant workers and their representatives should encourage confidential voluntary counseling and testing that is provided by qualified health services. To mitigate the impact of the HIV/AIDS epidemic in the workplace and on society, workplaces should provide counseling and other forms of social support to migrant workers infected and affected by HIV/AIDS. Even it is illegal terminate from service if someone is identified HIV positive.

2.8 Social and Civil Rights in Host Country

Social policies should enable migrant workers and their families to share in advantages enjoyed by the country's nationals. They should be accorded social and civil rights while working in the host country as follows:

2.8.1 Citizenship and Property Rights

International labour standards do not require sovereign States to grant citizenship to migrant workers. However, migrant workers should be allowed to apply for citizenship after a period of residence in the host country of at least five years, if not contrary to the policy of the host country (R.100, para 51).

Bilateral agreements between labour-sending and labour-receiving countries should make provision for the acquisition, possession and transmission of rural and urban property by migrant workers. At any rate, regular migrant workers should be given a reasonable period of time to dispose of their property before they have to go back to their home country (R.86, para 18).

2.8.2 Education and Culture

Migrant workers and their family members are entitled to equal treatment in respect of education, learning language of the country, children's access to schools, facilities to acquire some knowledge of their own mother tongue, participation in cultural life, practice of religion and adherence to their national customs and ceremonies (R.100, para 49; C.143, Art. 12; R.151, para 7)

2.8.3 Transfer of Funds to Home Country

Migrant workers have the right to transfer part of their earnings and savings as they wish within the limits allowed by national currency laws and regulations. This enables them to contribute substantially to the welfare of their family members who stay in the home country. Thus financial institutions should be reformed to transfer remittances safely, reasonably and efficiently (C.97, Art.9).

2.8.4 Family Reunification and Visits

Migrant workers have the rights to meet their family and migrant workers who have been employed for at least one year should be allowed to visit

their families during the paid annual holiday to which they are entitled. Alternatively, the family should be allowed to visit the workers for a period corresponding at least to the paid annual holiday to which they are entitled (C.143, Art. 13; R.151, para13-19).

2.8.5 Social Services

To adapt unfamiliar situation migrant workers are entitled to receive assistance and advice including information, services, and facilities in education, vocational training, language training, health services, legal aid, social security, transport, and recreation. Services should be offered, if possible, in the native tongue of the workers concerned, otherwise with interpretation and translation facilities. These services should be provided free of charge (C.97, Art.2; R.151, para 7 & 24)

2.9 Return and Repatriation

In some instances like loss of occupation through illness or injury, or sudden termination may motivate to migrant workers to over stay and even lead to them to go into irregular migrant status. But there are usually few provisions in either sending or receiving countries to protect migrant workers with regard to return and repatriation. Repatriation on the grounds that the worker concerned is suffering from infection or illness of any kind which has no effect on the task for which the worker has been recruited is an unacceptable form of discrimination (Guide for Policymakers, Bangkok 2008).

2.9.1 Appeal against Arbitrary Decisions

Migrant workers have the right to appeal against a decision to terminate their employment or to deprive them of their resident status. The workers affected are entitled to challenge the decision, and if successful, to reinstatement, or time to find alternative employment, and to compensation for loss of wages. Migrant workers have the same right to legal aid as national workers, and additionally the assistance of an interpreter (R.151, para 32-34).

2.9.2 Travel Costs

Existing ILO standards do not provide an absolute right to free travel back to the home country if migrant workers fail, for a reason they are not responsible for, to secure the employment for which they have been recruited, or other suitable employment. If migrant workers and their

family members are expelled from a country, they may have to pay their own travel costs but they do not have to bear the costs of the administrative or judicial procedures leading to the expulsion (C.97, Art.9; R.100, para 10; C.143, Art. 9).

2.9.3 Rights of Returning Migrants in Host Country

Whether regular or irregular, returning migrant workers have a right to outstanding remuneration, severance pay, compensation for holidays not taken, as well as, in certain cases, they reimbursement of social security contributions. If any difficulty arises in obtaining these entitlements, they should enjoy equal treatment with national workers regarding access to courts and legal assistance. Migrant workers should be given a reasonable period of time to remain in the host country to seek and obtain a remedy for outstanding remuneration and benefits (C.143, Art. 9; R.151, para 33 & 34).

