

Promoting and Protecting the Human Rights of Migrant Workers from Nepal & South Asia

HRGS Project Report



ABSTRACT

A brief summary of the HRGS 2013 Project – *Promoting and Protecting the Human Rights of Migrant Workers from Nepal and South Asia* capacity building program and research initiatives.

Contents

1. Executive Summary	3
2. Project Overview and Background	4
3. Capacity Building and Knowledge Sharing	8
4. Conclusion	26

Appendices:

A. Country Case Studies	28
B. Fair Hiring Initiative: Example of Alternative Model for Recruitment	35
C. Project Partner Organizations	37
D. Core Human Rights and International Labour Standards	38

1. Executive Summary

Labour migration, the movement of individuals in search for work overseas, has grown rapidly in Nepal in recent years. The remittances of Nepalese migrant workers contribute nearly a quarter of Nepal's GDP¹ – and have had a significant impact on poverty and development. Concern about the treatment of migrant workers has been growing with increasing reports of abuses of migrant workers in destination countries. Like other countries of origin in South Asia, government and civil society are struggling to respond to the human costs of labour migration.

Pravasi Nepali Coordination Committee (PNCC), in partnership with the Diplomacy Training Program (DTP) and Migrant Forum in Asia (MFA) secured funding through the Australian Government's Human Rights Grant Scheme (HRGS) for a project focused on the rights of migrant workers from Nepal, and South Asia².

The main activity and focus of the project was a South Asian Regional Capacity Building Program held in Kathmandu from September 18-22, 2013. This program included a focus on recruitment agencies and labour attaches. In the lead-up to the program background papers on recruitment agencies and the roles and responsibilities of labour attaches were prepared, including research and documentation on existing best practice.

The capacity building program brought together participants from government and civil society with the aim of building knowledge, skills and collaboration³. Most participants came from Nepal, including service providers at the district level and a labour attaché from the Middle East. Other participants came from other countries of origin in South Asia - India, Bangladesh and Sri Lanka. Resource people for the program came from the Philippines, Malaysia and Australia as well as Nepal.

The capacity building program was officially opened by the Chief Secretary, The Secretary of the Ministry of Foreign Affairs and the Chief Secretary of the Ministry of Labour, and the Australian Ambassador – as well as representatives of PNCC, MFA and DTP⁴.

The project contributed to developing the knowledge and skills of key actors in Nepal and the sharing of knowledge and expertise between key countries of origin. It has contributed to the efforts of PNCC in Nepal and to MFA strategies and to build the momentum for effective action on the rights of migrant workers. Next steps for the program participants were identified and agreed.

The project and training program provided a focal point for the establishment of links between human rights clinic/s at tertiary institutions in Australia and Kathmandu that will support Nepalese civil society advocates and will be sustained beyond the end of this project.

¹ According to the World Bank, personal remittances account for 22.2% of Nepal's GDP in 2011 (World Bank, 2013).

² Please see Annex 1 for the original proposal submitted and Annex 2 for a comprehensive overview of each organization's respective responsibilities in the draft MOU between PNCC, DTP and MFA.

³ Please see Annex 3 for the capacity building program schedule.

⁴ Please see Annex 4 for a list of representatives present for the opening ceremonies.

2. Project Overview and Background:

Please see Annex 1 for the original project proposal as submitted to the Australian Government Aid Program, Human Rights Grants Scheme.

2.1 Project Objectives

This project focused on assisting organisations in Nepal, and South Asia to more effectively promote the application of international human rights standards and good practice to international labour migration.

It aimed to provide practical training to key civil society advocates, government officials, and targeted private sector stakeholders on relevant international standards and their domestic application. In addition to training, the project facilitated engagement with/dialogue between:

- a) those responsible for policy and regulation of recruitment agencies, and representatives of recruitment agency bodies
- b) ministry officials responsible for the deployment and supervision of labour attaches
- c) government agencies responsible for addressing claims by migrant workers and their families
- d) bilateral and international agencies that can provide ongoing support for the development and implementation of policies informed by good practice and international standards

The project also aimed to facilitate new collaborative relationships between one or more tertiary institutions in Australia and one or more law faculties in Kathmandu that support Nepalese civil society to implement human rights standards in specific domestic and international cases. The intent of this clinical collaboration between the Australian and Nepalese law students is also to contribute to training the next generation of Nepalese (and Australian) human rights lawyers.

The purpose of this project is also to contribute to the continuing work of PNCC, its partners and the wider NGO movement working on these issues in Nepal.

2.2 Project Background

The project responds to the growing number of human rights abuses and violations associated with the rapid increase in labour migration from Nepal and other countries in South Asia. NGOs and organisations of migrant workers have responded to these needs, but face multiple challenges. One of these key challenges is how to apply international standards to policy and practice – and how to influence the public policy process. There is value in seeking to replicate/learn from the practices of those countries that have longer experience in managing labour migration.

While there is increased media coverage of abuses and vulnerability of migrant workers, there is a sense that public perceptions need to be shifted to build the political will to positively influence government policy and practice. Recent articles of the working conditions of construction workers in Qatar in international media outlets have also contributed to the global

discussions, which are only able to cover the surface-level complexities of the problems migrants and their families face throughout the migration process.

Labour migration from Nepal is increasing rapidly and remittances from migrant workers contribute nearly 25% of GDP⁵. Most migrant workers are men, but an increasing number of women are also leaving in search of work⁶. Many factors encourage women to migrate. Domestic violence, lack of economic opportunities, family pressures and discrimination are all recognised as being significant reasons for women going abroad to find employment⁷. In the Middle East, Malaysia, Singapore and Hong Kong they join millions of other migrant workers – including from other countries in South Asia.

These men and women are vulnerable to a range of human rights abuses, particularly in destination countries – by officials and the private sector - as documented by NGOs in Nepal and by international NGOs such as Amnesty International and Human Rights Watch⁸. There is a need for a more concerted and strategic response to these abuses, and to ensure governments and corporations apply relevant human rights standards.

Undocumented or irregular migrant workers (sometimes incorrectly referred to as illegal) migrant workers are particularly vulnerable.

Migrant workers can become irregular at various points in the migration cycle because of illegal recruitment, contract substitution, overcharging of fees in the recruitment stage leading to debt bondage, bonded labour and to forced labour in the destination country⁹. Restrictions on movement may lead some to falsify documents¹⁰. Restricted access to social services, the inability to form or join trade unions, non-payment of wages, and abusive working conditions may lead the migrant to leave their job without the permission of their employer/sponsor – immediately putting them in an irregular position and fearful of arrest, detention and punishment (including corporal punishment) (PICUM). Nor can they access the health or other services that other migrants and citizens can (PICUM).

⁵ Remittances amounted to approximately 23.1 percent of GDP in the Nepali fiscal year 2068/69, approximately 2012 (Karoobar Daily, 2013). Approximately 3.5 billion USD in remittances are sent annually, although the figure is estimated to be substantially higher (Glennie, 2012).

⁶ Some villages have recorded that approximately 90% of the male population have left for foreign employment opportunities (Glennie, 2012).

⁷ Of the returnee migrant women interviewed, most cited financial constraints (33%), desire to work abroad (21%), lack of employment opportunities (13%), unsatisfactory income in Nepal (12%), family pressure (5%), and the burden of being a single parent (5%) (Bhadra, 2007).

<http://www.unescap.org/tid/artnet/pub/wp4407.pdf>

⁸ Reports published by Amnesty International and Human Rights Watch documenting abuses against migrant workers can be found at the following websites (respectively):

<http://www.amnesty.org/en/refugees-and-migrants> and <http://www.hrw.org/topic/migration>.

⁹ Platform for International Cooperation on Undocumented Migrants (PICUM) explains that “the routes to becoming an undocumented migrant are complex and often the result of arbitrary policies and procedures over which the migrant has little or no control” (PICUM).

¹⁰ For example, on 9 August 2012, Nepal’s cabinet established an age bar on women under 30 working in the Gulf in response to the number of publicized domestic worker abuse cases (HRW, 2012). In response, many Nepali women chose to then use channels through India or secure fake documents to travel abroad. Other reports in destination countries such as the US report that as many as “75% of working-age illegal aliens use fraudulent Social Security cards to obtain employment.”

The primary focus of this project is on Nepal, but was developed in recognition that the challenges facing Nepal are shared by other countries of origin, particularly in South Asia and understanding that a more coordinated approach by civil society and governments in these countries is necessary and more likely to have an impact on the rights of migrant workers in destination countries. There is a need to have advocates from these countries working together to challenge “the competitive advantage” of governments applying lower standards of protection to their migrant workers.