2.9.4 Rights of Returning Migrants in Country of Origin

If migrant workers have retained the nationality of their country of origin, they have the right to unemployment benefit, if necessary, and if it exists, assistance in obtaining work, as well as social security and social reintegration. Migrant workers and their families should be exempt from customs duty on their personal possessions which include hand tools and portable equipment they have owned for an appreciable time and intend to use in the course of their occupation (C.97, Art. 2; R.86, para 20).

3.0 Rights for Migrant Domestic Workers: Country Experience

3.1 International and Regional Perspective

According to ILO, Global and Regional Estimates on Domestic Workers 2011, at least 52.6 million women and men above the age of 15 are domestic workers in their main job, which represents 3.6 % of global wage employment. Women comprise the overwhelming majority of domestic workers: 43.6 million that means some 83% but there is no specific instrument to women migrant domestic workers.

UN and ILO have developed binding instruments which address discrimination, gender-based violence, nationality, ethnicity and employment terms and conditions. For example, ASEAN's Declaration on the Protection and Promotion of the Rights of Migrant Workers emphasizes the obligation of countries of employment and the origin in

terms of access to justice and social welfare services, decent working and living conditions, access to legal and judicial system, regulation of recruitment agencies, repatriation and reintegration, and adoption of employment contracts. Council of Europe focuses on the link between domestic work and slavery and provision for a domestic worker to file a complaint before the European Court of Human Rights if a state has not effectively protected her rights under the European Convention on Human Rights. European Commission for Human Rights conducts dialogues with governments regarding human rights issues. Inter American Commission on Human Rights has established the Special Rapporteurship on Migrant Workers and their families. Inter-American Court of Human Rights has emphasised that States must not allow private employers to violate the rights of workers or the contractual relationship. The Protocol on the Rights of Women in Africa requires State Parties to protect women from exploitation by their employers and to establish a system of protection and social insurance for women working in the informal sector. Article 34(2) of the Revised Arab Charter on Human Rights adopted 22 May 2004 recognises the right of every worker including migrants to enjoy just and favourable conditions of work "which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work." Unfortunately the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution adopted by SAARC does not cover migrant domestic workers. However, countries like Italy, South Africa, Hong Kong SAR (Special Administrative Region), The Philippines, Jordan, etc have formulated favourable legal framework for migrant domestic workers.

3.2 Legal Protection for Migrant Domestic Workers

Table 1: Matrix of Legal Protection to Migrant Domestic Workers:

Particulars	Bahrain	HK SAR	Italy	Jordan	Kuwait	Lebanon	Malaysia	Singp	SA
1. Domestic workers covered by main labour law?	No	Yes	Yes	No	No	No	Yes, but limited	No	Yes
2. Migrant domestic workers restricted to women?	No	No	No	No	No	No	Yes	Yes	No
3. Minimum age for migrant domestic workers	18 yrs; 30 for Filipino	Depends on the origin	15 yrs.	18 years	20-50 years	23 Years	25-45 years; 21 for Indonesia	23-50 Years	15 Years
4. Minimum wage for Migrant domestic workers	No	Yes	Yes	No	Yes	No	No	No	Yes
5. Contracts required for employment of MDW?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6. Employment Contract prescribed by government?	No, (till 2008)	Yes	No ³	Yes	Yes	No	Yes	No	No ⁴
7. Duration of the Contract	N/A	2 Years	2 Yrs	2 years	2 Years	N/A	1 Year	N/A	Depends on the parties
8. Domestic workers covered by social security	No	No	Yes	No	No	No	No	No	Yes
9. Employment agencies regulated?	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
10. Right to change employers?	No	No	Yes	Yes	Yes, but limited	Yes	No	Yes, consent by employer	Yes
11. Freedom of Movement?	No	No	Yes	No	--	Yes	No	Yes	Yes
12. Right to work while Case is pending?	No	No	Yes	Yes	No	Yes, but only 2 months	Yes, by Special Pass	Yes, Compulsory	Yes

N.B: SA= South Africa, Origin=country of origin of the employee, MD= Migrant Domestic Workers.

Source: Legal Protection for Migrant Domestic Workers in Asia and Arab States, UNIFEM, Bangkok 2008.

From the above table it is quite clear that in terms of instruments for migrant domestic workers, Italy and South Africa cover most of the rights

³ In Italy employment agreed by both parties should comply with the minimum terms and conditions of law.

⁴ South Africa has provided a model contract complied with the minimum terms and conditions under the law.

of migrant domestic workers. Malaysia and Singapore have restricted the domestic works only for women. Migrant domestic workers of Bahrain, Jordan, Kuwait, Lebanon and Singapore do not have the access to main labour law of the nation. Even the law for migrant domestic workers in Malaysia is very confined. Minimum age for migrant domestic workers is in line with international standard although it sometimes contravenes to law. Countries like Bahrain, Jordan, Lebanon, Malaysia and Singapore do not have any minimum wage rate whereas Hong Kong SAR, Italy, Kuwait and South Africa ascertain minimum wage for migrant domestic worker.

It is noteworthy that all the countries mentioned in the table have developed contract for employment excepting Bahrain. Standard employment contracts are prescribed by government of Jordan, Kuwait, Malaysia and Hong Kong SAR. In case of Italy and South Africa employment contracts must comply the laws of the state but till 2008 Bahrain had no prescribed contract provision. Duration of the contract in most of the countries is 2 years, Malaysia 1 year, in South Africa it depends on the employer and employee, Bahrain and Singapore have no specific duration system.

In social security point of view, migrant domestic workers are more vulnerable excepting in Italy and South Africa. In case of Italy and Malaysia employer has to apply to the Ministry of Labour and Social Security and the Department of Immigration respectively for approval. The rest of the countries have regulated employment agencies.

Right to change employer is not applicable to Bahrain, Hong Kong SAR and Malaysia; with the prior approval or consent of the original employer employment is changeable in Kuwait and Singapore; Italy, Jordan, Lebanon and South Africa are liberal in this regard. Freedom of movement for migrant domestic workers is restricted to Bahrain, Hong Kong SAR, Jordan and Malaysia. Kuwait has no available data and Italy, Lebanon, Singapore and South Africa has provision for movement.

Right to work while case is pending is violated in countries like Bahrain, Hong Kong SAR and Kuwait. Italy, Jordan and South Africa have the provision to work and stay, in Lebanon only 2 months, in Malaysia the provision is applicable if special pass is issued by the Immigration Department and in Singapore it is compulsory to stay until the case is completed.

3.3 International Treaties and Conventions Ratified by Countries

Table 2: International treaties and conventions ratified by some countries

Treaties	Year	Bahrain	HK SAR	Italy	Jordan	Kuwait	Lebanon	Malaysia	Singapore	SA ⁵
ICERD	1965	1990	1981	1976	1974	1968	1971	--	--	1998
ICESCR	1966	--	1976	1978	1975	1996	1972	--	--	1994
ICCPR	1966	2006	1976	1978	1975	1996	--	--	--	1998
CEDAW	1979	2002	1996	1985	1992	1994	1997	1995	1995	1995
MWC	1990	--	--	--	--	--	--	--	--	--
ILO C029	1930	1981	1997	1934	1966	1968	1977	1957	1965	1997
ILO C097	1949	--	1997	1952	--	--	--	--	--	--
ILO C105	1957	1998	1997	1968	1958	1961	1977	--?	--?	1997
ILO C111	1958	2000	--	1963	1963	1966	1977	--	--	1997
ILO C138	1073	--	1999	1981	1998	1999	2003	1997	2005	2000
ILO C143	1975	--	--	1981	--	--	--	--	--	--
ILO C181	1997	--	--	2000	--	--	--	--	--	--
ILOC182	1999	2001	2002	2000	2000	2000	2001	2000	2001	2000

Source: UNIFEM, legal Protection for Migrant Domestic Workers in Asia and the Arab States

Bangladesh is the member of ILO since 1972 just immediate after Independence in 1971. Till December 2011 Bangladesh has ratified 33 Conventions which are in force: Fundamental Convention No. 29, 87, 98, 100, 105, 111 and 182; 2 Priority Conventions: Convention No. 81, 144 and other conventions are: 1, 4, 6, 11, 14, 15, 16, 18, 19, 21, 22, 27, 32, 45, 59, 80, 89, 90, 96, 106, 107, 116, 118, 149 whereas India is the member of ILO since 1932. Till December 2011 it has ratified 66 Conventions of which 59 are in force. India has ratified Fundamental Convention No. 29, 98, 100, 105, 111, 138, 182; Priority Conventions 81, 122, 144; other Conventions- 1, 8, 11, 13, 14, 16, 17, 18, 19, 22, 23, 26, 27, 30, 42, 77, 78, 80, 88, 89, 92, 94, 95, 106, 107, 108, 115, 116, 118, 119, 120, 131, 132, 135, 136, 137, 139, 140, 142, 145, 146, 147, 148, 149, 150, 152, 153, 167, 172. But Italy is the member of ILO since its establishment in 1919. It has ratified 111 Conventions of which 91 are in force: Fundamental Conventions 29, 87, 98, 100, 105, 111, 138, 182; Priority Conventions 81, 122, 129, 144 and other Conventions 2, 3, 6, 8, 9, 11, 12, 13, 14, 16, 18, 19, 22, 23, 26, 27, 35, 36, 37, 38, 39, 40, 42, 44, 48, 53, 55, 68, 69, 71, 73, 74, 77, 78, 79, 80, 90, 92, 94, 95, 97, 99, 102, 106, 108, 114, 115, 117, 118, 119, 120, 124, 127, 132, 133, 134, 135, 136, 137, 139, 141, 142, 143, 145, 146, 147, 148, 149, 150, 151, 152, 159, 160, 164, 167, 170, 175, 181, 183 (ILO Conference 101st Session 2012).