Different governments in South Asia have developed different systems and approaches in managing labour migration, including in pre-departure, deployment of labour attaches, training, and regulation of recruitment agencies. There is value in seeking to share best practice and approaches and to develop collaborative relationships and this part of MFAs broader and longer term strategy.

2.3 Anticipated Outcomes

At the project’s conclusion, it was expected NGO advocates from Nepal and South Asia would have:

- Increased knowledge and understanding of key human rights and labour rights standards and how these can be applied to policy and practice.
- Increased knowledge of good practice in labour migration – including in relation to the regulation and monitoring of labour recruitment agencies and the roles and responsibilities of labour attaches/diplomatic representatives in receiving countries.
- Increased skills and confidence to engage in dialogue and advocacy with officials – with initial dialogue/advocacy having occurred during the project.
- Developed working relationships with NGO colleagues and with officials useful for future work – including specific initiatives to monitor and implement the human rights of migrant workers.
- Collation and dissemination of documentation on good practices in relation to regulation/operation of labour attaches /recruitment agencies.

PNCC, DTP and MFA worked together to achieve these outcomes principally through the development and implementation of a five-day residential training program, researching case studies of good practice relevant to recruitment agencies and labour attaches, and on the identification of trainers and participants and the development of materials.

In addition, the collaboration aimed to Initiated collaboration between tertiary institutions in Australia and Nepal focused on the rights of migrant workers. During the program the Human Rights Clinic at UNSW Faculty of Law initiated contact with Advocacy Forum and through Advocacy Forum the Law Faculty at Tribhuvan University. This may lead to a collaboration that will see students in both law schools working together on a migrant worker case under CEDAW. In addition, PNCC also developed an MoU with Kathmandu School of Law to establish a human rights law clinic to work on cases of migrant workers in Nepal.

2.4 Participant Selection

Participants were selected on the basis of their capacity and commitment to continue collaborative work on these issues.

PNCC and MFA identified the program participants from among their networks, including at the district level in Nepal and in MFA member organisations in South Asia, including trade unions. There were government officials and staff from national human rights institutions (NHRIs). Efforts were made to include labour attaches among the participants, although only one labour attaché from Nepal (based in Kuwait) was able to attend.

Efforts were made to ensure gender balance in the training program. In total, there were 25 participants and 13 resource persons. Of the group, there were 11 women who participated in the program and 17 from other source and destination countries. Please see Annex 5 for the participants list.

2.5 Curriculum Development

The curriculum and training methodology incorporated a participatory approach that balanced development of knowledge and skills, including practical interaction between civil society advocates and government officials/recruitment agency representatives on human rights issues of concern.

PNCC worked with DTP on the development and implementation of the project, providing input on curriculum, trainers and facilitators and materials – and with program organisation and facilitation. Migrant Forum Asia (MFA) assisted with selection of trainers/facilitators, participants and provided input to the program curriculum.

2.6 Program Materials

“The best part of this programme is mostly information. Because the migrant workers issues about deeply knowledge.”

To support the capacity building program for the Diplomacy Training Program participants, a training/reference Manual was prepared and provided to participants.

In addition three background papers were prepared. The Diplomacy Training Program undertook desk research to identify best practice examples/case studies in relation to the role of labour attachés¹¹ in destination countries, and a compilation of best practices for the foreign employment recruitment industry¹².

PNCC and the Kathmandu School of Law (KSL) also involved KSL students in an investigation and analysis of the extraordinary number of cases submitted to the Foreign Employment Promotion

¹¹ Please see Annex 6 for a copy of the report.

¹² Please see Annex 7 for a copy of the report.

Board (FEPB) in Nepal December 2012 – September 2013, and how they can be related to international United Nations (UN) and International Labour Organization (ILO) Conventions¹³.

- **Role of Labour Attachés**

The background paper describes the role of labour attachés in destination countries. It highlights a series of good practices, including pre-deployment training and orientation, and engagement with Diaspora/Migrant Worker communities. It concludes with a list of recommendations for sending countries to improve their services in countries of destination, noting that gender-responsive mechanisms for migrants in distress should also be a focus area for labour attachés.

- **Ethical Recruitment Practices**

The *Draft Background Paper: Migrant Workers, Recruitment Agencies and Human Rights* describes the roles and responsibilities of recruitment agencies in relation to the rights of migrant workers. The private sector plays a key role in labour migration – both as the employers of migrants and as the link between employers and migrants. Recruiting migrant workers has become a big and very profitable, and politically influential, industry in many countries of origin. Where regulation and accountability mechanisms for this industry exist they are seen to be inadequate or ineffective. In some country recruitment agencies have combined in industry associations and there are examples of attempts at self-regulation to address the increasing evidence and public concern of abuses linked to the practices of recruitment agencies. International standards, MOUs and international and regional dialogues such as the Colombo Process and the Abu Dhabi Dialogues can provide regulatory guidelines for business enterprises engaged in international recruitment activities. The UN's *Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework* sets out the responsibilities of companies and government. The paper concludes with a series of recommendations for sending countries, receiving countries, and businesses in how to work more collaboratively to address the complexities of international recruitment.

3. Capacity Building and Knowledge Sharing

“The best of the program for me is that I got the chance to hear and learn the different practices of different countries. Similarly I got some knowledge about ILO and other conventions.”

The focus of the project was a 5-day training program held from 18 – 22 September 2013 with participants and resource persons from Nepal, Bangladesh, India, Sri Lanka, Philippines, and Malaysia. The goal of the program was to build the knowledge and skills of the participants and to encourage collaborative efforts between advocates working in each of the countries while also promoting discussion between the various levels of stakeholders including government

¹³ Please see Annex 8 for this report.

officials, diplomats, intergovernmental bodies, migrants, their families and civil society groups in the migrant rights movement.

3.1 The Opening Ceremony

The opening ceremony included representatives from the highest levels of Nepal's government, as well as the organizing partners and the Australian Ambassador. The panel emphasized the significance of these issues for Nepal, and its people. The speakers emphasized the need for a multi-stakeholder approach to fully address the complexity of issues migrant workers are facing. HE Glenn White, Australia's Ambassador to Nepal, who has had experience from previous diplomatic postings of the issues facing migrant workers in the Middle East, recognized the importance of labour migration to Nepal's economy, and that the experience of migration could be a positive one, particularly if action was taken to ensure the rights of migrant workers. The value of Nepal ratifying the UN Convention on the Rights of Migrant Workers was also highlighted.



Figure 1 Mahendra Pandey of PNCC makes opening remarks at the start of the capacity building program.

3.2 Introducing International Human Rights Standards and Mechanisms:

Since 1948 governments, represented in the United Nations, have developed a comprehensive framework of international human rights standards. There are now nine core human rights

treaties and many more Declarations. These instruments, many widely adopted, apply to all human beings regardless of their nationality and legal status. These instruments generally do not affect the State's sovereign right to control and regulate its borders, but rather set out their obligations to the people within their borders.

Most relevant to the situation of migrant workers is CMW. This came into force as a binding treaty in 2003 and has to date been ratified by five states in Asia: Bangladesh, Timor Leste, Sri Lanka, Indonesia, Philippines and signed by Cambodia (OHCHR, 2013).

Because the CMW is not widely ratified, advocates need to utilize other human rights treaties, such as CEDAW, to protect and promote the rights of migrant workers. These treaties have an individual complaints mechanism that can be used where states have ratified the necessary Optional Protocols.

Using individual complaints procedures and human rights treaty-reporting processes, advocates can hold countries accountable to their international obligations in cases that include migrant workers and their families.

Human Rights Special Procedures also provide an avenue for accountability and for promoting the rights of migrant workers. They can undertake country visits, recommend actions, make urgent appeals and report annually to the UN Human Rights Council. They rely heavily on the input and advice of NGOs and others to be effective. The UN Special Rapporteur on Migrants Rights and the Special Rapporteur on Violence Against Women are two of the key UN Special Procedures.

The UN's Universal Periodic Review (UPR) also provides a key opportunity to raise concerns and promote recommendations for change.

The Commission on the Status of Women is another key forum for advocates, given the increasing feminization of migrant labour. Follow-up processes and evaluations also provide avenues for dialogue with governments to ensure policies and practices are implemented to protect female migrant workers and their families.

There was a focus on how CEDAW and General Recommendation 26 on Domestic Workers could be used by migrant worker advocates to promote the protection of migrant workers. In groups, participants used the case study of a Nepali woman migrant worker to highlight which of her rights had been impacted by her treatment in Nepal and in the destination country.

3.3 The ILO and International Labour Standards

"The most useful sessions were about human rights, ILO standards, and sharing the Philippines and other countries situations."

*International Labour Standards*¹⁴

¹⁴ All information from this section has been adapted from Mr. Nilim Badal's presentation on 20 September 2013.