⁵ 'SA' here means South Africa

4.0 Conclusion and Recommendation

4.1 Conclusion

Among the overseas employees, domestic or less skilled migrant workers are more vulnerable than those of skilled and semi-skilled manpower. The study of different countries' law report identifies the factors contribute to the vulnerability of migrant domestic workers: recruitment policies and practices on payment of fees and the link between the legality of the worker's stay with the employment relationship with a specific employer; illegal recruitment, trafficking, servitude and forced labour, and absence of a written contract of employment and lack of legal recognition of domestic work.

From the socio-economic point of view migrant workers are the part and parcel of both country of origin and the host country. That's why legal recognition to the work done by migrant workers or migrant domestic workers is a must, and both the countries should develop access to information, reporting and protection mechanisms for migrant workers.

In these circumstances the protection of the rights of migrant workers requires a sound legal foundation based on international law and standards, as well as active cooperation among governments, employers' organisations, workers' organisations and civil society including the media. Governments may ratify and fully implement concerned international legal instruments that promote human, labour and gender equality rights of migrant workers, in particular ILO Conventions No. 97 and No. 143; the eight fundamental Conventions, and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The study also shows that countries like Italy, South Africa, Hong Kong SAR, etc of which domestic instrument are in line with the ILO Conventions and have the mechanism of employment contracts and legal access to justice. That's why migrant workers of those countries are less vulnerable than those have absence of legal instruments covering domestic migrant workers.

4.2 Recommendations

4.2.1 Campaigns against illegal migration

Countries of origin should launch campaigns against illegal migration which might include awareness building regarding the risks of illegal migration and providing information about legal migration channels.

Involvement of embassies and consulates from countries of employment in such campaigns is considered effective.

4.2.2 Initiatives to prevent indebtedness of migrant domestic workers

States should take initiatives to avoid indebtedness of migrant domestic workers, including the adoption of agreements which provide that their recruitment costs be covered by the employer and/or recruitment agencies and State credit programs for migrant women.

4.2.3 Pre-departure training programmes

The organization of training programs for migrant domestic workers prior to their departure is considered as a good practice. Such programs, depending on the circumstances, should include basic lessons in the language of the country of employment and practical tips on communication technologies and how to transfer remittances.

4.2.4 Change of employers

Countries of employment should review their legislation and ensure that workers' migrant status does not depend directly on the employment relationship with an employer and that, under certain circumstances and conditions, workers may change employers.

4.2.5 Hindrances to domestic workers' access to justice

Migrant domestic workers who report their employers for violating their labour and other rights should be allowed to remain in the host country and provided them with necessary assistance to take part in the trials of their employers and to obtain justice.

4.2.6 Regulation of recruitment agencies

Legislation and policies of countries of origin and of employment should provide for mechanisms to monitor the work of recruitment agencies; specific rules governing fees should be established and its enforcement should be monitored; recruiting agencies should have to renew their licenses periodically and watchdog arrangements should be established to ensure that only those agencies which observe specific criteria relating to migrant domestic workers' rights can continue to operate.

4.2.7 Monitoring of employers by the recruitment agencies

Recruitment agencies should have the duty to take monthly feedback from the domestic workers and legally required to monitor conduct of employers accordingly.

4.2.8 Equal protection in case of disputes

In the event of disputes, States should ensure that migrant domestic workers and employers are afforded equal protection based on the terms of the contract of employment, including working hours, wages, boarding and lodging.