International Labour Standards (ILS) take the form of Conventions and Recommendations. Conventions are legally binding international treaties that may be ratified by member States that set out minimum standards for labour conditions. Recommendations, which are non-binding but authoritative guidelines do not have to be ratified and become effective upon adoption at the ILC, but provide more specific guidance for national laws.

The ILS are designed to promote *Decent Work* for workers of all nationalities so that work can fulfill its function as a lever lifting people out of poverty while providing space to economies to make adjustments to raise productivity and income levels. The ILS are created through a tripartite process involving government representatives, employers and workers - and are adopted at the annual international labour conference (ILC).

All members of the ILO are bound by the eight core conventions that comprise ILO's Fundamental Principles and Rights of Work. The following lists the four fundamental principles of each of these core conventions:

1. Freedom of association and effective recognition of the right to collective bargaining [C87 (1948) & C98 Freedom of Association (1949)]
 - a. Right to form associations without fear
 - b. Organizations are not liable to be dissolved
 - c. The right to organize is protected
 - d. Protection from anti-union discrimination
 - e. Promotion of voluntary negotiations and collective bargaining
2. The effective abolition of child labour [C138 (1973) and C182 (1999) against Child Labour]
 - Set minimum working age
 - Regulation of light work to ensure security, health, and morality are observed
 - Immediate abolition of the worst forms of child labour (forced labour, prostitution, drug trafficking, and all other jobs that are harmful to a child's health, security, and morals)
 - Removal and rehabilitation of children involved in the worst forms of child labour
3. The elimination of discrimination in employment and occupation [C100 (1951) and C111 (1958) against Discrimination in Employment]
 - Protection from discrimination on the basis of gender, especially with respect to wages (equal pay for equal value of work)
 - Protection from discrimination on the basis of race, religion, colour, political opinion and other social or cultural aspects
4. The elimination of all forms of forced/compulsory labour [C29 (1930) and C105 (1957) against Forced or Compulsory Labour]
 - Prohibition of all forced/compulsory labour (through methods of punishment, coercion, ideological influences, racial or other forms of discrimination) in the shortest time possible

ILO Conventions 97 and 143 were the first international instruments on migrant workers. They put forward equal treatment between regular status migrants and nationals in employment & working conditions; and measures to address irregular migration; rights of irregular migrants.

Thus far, only 47 states have ratified C97 and 23 have ratified C143. Other ILO Conventions that are particularly relevant to the wellbeing of migrant workers include:

- C19: Equality of Treatment (Accident Compensation)
- C81: Labour Inspection
- C118: Equality of Treatment (Social security)
- C157: Maintenance of Social Security Rights
- C181: Private Employment Agencies
- C189: Domestic Workers

Please see Annex 9 for a comprehensive list of Conventions that have been adopted by states in Asia and the Gulf Cooperation Council countries (GCC).

Multilateral Framework for Cooperation on Labour Migration

Adopted in November 2005, the Multilateral Framework for Cooperation on Labour Migration is a global framework of non-binding principles, guidelines and good practices for a rights-based approach to labour migration. It is based on ILO Conventions and standards, tripartite negotiations, and consensus of origin and destination countries. It consists of 15 principles and corresponding guidelines.

National laws and policies should reflect ILS to ensure there is access to information, legal assistance and training; policy and legislative develop; bilateral, regional or multilateral social security agreements; wage protection, labour inspections, and written employment contracts; effective complaint mechanisms with enforceable remedies, sanctions, and penalties; and non-retention of identity documents.

ILO Mechanisms:

The reporting system and complaints procedures are the two key mechanisms of the ILO supervisory system to oversee and encourage implementation of the ILS. It is a tri-partite system.

Regular Supervision (reporting system) is done through government reports and other special reports. States are subject to periodic reviews on ratified conventions. As a result, they are required to submit a report one year after a Convention comes into force. Reports of the eight fundamental Conventions and four priority Conventions are due every second year, while all other conventions are reported on every five years. These reports include the situation of the implementation of the Conventions in law in practice, legislation, court decisions, labour inspection visits, budgetary and other measures.

At regular intervals, member States are also requested to complete special reports on the law and practices in their countries based on a specific topic, whether or not they have ratified the relevant Conventions. The ILC 's Committee of Experts then publishes an in-depth annual General Survey on the member States' national laws and practices on the basis of these reports. In 1998, a General Survey of laws and practices related to migrant workers was taken.

To follow-up the recommendations of the reports, the Committee of Experts on the Application of Conventions (CEACR) reviews the periodic report from the governments. The Committee is

comprised of twenty legal experts (independent, impartial experts in the field of labour law). It assesses the country's application of the ILS and identifies any noticeable discrepancies. They provide observations, and direct requests for more information or clarification on specific issues. The Conference Committee on the Application of Standards then reviews the annual report of the Committee of Experts. The Conference Committee is comprised of government, employer and worker delegates. The reports are examined and discussed at length. The Committee then provides a series of conclusions and recommendations for the government to remedy any problems or invite ILO technical assistance.

The complaints procedure can be used when an individual State does not comply with the obligations of any ILO Convention. A complaint may be submitted through representation under Article 24 or Articles 26-34 of the ILO Constitution or through a complaint on the violations of freedom of association.

A complaint (representation) under Article 24 can only be made by an employer or workers' organization. Therefore, if an individual or NGO would like to make a representation, they can only do this through giving information to the relevant organization. One example of this is a complaint raised by TUCP alleging non-observance by China of Convention No.97 with respect to the SAR of Hong Kong regarding wage and social security rights of foreign domestic workers.

Complaints under Articles 26-34 concern serious and persistent violations. Although this method has been used infrequently, one example of its use included the Commission of Inquiry set up in 1997 to examine the observance of Myanmar of C.29, and subsequent Resolutions in 1999 and 2000.

Finally, complaints on violations of freedom of association can be made regardless of whether a State has ratified the relevant Convention(s). The Committee on Freedom of Association examines these complaints.

3.3 Looking Specifically at ILO C189 on Decent Work for Domestic Workers¹⁵

As of 2010, the ILO estimated that there are over 53.6 million workers worldwide were working as domestic workers. 83% are women. These workers represent 3.6% of the global wage employment and 7.5% of total female wage employment.

Traditionally, domestic work is perceived as not "real" work. It was performed unpaid by women in their homes. As paid employment it is mainly women working in the homes of others. The undervaluation of domestic work and discrimination on the basis of sex, race, ethnicity and social origin (eg coming from rural areas) leave domestic workers more vulnerable, especially as they work in isolation. Migrant domestic workers are in an even more precarious position – because of current recruitment processes, employment conditions, language, cultural barriers and isolation from their community and family support networks.

Internationally, domestic work is often excluded from legal protection offered to other workers and workplaces. As of 2010, ILO had established that 10% of countries cover domestic workers to the same extent as other workers, while in Asia and the Pacific (AP) it is only 3%.

¹⁵ All figures from this section have been taken from Badal's presentation (2013).

ILO 2010 Global figures:

- 30 % excluded from any labour legislation. In Asia and the Pacific (A/P): 61 % excluded
- 45 % have no right to one day off per week. In A/P: 97 %
- Over 56 %: no normal weekly hours limit. In A/P: 99 %
- 42 % excluded from minimum wage coverage. In A/P: 88%

The Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201) were adopted at the 100th Session of the International Labour Conference in June 2011. The Convention broadly defines domestic work as “work performed in or for a household or households” and a “domestic worker” defined as “any person engaged in domestic work within an employment relationship”.

The Convention does set minimum standards and conditions to provide fair terms of employment and decent working conditions based on equal treatment with other workers.

Some provisions included are related to set minimum age, recruitment, employment contracts, working time, and remuneration. As with other core Conventions, domestic workers must not be deprived of compulsory education if under 18 years or of opportunities to participate in further education. Recruitment must also be regulated and fees and must not be deducted from the worker’s remuneration. Where possible, a written contract should be provided with the terms and conditions of employment communicated in a verifiable and easily understandable manner in accordance with national laws. If the employed is a migrant worker, the job offer or contract must be provided before departure. Standards regarding working hours, weekly and daily rest, paid leave and stand-by time are all included in the Convention. Stipulations for domestic workers to keep their travel and other identification documents and decisions on whether to live with the family are also included. Other important provisions including minimum wage and wage protection are guaranteed to ensure workers receive regular cash payments in addition to any in-kind payments offered. Social security, maternity protection and health and safety at work are also included in the Convention.

ILO C189 official came into force on 13 September 2013.

3.4 Human Rights Promotion, Protection at the National Level – The Role of NHRIs

Sessions led by Mr. Surya Deuja of the National Human Rights Commission of Nepal, developed participant’s understanding of international human rights instruments and the role of National Human Rights Institutions (NHRIs) in promoting and protecting human rights at the national level.

Human Rights and State Responsibility

Surya emphasized the state’s responsibility to respect, protect and fulfill human rights of all persons under its jurisdiction. He used the example of the Universal Periodic Review (UPR) as one of the key international mechanisms that advocates could use to ensure states live up to these obligations.

Addressing the rights of migrant workers, looked at a range of human rights concerns:

- Civil and political rights issues:
 - overseas voting,
 - freedom from discrimination,
 - freedom of movement,
 - freedom from torture,
 - ill-treatment, sex and gender-based discrimination,
 - and the right to life.

- Economic and social rights issues:
 - HIV and AIDs awareness and protection,
 - insufficient accommodation,
 - exclusion from social security schemes
 - family reunification
 - Access to justice

- Labour Rights:
 - the recruitment fees/debt bondage,
 - the Kafala system - right to choose and leave employment/employer
 - securing guaranteed wages,
 - hazardous working conditions,
 - freedom of association

Surya noted that women in the migration process were particularly vulnerable, partly due to the nature of the work they did, but also because of existing patterns of discrimination in both countries of origin and destination.

Countries of origin face challenges in protecting migrant workers rights, particularly overseas, and NHRIs have the potential to address some of these challenges.



Figure 2 Surya Deuja leads an interactive case study where participants practice approaching the NHRC with a case they would like addressed. Surya followed the session with constructive feedback.

The Role of NHRIs

Elaborating, Surya provided a background to the development of NHRIs – including to the *Paris Principles*, which are designed to ensure their independence from the governments that establish them.

He also explained the importance of the NHRI networks that exist. Using the example of the Asia Pacific Forum of National Human Rights Institutions (APF) established in 1996, which includes members in country of origin and destination. Given the breadth of countries represented in the APF¹⁶, it was recommended this would be an appropriate avenue to bring up rights issues related to migration.

In 2012, the NHRC of Nepal hosted a regional meeting of NHRIs focused on the rights of migrant workers which adopted the *Kathmandu Resolution* to further develop the NHRI network and promote the rights of migrant workers. Commitments included:

- Guaranteeing to treat migrant rights as priority area
- Advocating for the ratification of MWC
- Reviewing legislation regarding migrants' rights
- Establishing a regional information database of migrants' rights cases
- Identifying mechanisms to assist migrants in detention
- Establishing regional cooperation between NHRIs, such as a joint task force

¹⁶ Member countries include Afghanistan, Fiji, India, Australia, Bangladesh, Indonesia, Malaysia, Maldives, Nepal, Jordan, Mongolia, New Zealand, Philippines, South Korea, Sri Lanka, Thailand, Qatar, Timor-Leste, and Palestine.

- Providing trainings to administrative, judiciary, immigration and security sectors on the rights of migrant workers
- Engaging with the ILO and UN OHCHR to advance the rights of migrant workers

The NHRC has recommended the government ratify CMW, and has been developing MOUs and bilateral agreements with destination countries, handling complaints and referring cases to relevant parties.

There was a practical exercise with participants – focused on the challenge of developing more effective collaboration between civil society and NHRIs. One of the key points was the need for civil society to have evidence and documentation if they want the NHRI to take up cases.

Interventions of the National Human Rights Commission (NHRC) of Sri Lanka on Migrant Workers

The NHRC of Sri Lanka has made several short-term and long-term interventions with the goal of improving the situation of migrant workers from Sri Lanka. Included in short-term interventions are receiving and handling complaints on fundamental rights violations, monitoring detention centers, and the detention situation of Youthful Offenders Home and State Children’s Homes. After each review, the NHRC then issue recommendations on future steps to be taken. To support this work, the NHRC also issues guidelines and policy plans for the government. This includes monitoring the implementation of ILS guidelines, and UPR UN CMW recommendations, and providing technical support to relevant stakeholders in implementing recommendations.

3.5 Role of Labour Attachés¹⁷

As labour migration from Asia has grown, attention has come to focus on the role of labour attachés from countries of origin in destination countries. These have tended to have a dual role – to expand work opportunities for their nationals – and to represent their interests and ensure their welfare.

Labour attaches have a key role to play in seeking to better promote and protect the rights of migrant workers. The challenges facing labour attaches, and suggestions for making them more effective in their work for migrant workers was a focus of presentations from Bangladesh, Nepal and the Philippines and group discussion. Together they provided a comprehensive picture of the realities in countries of destination. Please see the additional information included in Appendix A.

The Philippines is seen as having put in place more resources and more support for its migrant workers than other countries have so far. They have also sought to address the challenges of coordination between departments and within their missions.

¹⁷ See background paper for more information

Emerging from these presentations the key suggestions for improvement included:

- Better training of LAs
- Improved coordination within missions between LAs and diplomatic staff
- Improved coordination between LAs and civil society/national associations in country of destination
- Improved coordination between missions from sending countries on common issues of concern
- Missions should have funds established to assist migrant workers in distress
- Other processes such as government-to-government agreements and emergency situation protocols need to be developed and shared with staff.

It was noted that labour migration is likely to grow and this needed to be planned for and reflected in resourcing of missions and labour attaches in countries of destination. In the GCC countries, large-scale infrastructure projects will be undertaken in the near future for the World Expo and the FIFA World Cup. In addition, to support these projects, new cities, roadways and other infrastructure will need to be developed. Missions should look at how increased demand in the construction sector will affect migration and what can be done to prepare workers for these occupations.

Workers in low-skilled occupations are particularly vulnerable. Emphasis should be on skilled migration such as glass fitting, steel fabrication, painting, and plumbing in discussions by missions with potential employers and workers. Other considerations such as demand in Japan for English and IT skills should be utilized. Internationally there is a growing demand for health care providers to look after children, the sick, and the elderly. In each of these professions, proficiency in English is advantageous.

3.6 Human Rights and Business: Challenges in Labour Recruitment¹⁸

Ms Marie Apostal from Fair Hiring Initiative led the group in a discussion about the relationship between the recruitment industry and migrant workers' rights. Marie looked at concerns with current labour recruitment practices in countries of origin.

In contravention of international standards, most migrant workers from Asia bear the costs of labour migration. A system of labour brokers, working with recruitment agencies, charges fees to the workers who are seeking overseas employment. The employer in the destination country also usually pays a fee, increasing their perception of investment in/ownership of an individual that is compounded by the Kafala system.

During the recruitment and selection stage, fees may be classified as commitment or reservation fees, placement fees, or direct costs such as airfare to the employment destination. At their place of employment, workers may experience salary deductions such as "run away insurance". Upon return or reintegration, often workers also must pay repatriation-related fees. These fees can result in *debt bondage*.

¹⁸ Please note all information from this section has been taken from Ms Marie Apostal's presentation on 19 September 2013. See background paper for more information.

Marie argued that the current system, which results in abuses of migrant workers' rights, benefits neither worker nor employer. In order to change the system, one had to understand it and how it currently operates.

Marie argued that ethical recruitment practices could benefit all. Workers have larger disposable incomes, which also benefit both countries economically. Companies are able to eliminate debt bondage from their supply chain while employers get qualified and more productive workers who are more likely to stay for the duration of their contracts. Sending and receiving country governments also have less administrative challenges as there is increased regularization, and therefore safety and inclusion, of workers.

Case Study Example

To illustrate the challenges, participants were given three case studies focusing on various stages and rights violations that occur as a result of recruitment malpractice. Annex 10 shares each of the cases. The groups then collectively outlined the human rights issues in the case, the context of CSR and how business should address these issues, and look at how business can be used as leverage for advocacy and change. The groups also specifically identified key actors who would be instrumental to making change.

Driving Demand for Ethical Business Practices:

There is growing recognition of the abuses that are occurring in current patterns of labour migration – and responses are coming through the law, advocacy and industry initiatives.

At the international level, the UN Guiding Principles on Business and Human Rights set out the responsibilities of governments to protect individuals from abuses by business, or businesses to respect human rights and of both business and government to provide access to effective remedy. The Dhaka Principles applies this framework to the labour migration process.

International standards and national laws provide a framework for businesses and employers in origin, transit and destination countries that would ensure the rights of migrant workers. These have proved inadequate – either through lack of national regulations, lack of effective regulatory mechanisms, lack of monitoring and enforcement or lack of awareness or will. The trans-border, or extra-territorial nature of the violations is also a key factor.

In Sri Lanka there is still a significant percentage of workers who are not using licensed recruitment agencies. It was reported that 62.7% or 175,266 persons used alternative sources to find employment abroad, while only 37.3% or 104,216 used licensed agencies. In Bangladesh, approximately individuals (60%) go through individual orders while (39%) go through private recruitment agencies. Only 1% of those going abroad for work go through the government agency, the Bangladesh Overseas Employment and Services LTD (BOESL).