4.2.9 Written contract of employment

Legislation on the recruitment of migrant domestic workers should require a written contract, giving particulars of the employer and employee and details of the employee's monthly wages, duties and working hours, free time and vacations, board, lodging, medical insurance, transport to the country employment, conditions for terminating the contract, complaint procedures and provision for the eventuality of the employee's death or illness; when the contract is signed in the language of the country of employment, a translation should be required for the benefit of the migrant domestic worker.

4.2.10 Model contracts for domestic workers

The drawing up by States of employment model contracts for domestic workers which also apply to illegal migrants, stipulating working hours and minimum wages, might be helpful for migrant domestic workers to claim the right in court.

4.2.11 Withholding in identity documents

States should ensure legislation that prohibits the withholding of passports or relevant identity cards, and complaints regarding confiscation of such documents should be investigated properly.

4.2.12 Dismissal in case of illness

Legislation in the countries of employment should not allow migrant domestic workers to be dismissed in case of illness without fair compensation.

4.2.13 Medical examination

Legislation should prohibit certain medical examinations of workers like HIV/AIDS without their expressed consent. Maternity protection should be ensured as right and benefits should be paid accordingly.

4.2.14 Role of embassies and consulates

Consulates and embassies should play an active role in protecting the rights of migrant domestic workers, by means including regular checks on their circumstances; it is good for consulates to provide shelter to women fleeing from abusive employers and to provide them with assistance in filing complaints against the employers; when migrant domestic workers cannot claim their rights in court, it is might be a good practice for consulates to assist in mediating between the parties through contracts with the ministries and departments concerned.

4.2.15 Access to complaint mechanisms

Countries of employment and Consulates or High Commissions of countries of origin should set up toll free telephone lines as well as online internet management where migrant workers can seek advice, guidance or submit complaints.

Annexure-I

International Labour Standards Relevant To Migran Workers

Fundamental ILO Conventions

Freedom of Association

C.87 Freedom of Association and Protection of the Right to Organise Convention, 1948.

C.98 Right to Organise and Collective Bargaining Convention, 1949.

Equality at Work

C.100 Equal Remuneration Convention, 1951.

R.90 Equal Remuneration Recommendation, 1951.

C.111 Discrimination (Employment and Occupation) Convention, 1958.

R.111 Discrimination (Employment and Occupation) Recommendation, 1958.

Forced Labour

C.29 Forced Labour Convention, 1930.

R.35 Forced Labour (Indirect Compulsion), 1930.

C.105 Abolition of Forced Labour Convention, 1957.

Child Labour

C.138 Minimum Age Convention, 1973.

R.146 Minimum Age Recommendation, 1973.

C.182 Worst Forms of Child Labour Convention, 1999.

R.190 Worst Forms of Child Labour Recommendation, 1999.

Migrant-specific ILO Conventions and Recommendations

C.97 Migration for Employment Convention (Revised), 1949.

R.86 Migration for Employment Recommendation (Revised), 1949.

C.143 Migrant Workers (Supplementary Provisions) Convention, 1975.

R.100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955.

R.151 Migrant Workers Recommendation, 1975

Some ILO Conventions and Recommendations with Specific Concerns of Migrant Workers

- C.19 Equality of Treatment (Accident Compensation) Convention, 1925.
- C.26 Minimum Wage-Fixing Machinery Convention, 1928.
- C.81 Labour Inspection Convention, 1947.
- C.88 Employment Service Convention, 1948.
- C.94 Labour Clauses (Public Contracts) Convention, 1949.
- C.95 Protection of Wages Convention, 1949.
- C.102 Social Security (Minimum Standards) Convention, 1952
- C.110 Plantations Convention, 1958.
- R.115 Workers Housing Recommendation, 1961.
- C.117 Social Policy (Basic Aims and Standards) Convention, 1962.
- C.118 Equality of Treatment (Social Security) Convention, 1962.
- C.121 Employment Injury Benefits Convention, 1964.
- C.122 Employment Policy Convention, 1964.
- R.122 Employment Policy Recommendation, 1964.
- R.169 Employment Policy (Supplementary Provisions) Recommendation, 1964.
- C.129 Labour Inspection (Agriculture) Convention, 1969.
- C.131 Minimum Wage-Fixing Convention, 1970.
- C.135 Workers Representatives Convention, 1971.
- R.143 Workers Representatives Recommendation, 1971.
- C.141 Rural Workers' Organization Convention, 1975.
- R.149 Rural Workers' Organization Recommendation, 1975.
- C.142 Human Resources Development Convention, 1975.
- R.195 Human Resources Development Recommendation, 2004.
- C.149 Nursing Personnel Convention, 1977.
- C.155 Occupational Safety and Health Convention, 1981.