- From the presentations from participants Malwala Arachchige Nihal Chandrasiri, Research Officer for the NHRC Jof Sri Lanka and M. Sundaralingam, Assistant Secretary of the Lanka Jathika Estate Workers Union and ABM Sajjad Hossain from the Bangladesh Institute for Labour Studies (BILS).

There are initiatives to address this – and to force industry to address the issues through its supply chain. The example cited by Marie is the California Transparency in Supply Chains Act. This Act has focused company attention on the presence of human trafficking and modern-day slavery in supply chains. Through these provisions, companies can be subject to legal sanction by being complicit in exploitation and abuse of workers even in other countries.

Industry Responses and Corporate Social Responsibility Standards

At the corporate level, companies like Apple have developed the Apple Supplier Responsibility Code which prohibits involuntary labour, requires private employment agencies to exercise due diligence, and imposes a cap on recruitment fees. Breaches of this Code have resulted in punishment of suppliers and workers being compensated.

There are also industry-wide guidelines including the Staff Wanted Initiative, which covers hospitality industry, and the Electronic Industry Code of Conduct (EICC), which prohibits the use of forced bonded, indentured labour – which may apply to the situation of many migrant workers.

Initiatives such as the Verite-Manpower Standards (Ethical Framework for Cross Border Labour Recruitment), and the Verite Fair Hiring Toolkit are also attempts to ensure that businesses do the right thing.

A number of multinational corporations have agreed to a set of social responsibility standards that guide the direction of their business. Some of these companies include GAP, Apple, Starbucks, Hershey's and Motorola. Included in these commitments are policies that ensure there is no child labour, no forced labour, non-discrimination in the work place, freedom of association, fair wages and benefits, regular and overtime hours, discipline and termination restrictions, providence of grievance procedures, anti-harassment and abuse practices, ethics, health and safety provisions, and environmental protection. These responsibilities apply to all aspects of their supply chain.

The Challenges of Auditing to Code Standards

Independent auditors monitor the implementation of these industry and company codes. Auditors generally focus on the factory conditions to determine the presence or absence of noncompliance or potential risks. Few auditors are properly trained or encouraged to pick up migrant workers' issues and risks.

It is difficult, for example, to verify the compliance to limits on fees and expenses. Often jobseekers are encouraged by brokers and sub-agents to lie about their fees under false pretenses of securing or maintaining their employment. Those who are already on-site also may not be comfortable telling their story truthfully due to threats from the employer or brokers. As many are at risk if they choose to talk about their experience, additional precautions must be undertaken to protect their anonymity.

There are additionally issues related to documentation. Many expenses and fees that are not part of the legal process do not have receipts nor do they show a breakdown of the total

amount that has been paid. It is also difficult to locate informal middlemen or subagents in the recruitment chain to get details related to the fees charged.

Finally, the logistical challenges of auditing in multiple countries and each aspect of the recruitment chain given the deliberately opaque nature of the process also make auditing particularly difficult.

Consequently the current monitoring systems do not provide enough incentive to use ethical practices. Most companies do not have the internal resources to effectively gain check foreign labour supply chains, making it even more difficult to find and develop relationships with ethical recruitment agencies.

Improving Practice - Promoting an Ethical Approach

To address these challenges, it is important for companies to:

- have clear understanding and details of the problem,
- commit to returning overcharges (as Apple did)
- manage on-site conditions
- establish effective grievance mechanisms
- abolish controlling systems such as passport confiscation, forced savings, deposits, etc.
- enforce ethical recruitment regimes - working with ethical recruitment agencies and stipulating the employer must pay all recruitment service fees can then reinforce ethical regimes.

The first stage involves assessing the brokers' and employers' practices by gathering information from workers and having a sound understanding of the overseas employment laws.

Based on this initial assessment, and details of the breaches, the company should determine how much and what scope of compensation should be distributed and how that should be communicated to the workers.

Jobseekers should be aware of these practices before deployment. Although there are a variety of methods employers could use to inform potential workers, Marie recommends a checklist of all expenses the employer will cover be provided. In addition, the worker should also keep a checklist of all actual expenses. Upon arrival, the worker can submit these expense lists. A hotline should also be established for jobseekers to ask any questions about the process or to report and policy violations related to fees and expenses.

To release current workers from debt bondage situations, employers should pay back over-charged fees to their employees. Good practice dictates that the worker should be paid as close as possible to the total amount the worker paid to any recruiter or subagents. The challenge in this is there are often no records of these transactions so the employer must rely on the testimonies of the workers and establish a maximum amount that could be distributed.

It is therefore important to ensure there is sufficient translation and trust to allow workers to feel comfortable talking about their situation honestly without fear of retribution. There should

also be access to a hot line or third party so that the worker can contact an outside party if and when they are comfortable. Good practice also suggests that the employer at least pays for their current contract fees.

Other internal controls are necessary to sustain ethical recruitment practices. Employers should be required to conduct audits specifically to pick the issues around recruitment fees, substitute contracts etc. They must therefore run periodic assessments of worker grievances and feedback reports. Periodic verification checks of fees and expenses should also be accounted for through a hotline for applicants and verification interview upon arrival. Other methods could include employee and/or customer satisfaction surveys and document reviews. These system assessments could be done internally or by a third party depending on the situation.

3.7 The Role of Media in Documenting Abuses and Raising Awareness

Mr. Devendra Bhattarai, Editor of the Delhi office of Kantipur Daily, led the group through a discussion of the importance of media in raising awareness of the unique experiences of each migrant. He illustrated this by providing examples of cases he has been looking at in Delhi and briefly illustrating the difficulties migrant workers face in transit to prospective employment opportunities abroad.

In this presentation, Devendra focused on several prospective migrant workers he had met in Delhi. These women had been told about an opportunity to work in a film production happening in Bolivia. The process of getting to the film location posited a unique employment opportunity and a number of visa challenges and restrictions that allowed the recruitment agents to charge an extraordinary rate for the processing fee. The use of sub-agents in different countries also complicated legal proceedings.

Devendra has worked also in destination countries and in Kathmandu – and has played a role in ensuring that the plight of individual migrant workers has become a pressing political and social issue at the national level – after long neglect. He encouraged participants to actively engage with the media so that the personal stories of migrants could be told. This was also an important way of informing migrants of their rights, and of the risks of labour migration. If migrants are aware of the risks they can make more informed decisions – and also act to protect themselves.

3.8 Future Action Plans/Recommendations

“DTP should organize follow up training for us. And I think media has a key role on protecting and protecting human right of migrant workers, that’s why it should organize perfect program especially for media persons.”

For the final session participants requested the opportunity to develop of an action plan that they could work on together after the conclusion of the training program. The participants

outlined the following issues and objectives they hoped to address in the near future using their newly developed network¹⁹.

Paradigm shift at the individual and organizational levels

Participants made personal commitments to prioritize migrants rights and trafficking issues within their organizations and in life decisions.

Participants requested a continuation of the DTP program through MFA to focus on migration in a different country of origin so participants could better understand and contextualize the similarities and differences migrants and their families were facing in South Asia

Specific requests/suggestions for capacity building on the following topics were made:

- Training for media personnel on migrants rights and how to use the media for migrants' rights advocacy.
- Focus on bilateral agreements, MOUs and other extraterritorial judicial agreements and their implications and effectiveness in promoting and protecting the rights of migrant workers and their families.
- Additional focus on key migration concepts such as mobile peoples, "people on the move" and further clarification on the differences and interdependencies between topics such as labour migration, climate change, refugees, trafficking, and development.
- Regionally specific trainings that focus on key destination countries (such as Gulf countries) including a discussion of the legal framework and improving the effectiveness of case management for migrants in distress

"Please cover the whole South Asia, include Bhutan, Maldives, and Pakistan too."

To achieve the proposed objectives, it was suggested that the participants work together to approach donors for financial and technical support to continue the capacity building of participants, their organizational staff, and migrants groups to better understand the importance of the issue and the need for its inclusion in long-term organizational planning.

Awareness Raising at the National Level

The participants all agreed that it would be important to share the knowledge gained from the training to their respective organizations, local constituents, and policy makers. It was therefore suggested that

- groups engage in various public actions and widely circulate and disseminate materials provided by the training. The role of media was highlighted here as playing a key role in creating space and noise about the challenges migrants are facing and what would be needed to adequately address them.

¹⁹ For the original working document from the session, please refer to Appendix

- participants share information amongst the group about international dialogues, forums and other news. The importance of sharing information, events, advocacy activities on migration-related matters was highlighted as not only a sense of empowerment, but also encouragement to participants who may not have the same sense of community or focus on migration within their immediate community and or organization. A more specific request for a debriefing event of report of the results of the second UN HLD was also made.

“Would be much better if there would be participants from the recruitment agencies, government functionaries, migrant worker representative, and police.”

It was emphasized that these actions should be coordinated within the region and perhaps internationally with other key groups such as MFA network activities on International Migrants Day, which will be on 18 December 2013.

Network building and strengthening

Like the initiatives under the awareness-raising category, it was requested participants make a concerted effort to share information among the organizations in the training. With the contact list provided to the participants, it was suggested that the group be connected with regional partners such as DTP and MFA to keep updated on migration information and events through their websites and e-groups.

To further expand the network, it was recommend to create migrant groups alliances and networks among the South Asian countries so that they would be more effectively able to lobby collectively with destination countries, develop joint action agendas and advocacy campaigns such as for the ratification of key conventions such as ILO C 189 or MWC 1990.

In support of this initiative, the inclusion of trade unions in each of the present countries was highlighted. The importance of including key leaders of the unions in migrants rights’ trainings was suggested as an effective tool to ensure migrant workers’ rights are included/prioritized in trade union agenda and programs. It would also destigmatize the inclusion of migrant workers in unions in destination countries and encourage further collaboration with civil society in both origin and destination countries.

“I run community programs so I can share the laws and policies implemented by different countries and try to implement in my community and organization”

To expand the network, it was suggested that there was a need to develop and strengthen awareness programs and trainings on migration at the grassroots or community level. This would most likely be achieved by linking with media outlets such as radio broadcasters, local civil society groups, trade unions, social activists and those working as educators. Trainings would include livelihood awareness programs at the community level to help reduce the

pressure to migrate for employment. Developing the network with this multitude of stakeholders would encourage cross learning and sharing, especially with respect to good practices.

SAARC - Engagement at the sub-regional level

Participants also called for more participation with the SAARC and to lobby for the inclusion of migration on the SAARC agenda. It was recommended this could be done by writing a letter from the training delegates to SAARC Committee and linking with the People's SAARC process to push for the inclusion of migration as a priority agenda item.

3.9: Participant Evaluations and Conclusion

The capacity building program was evaluated through a series of anonymous participant evaluations and an oral group evaluation at the conclusion of the program.

Each of the participant evaluations highlighted their appreciation for the information sharing opportunities provided by the training. Interactive programs allowed participants to apply their knowledge and understanding of the different modalities to practical situations.

It was clear from these evaluations that the program had met the expectations of participants and had achieved what it set out to in terms of a program that balanced the development of knowledge and skills, the sharing of relevant experience and the building of networks.



Figure 3 Participants discussion group including representatives from the district information center, Sri Lanka NHRC, Kuwait Labour Attache, media representative and Bangladesh government official.

4. Conclusion

The project largely met its objectives.

The focal point of the project was a sub-regional capacity building program: “Promoting and Protecting the Human Rights of Migrant Workers from Nepal and South Asia” from 18 – 22 September 2013.

Through research and preparations for the program it was possible to identify cases of good practice – and to make practical recommendations for improving existing practice in Nepal – and through Nepal’s labour attaches.

Three background pieces of research were completed as part of the project:

- Initial quantitative research into cases received by the FEPB and related tribunal have been conducted and preliminary analysis of trends and concerns in the cases submitted to the bureaus
- Background Papers on labour recruitment and
- The role of labour attachés

A comprehensive training manual for participants with useful documents for further reference as a tool that they can use to support their future work.

The capacity building program made a valuable contribution to the longer-term strategies of both Migrant Forum Asia (MFA) and PNCC. It provided training for members of their networks/staff and encouraged engagement in governance processes relevant to their mission of ensuring respect for the rights of migrant workers and their families. The participants themselves strengthened their networks and committed to further collaborative action.

The project also facilitated a growing collaboration between PNCC and KSL which has led to action on individual cases and the establishment of a KSL legal clinic involving KSL students.

Through the program the UNSW Law Faculty's Human Rights Clinic established a relationship (and MoU) with Advocacy Forum and a tertiary institution in Kathmandu to focus on pursuing a communication to CEDAW focused on women migrant workers from Nepal.

Through the training program and project activities it was possible to establish a more informed, cohesive South Asian regional network for future action. Each of the program sessions emphasized the need for regional cooperation to implement more supportive policies that ensure the rights of migrant workers are promoted, protected and maintained in origin, transit and destination countries. The complexity of the labour migration process and the number of actors involved at each stage require all stakeholders to establish a more united front to provide access to justice and fair and equitable practices that provide opportunities for migrant workers and their families opportunities to advance their livelihoods safely.

Through programs like this, and with the support of the Australian government for this project, migrant workers and migrant worker advocates in Nepal and South Asia are better able to identify key areas that need to be addressed while also applying their learnings and newfound network to advance the rights of migrant workers and their families.

Appendix A: Country Case Studies²⁰

Country Reports: Migrant Workers and Bangladesh²¹

Background

With a total geographical area of only 144,000 sq km, Bangladesh is one of the most populated countries in the world with a total population of 147.9 million people according to the 2011 census. Of this population, only 50.37 million are part of the workforce, with 24.7% in industrial work. The current unemployment rate stands at 4.8% of the total workforce and 32% of the workforce underemployed.

Labour Migration from Bangladesh

The number of people going abroad for work has gradually been increasing over the past 40 years, with large increases of numbers finding employment abroad in 2007 and 2008. Most migrant workers come from rural regions of the country with minimal education. As a result, they have little understanding of what their workplace or urban life would be like. Workers have little opportunity to learn about their rights.

Most go abroad as low-skilled workers (62%), with a minimal amount of professionals (<1%) seeking opportunities abroad. This being said, in the past ten years, a growing number of workers are securing positions as skilled workers (35%) in other countries. They are usually young people from lower middle class families who have technical and/or vocational training.

The majority of workers choose to go to KSA (39%), UAE (23%) and Malaysia (18%). Other countries of destination include Kuwait, Oman, Bahrain, Qatar, Lebanon, Libya, and Singapore.

Most individuals (60%) go through individual orders while (39%) go through private recruitment agencies. Only 1% of those going abroad for work go through the government agency, the Bangladesh Overseas Employment and Services LTD (BOESL).

The amount of remittances sent home has been steadily increasing over the past 10 years, reaching a peak in 2012 at US\$12.87 billion. This resulted in a flow of remittance and financial progress ratio of 11.1 in the 2011 – 2012 fiscal year.

Challenges Migrants and their Families Face in Bangladesh

The lack of knowledge migrants have before leaving or making a decision on whether to migrate has a significant impact on their abilities to adjust in the country of destination. For example, many have inadequate knowledge on the customs, culture, and language of the countries of

²⁰ The additional information in this section is based on presentations by participants, trainers and partner organizations.

²¹ Mr. AD Sajjad Hossain, Program Officer of the Bangladesh Institute of Labour Studies (BILS) presented his perspective of the situation of migration in Bangladesh.

destination. It also leaves migrants susceptible to recruitment malpractices such as false promises, paying excess money, unethical practices, and false documents.

To secure a placement, many sell their land or borrow money at an exorbitant rate from others to send a family member abroad. Usually the family waits for the income of the member abroad to pay back the loan or to purchase back their land. This places an enormous amount of pressure on the person working abroad. These challenges lead to various negative social consequences.

Gender and Labour Migration

Although traditionally labour migration was mainly male, an increasing number of women have been going abroad since 2003. In 2012, 37,304 women went abroad to seek employment opportunities. Most women are employed in factory or domestic work. In these positions, they are susceptible to maltreatment, poor working conditions, and physical and sexual abuse. As their work is often isolated, they tend to be more vulnerable to these kinds of malpractices.

Challenges Migrants Face in Destination Countries

Workers are often exposed to inhuman working conditions. This includes low wages, unsanitary conditions, psychological, physical, and sexual abuse, absence of protection under country legislation, discriminatory treatment, and lack of support from their respective missions.

Initiatives Undertaken by the Government

In 2001, a separate ministry was developed to adequately address the challenges migrants were facing. Through this ministry, new policies on migrant workers have been drafted and under approval process. Included in these policies are initiatives to control recruitment malpractice, and strategies to negotiate with foreign countries.

Two of the most effective legislative tools have been the Overseas Employment and Migrant Workers Welfare Act, 2013 and Immigration Ordinance 2013. The Act covers the licensing, recruitment, and registration procedures; employment contract and responsibilities of recruitment agencies, registration, immigration clearance and welfare and role of government; and complaint procedures, malpractices/crime considerations, penalties and dispute settlement.