- R.164 Occupational Safety and Health Recommendation, 1981.
- C.157 Maintenance of Social Security Rights Convention, 1982.
- R.167 Maintenance of Social Security Rights Recommendation, 1983.
- C.158 Termination of Employment Convention, 1982.
- C.167 Safety and Health in Construction Convention, 1988.
- C.168 Employment Promotion and Protection Against Unemployment Convention, 1988.
- C.169 Indigenous and Tribal Peoples Convention, 1989.
- C.172 Working Conditions (Hotels and Restaurants) Convention, 1991.
- C.176 Safety and Health in Mines Convention, 1995.
- C.181 Private Employment Agencies Convention, 1997.
- R.188 Private Employment Agencies Recommendation, 1997.
- C.183 Maternity Protection Convention, 2000.
- C.184 Safety and Health in Agriculture Convention, 2001.

Bibliography

- Abuse of Domestic Workers on the Rise, 20 November 2006, IRIN,
<http://www.alertnet.org/thenews/newsdesk/IRIN/5c52e8f88f5221a9231680b941a9ef480.htm>
- Asian Migrant Centre, et al: Baseline Research on Racial and Gender Discrimination towards Filipino, Indonesian and Thai Domestic Workers in Hong Kong (2001).
- Bangladesh Economic Survey Report, April 2012
- Bangladesh Household Income and Expenditure Survey Report, 2010
- Bangladesh labour Force Survey Report, 2010
- Bureau of Manpower Employment and Training (BMET), Report, June 2012
- Concluding Observation of the Committee on the Elimination of Racial discrimination: Bahrain, CERD/C/BHR/CO7 (2005).
- Dr. Ray Jureidini, Migrant Women Domestic Workers in Lebanon, International Migration Papers, 9 (ILO, 2001)
- Gender Promotion Programme, International Labour Office, Preventing Discrimination, Exploitation and Abuse of women Migrant Workers: An information guide, Booklet 1 Introduction: Why the focus on women international migrant workers, Geneva, 2003, Box 1.3. Vulnerabilities at different stages of the migration process, p.22
- Global Commission on Migration (GCIM), Migration in an International World: New Directions for Action, Report of the Global Commission on Migration, Switzerland, October 2005, p. 83
- Haya Al-Mughni, Country Report: Kuwait, Freedom House, <http://www.freedomhouse.org>.
- ICFTU: Annual Survey of Violations of Trade Union Rights 2003, consulted at <http://www.icftu.org/survey2003.asp?language=EN>
- <http://en.wikipedia.org/wiki/Remittance> as downloaded 01 Oct 2012
- ILO, Action against Sexual Harassment at Work in Asia and the Pacific, Bangkok, 2001, p. 17

ILO: Global and regional estimates on domestic workers, Domestic work Policy Brief No. 4 (Geneva, 2011).

ILO: Guide to private Employment Agencies: Regulation, monitoring and enforcement, Geneva, 2007, p. 41, <http://www.ilo.org/public/English/employment/skills/index.htm>.

ILO: International Labour Standards on Migrant Workers' Rights: Guide for Policy Makers and Practitioners in Asia and the Pacific, Bangkok, 2008

ILO: Investing in Every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour (Geneva, IPEC, 2004), pp 4-5.

ILO, Multilateral Framework on Labour Migration Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, 31 October-2 November 2005, p.62

ILO: Rules of the Game, A Brief Introduction to International Labour Standards, 2005

ILO, Violence at Work, Third edition, Geneva, 2006, pp. vi. 20-22,

Information Documentation on Ratifications and Standards-related Activities upto December 2011, ILO Conference 101st Session 2012 (ILC. 101/III/2).

Kay Lam Chi Yan: The Second periodic Report on the Hong Kong Special Administrative Region of the People's Republic of China in Light of the Convention on the Elimination of All Forms of Discrimination against Women, Hong Kong Human Rights Monitor (2006)

Legal Protection for Migrant Domestic Workers in Asia and Arab States, UNIFEM, Bangkok 2008.

Malaysia, Ministry of Human Resources, Good Practices to protect Women Migrant Domestic Workers in Malaysia, Especially Migrant Domestic Workers in UNIFEM, 2006.

Maria Theresa Semante, Anti-abuse Campaign OFW's in Bahrain, OFW ADVISORY, 14 Aug 2006, http://www.ofwguide.com/article_item.php?articleid=497