Other national legislation includes enforcement mechanisms such as the Recruiting Agent Rules, 2002, Wage Earner's Welfare Rules, 2002, and the Immigration Rules 2002. The government has also drafted a policy on Bangladesh overseas employment and established the Probashi Kaliyan Bank (Expatriate Welfare Bank), which operates to benefit the welfare of earners. Pre-departure counseling and training centres have been initiated to prepare migrants for their employment.

Bangladesh has signed ILO Convention 97 and Convention 143, and ratified UN Convention on Migrant Workers 1990. The implementation of the policy recommendations from these Conventions needs to be looked at.

Trade Union Linkages/Responses

Although there are no formal policies set in place, there are some initiatives that have been undertaken with unions in receiving countries. There are also some organizing initiatives being worked on in the countries of destination.

To improve the situation of migrant workers, it would be important for trade unions to prioritize migration as a key target group. Linking with other global and regional trade union and NGO movements would also improve the services available to migrant workers. Through the movement and ILO, more pressure could be put on governments and other institutions to improve the policies and practices that affect migrant workers and their families. Only through lobbying, awareness campaigns and trainings will lead to better government responses to migrant workers' challenges.

Bangladesh: Challenges of Bangladesh Missions in Countries of Destination²²

- The high number of migrants working abroad makes it difficult to provide sufficient support.
- Some migrant workers are seen as lacking the necessary education and skills to present their cases/grievances effectively to relevant authorities – yet the labour attachés do not have the human resources to provide the support services to those workers.
- Labour attachés face difficulties addressing irregular status and compensation issues, partly because they lack the necessary guidelines for handling cases. This becomes a significant problem in the incident of the death of an irregular status worker
- The militancy of workers was also identified as an issue - minor issues can become major when left unattended. Strikes and violent actions are seen to make the work of labour attaches more difficult – one of their major functions is to promote employment of their nationals.
- Labour attachés need to build rapport necessary to gain the trust of the workers, they are there to assist – as well as government and employers
- There is a lack of coordination between relevant departments, the family and legal systems that make this particularly challenging. Compensation issues, can lead to family feuds. Securing a court verdict on the compensation may also lead to further delays and complications that create even more tension for these families.
- Many women going abroad to work as domestic workers in the Gulf are irregular and have received no formal training or BMET clearance. Due to the unique nature of their occupation, they are more vulnerable to criminal activities such as murder, rape, and other abuses and malpractices.
- Some destination countries, such as Libya and Iraq pose particular challenges for labour attaches – including lack of state institutions
- Missions must also deal with other discriminatory practices such as wage differentials based on the nationalities of the workers. S
- Securing the cooperation of a worker's kafeel (e.g. to support the costs of transferring a dead body), lack of labour laws for domestic workers, and biased court systems also make it difficult to pursue legal cases.
- Missions in countries like Egypt and Libya must support migrant workers residing in the respective country while also assisting Bangladeshis that use these countries to go to

²² This is based on a presentation from one of the trainers

Europe and lack resources. Due to the complicated legal processes and visa requirements, these missions are often unable to support the number of migrants requesting their services.

- Coordinating with the ministries, governments, informal (community) associations, NGOs, and local governments is also challenging. Coordinating For example, if an employer will not financially support the transfer of a worker's remains, the missions must coordinate with other associations or groups for financial and logistical support. There are sometimes conflicts between the many associations and groups and destination countries. Most ministries and organizations must therefore work in isolation;
- Gifts are important for cultivating relationships with individuals in relevant departments and ministries in the destination countries, but labour attaches/missions are not provided with any resources to provide such gifts (partly out of concerns in relation to perceptions of corruption)
- Mission staff/Labour Attaches lack the necessary language skills to operate effectively in destination countries (Arabic/Bahasa Malaysia)
- Shortage/lack of machine readable passports for workers makes renewal of visas/responses/assistance slower and more difficult
- There have been many cases of the Wage Earners' Welfare Fund being used inappropriately to maintain staff or to buy luxury goods.
- Digital connectivity between the different departments BMET, EWOE, and MOFA would improve the situation.
- As most authority and budgeting is left to the mission heads, there are several key problems with the distribution of resources. For example, staff members of the same level often get differential allowances. Also, during emergency situations, mission heads often refuse to furnish additional funds where required. It is therefore essential that labour attachés have more input in budget preparations so that these issues can be addressed.

Country Reports: *Migrant Workers and Sri Lanka*²³

Background Information

According to the Sri Lankan Department of Census and Statistics, Sri Lanka has an approximate population of 20,328,000 people, as of mid-2012. The average life expectancy is 75.1 years of age and an average literacy rate of 92.2%. It is ranked as 92nd, out of 186 countries on the Human Development Index with a rating of 0.715.

Labour migration is considered to have begun in 1970 with skilled and unskilled workers going mainly to the Middle East. Opportunities provided by Gulf countries led to the rapid increase in Sri Lankans emigrating. The most recent data shows that the majority of workers are going to Saudi Arabia (34.8%), Qatar (20.4%), Kuwait (15.7%), the UAE (13.4%) and others (15.7%).

²³ Based on presentations from participants Malwala Arachchige Nihal Chandrasiri, Research Officer for the NHRC of Sri Lanka and M. Sundaralingam, Assistant Secretary of the Lanka Jathika Estate Workers Union.

In 2010, 266,445 people left the country, meaning approximately 730 Sri Lankans were leaving the country daily. Currently there are 1.8 million Sri Lankans overseas with 25% of the workforce being employed overseas. Remittances during this time period totaled 465,372 million rupees. Of this, 279,688 million (60.1%) is from the Middle East.

The gender profile of migration has changed dramatically:

1986 -14,456 migrant workers - 76.25% male

2010 - 266,445 migrant workers - 49.14% women (130,493).

Estimates for the ratio in 2012/13 are similar with 137,151 women going abroad.

Gender dynamics are also present in the job categories represented. The majority of migrants work as housemaids (42.3%), a traditionally female occupation. Other categories represented include skilled (23.7%), unskilled (22.3%), clerical (5.7%), middle-level (3.3%), professional (1.5%) and semi-skilled (1.2%).

Government Mechanisms

There are multiple state mechanisms designed to protect migrant workers through the Ministry of Foreign Employment Promotion, the Sri Lanka Bureau of Foreign Employment, and Sri Lankan missions in receiving countries.

Through these government offices, a number of taskforces, policies and departments have been established to support migrant workers and their families. One of these taskforces is the Presidential Task Force on the Protection and Welfare of Migrant Workers and their Family Members, which was established in 1997.

This taskforce was responsible for ensuring Labour Welfare Officers were appointed to Sri Lankan Missions only where they were fluent in the receiving country's main language so they could adequately attend to grievances and the welfare of migrant workers. They also authenticated contracts for female domestic workers to minimize exploitation in host countries. In Sri Lanka, the taskforce also improved training compulsory modules for female migrant workers, setup an airport monitoring mechanism to prevent irregular migration and established a Workers Welfare Fund, which provides social services and financial support for workers in distress.

Due to the rise in the number of people choosing to go abroad for employment opportunities, a new ministry was established in January 2007 to specifically address the needs of migrant workers. The Ministry of Foreign Employment Promotion and Welfare is charged with ensuring foreign employment policies reflecting ILS are implemented. A Cabinet ranked Minister heads the Ministry.

The National Labour Migration Policy, 2008, was also created to better govern and regulate labour migration. The policy aims to provide effective protection and welfare services to migrant workers and their family members while also mobilizes contributions for socio-development purposes.

Other initiatives of the Ministry include bilateral MOUs, such as with Jordan, the UAE, Qatar, Bahrain and Libya; implementing policies specifying minimum salary standards for migrant workers, compulsory insurance schemes for female migrant workers, and pension schemes; and enhancing pre-departure orientation and training programmes.

An Inter-Ministerial Steering Committee was also put in place to develop recommendations on National Policies into legislation, while also bringing the industry within these policy frameworks. One of these policies is the draft Sri Lanka National Migration Health Policy December 2012. The policy aims to protect health issues of all migrants. This policy would put migrant health agenda within its national health policies and health care system comprising public and private health service providers.

Although there are multiple protection mechanisms that have been created and implemented by the government to protect migrants, there is still a significant percentage of workers who are not using licensed recruitment agencies. It was reported that 62.7% or 175,266 persons used alternative sources to find employment abroad, while only 37.3% or 104,216 used licensed agencies. Due to these challenges, a number of persons have been negatively affected by trafficking.

To combat these incidences, Sri Lanka has implemented the 2006 Penal Code Amending Act No. 16 (in compliance with UN Trafficking Protocol standards), the SAARC Convention on preventing and combating trafficking in women and children for prostitution (ratified in 2005), and a monitoring unit at the international airport. An anti-trafficking detection center is also in the works to be set up at the international airport under the Department of Immigration and Emigration.

Country Reports: *Migrant Workers and The Philippines Experience*

There are several onsite offices provided to migrant workers in the country of destination. These offices include the Foreign Service Posts, the Philippine Overseas Labour Office (POLO), and the Filipino Workers Resource Center (FWRC). Each of these offices are designated to assist Filipino migrants in providing legal and consular services to those in distress.

To support Filipinos working abroad, there are 94 Philippine Service Posts including 67 embassies, 23 consulates-general, 4 permanent missions and 1 extension office. There are also 127 Philippine Honorary Consulates and 37 POLOs headed by the Labour Attaché and the Welfare Officer. Most POLOs are staffed by Department of Foreign Affairs (DFA) personnel.

Each mission takes a team approach under the guidance of his or her country ambassador. In this role, "It shall be the highest priority concerns of the DFA and the Philippine Foreign Service to extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos." (Republic Act 8042, as amended). Work related concerns that the missions must assist with include illegal recruitment, human smuggling, human trafficking and employment related concerns such as unpaid salaries, maltreatment, and work contract problems. Other notable challenges the embassies deal with include detention, adultery/immorality, illegal drugs, falsification of documents/forgery, murder/homicide, rape/sexual harassment, embezzlement/fraud, possession of illegal or restricted material,

deaths and/or suicides and the shipment of their remains. Claims and benefits, saving lives of hostages, individual repatriation, mass amnesty and repatriation, search and financial support are also included as significant responsibilities for the missions.

Under the current stipulations, the embassies mainly focus on repatriation, facilitating and supporting the cost of shipment of remains or cremation, providing temporary accommodations, food and other basic necessities to distressed migrants, and medical evacuation and hospitalizations. They also are mandated to conduct assistance to national (ATN) missions and assist nationals with any immigration penalties or related charges. There is also a standby ATN Fund that is available to assist and protect distressed Filipinos in cases of war, political instability, civil unrest, epidemic, disasters, calamities, natural or man-made and other similar events.

Under the Legal Assistance Fund, migrant Filipino workers and overseas Filipinos in distressed are offered fees for private counsel, (of up to 3,000 USD per person), bail bonds, court fees, litigation expenses, amicable settlements, traveling and communication expenses for criminal cases, labour disputes and appeals of death penalties or life sentences. These fees are only provided in the absence of a counsel de officio and when the accused cannot afford services of private counsel.

Country Reports: Situation in Target Destination Countries - Kuwait

As one of the wealthiest states in the Gulf region, 68% of its population is from outside the country. The government has publically stated that they will try to decrease the number of foreign nationals working in the country by 100,000 in the next decade. As a result, law enforcement authorities have been more deliberate in targeting migrants that may have migrated through irregular channels or are working beyond their original contract agreement. In the past two years, 12,000 foreign nationals have been repatriated as a result of traffic offences.

As in other GCC states the Kafala system operates. Currently, a Kuwaiti national is able to sponsor up to 5 foreign nationals for employment. Kuwait has committed to trying to end the sponsorship (Kafala) system, although no progress has been made to date.

Gender Issues:

In 2009, embassies in Kuwait received more than 10,000 complaints from domestic workers regarding unpaid wages, long working hours, and various forms of abuse. The labour law also does not cover domestic workers or private drivers.

Trade Unions:

Currently, migrant workers are not able to join the one union active in the country nor are they permitted to participate in their activities. These factors make guaranteeing Nepalese migrants' rights more challenging for the mission.

Experiences of Labour Attache from Nepal working in Kuwait

Two key issues were highlighted:

- *Feminization of migration*

An increasing number of women from Nepal are migrating for employment. Some are working in skilled positions such as teachers, nurses and social workers while a large proportion work as domestic or care workers, in garment factories, in the entertainment industry and as agricultural workers. Many women working in the informal sector are subjected to unfair living and working conditions and many positions, such as domestic workers, are not included under the labour law - making them uniquely vulnerable.

- *Number of undocumented*

Irregular migration is also a significant issue that the mission in Kuwait is familiar with. Many employers confiscate documents, withhold wages, or abuse people in these positions as a controlling mechanism. Due to the nature of work and status of many migrant workers, their right to mobility is restricted. Because of these conditions, many migrants approach their respective missions for support. The Kuwait government's response to the number of migrants who are working in Kuwait irregularly, has been to invest resources into finding and deporting undocumented migrant workers. This has not proved to be a viable solution to their concerns and creates more problems for the workers and the missions.

Appendix B: Case Study: Fair Hiring Initiative: Example of Alternative Model for Recruitment

FHI hopes the recruitment industry will reflect these ethical practices through fair and accountable recruitment as an accessible commodity for all potential jobseekers looking at overseas employment opportunities. By making ethical recruitment more accessible, the percentage of workers going overseas through safe, legal and regular channels would increase while employers and recruiters would be more engaged in the process.

Using this model, workers would be chosen for their skills, attitudes, and knowledge applicable to the position, rather than their ability to pay for the related fees. This would also ensure workers are more productive in the workplace due to their financial and psychological needs being met. In this model, the employer is an active stakeholder in the reducing debt-bondage and forced labour.

Other stakeholders, such as local government units, vocational and technical schools, state colleges, and universities, agencies and the private sector would also be involved in each stage of the recruitment process. Using the Dhaka Principles, employers and workers would be better matched through recruitment, assessment, training, career management and consultations. This methodology would be enforced through a set of specific operational practices “Standards of Ethical Practice”, for recruitment firms that operate internationally and reinforced through a verification and certification system.

Through engaging ethical partners, being involved in the selection, placement and training stage, and providing on-site monitoring and support services, temporary migrant workers are able to return safely and reintegrate upon completion of their contract. This process requires recruitment agencies to conduct an environmental scan that matches job descriptions, living and working conditions, work permit requirements, insurance coverage and monitoring systems with the workers unique skill set and personality. This is achieved through merit and competency-based selection, orientation and training program without fees, bonds, or gifts. Workers are therefore prepared for the selection policies, procedures, employment terms and conditions, welfare funds, cultural transition and adaptations, and life planning. On-site monitoring is provided through workers handbooks with hotline numbers, procedural guidelines, emergency contact numbers, local labour laws, banking processes and contingency measures. Feedback and grievance mechanisms are also provided with on-site visits and counseling.

Appendix C: Project Partner Organizations

PNCC implemented this program in partnership with the Diplomacy Training Program and Migrant Forum Asia. Key staff of PNCC are alumni of DTP's programs and DTP assisted PNCC in a national level workshop on the rights of migrant workers in 2012. PNCC is a member of Migrant Forum Asia (MFA).

PNCC is a non-profit, autonomous and migrant led-migrant organization working in the field of the migrants workers and their families, established in 1998 (in Saudi Arabia) and in 2009 (in Nepal). It works on the rights and welfare of Nepali migrant workers working abroad, especially in Gulf Countries, and assists in the re-integration program to the returnee migrants. It comprises of thousand members throughout the destined and origin country. PNCC has its strong network in 6 Gulf countries (Saudi, Bahrain, UAE, Kuwait, Qatar and Oman), 36 district branches and Migrant Resources Centres in 5 districts.

The DTP is an independent NGO that seeks to advance human rights and empower civil society in the Asia Pacific region through quality education and training, and the building of skills and capacity in non-governmental organisations and for individual human rights defenders and community advocates. The DTP was founded in 1989 by HE José Ramos-Horta, 1996 Nobel Peace Laureate and current President of Timor-Leste, and Emeritus Professor Garth Nettheim. Since 2003 the Diplomacy Training Program has introduced new thematic courses on Indigenous Peoples Rights, Migrant Workers, Human Rights and Business and Human Rights and Trade to supplement its flagship annual regional *Human Rights and Peoples' Diplomacy Course*.

MFA is a regional network of over 50 non-government organizations (NGOs), associations and trade unions of migrant workers, and individual advocates in over 17 countries in Asia who are committed to protect and promote the rights and welfare of migrant workers. Formally organized in 1994, it is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equity, particularly for migrant workers. MFA acts as a facilitator, a regional communication and coordination point between member-organizations and advocates, forging concerted action to address discriminatory laws and policies, violence against women migrants, unjust living conditions, unemployment in the homeland and other issues affecting migrant workers.

Appendix D: Core Human Rights and International Labour Standards

The Universal Declaration on Human Rights (UDHR),
International Convention on Civil and Political Rights (ICCPR),
International Convention on Economic, Social and Cultural Rights (ICESCR),
Convention on the Elimination of Racial Discrimination (ICERD),
Convention on the Elimination of Discrimination Against Women (CEDAW),
Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC),
Convention on the Rights of Persons with Disabilities (CRPD),
Convention on the Rights of All Migrant Workers and their Families (CMW)
Convention on Enforced Disappearances