



Social Protection for Women Migrant Workers:

A Comparative Study among Sending Countries

Paper prepared for
World Bank Office Jakarta

by

Ingrid Blokhuis
Independent Legal Consultant

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THE WORLD BANK



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The findings, interpretations and conclusions expressed herein are those of the author and do not necessarily reflect the views and policies of the Board of Executive Directors of the World Bank or the governments they represent.



EXECUTIVE SUMMARY

- i. The World Bank aims at formulating a doable worker protection system for Indonesian women migrant workers under the Women Migrant Worker Program. Between 450 000 and 500 000 Indonesians are registered to migrate every year to work abroad. At present approx. 3 million Indonesian women work abroad, 90 % in the informal sector. The Indonesian assistance to and protection of these workers has a great potential for improvement. Other worker exporting countries in the region have similar shortcomings, but also partially functional systems which Indonesia could profit from adopting in part or in whole.

This comparative study among worker exporting (sending) countries includes, apart from Indonesia, the Philippines, Sri Lanka, India, Thailand and Pakistan, and covers e.g. legislation, recruitment and training, contract practices, health, social security, assistance, welfare funds and savings and investments. The main objective of the study has been to identify the most optimal solutions related to the women migrant work force found in each of these countries, suitable to be copied by Indonesian authorities.

- ii. Whilst all the other countries included in the study, have passed comprehensive laws for the migrant workers sector, the Indonesian legal framework is constituted by numerous decrees, which makes it difficult to keep track of the rules. A new law on the Placement and Protection for Indonesian Workers Overseas has recently been endorsed, but has not yet entered into force. From a migrant worker perspective the law is most unsatisfactory. It is, however, not necessarily the legal framework that constitutes the gravest problem in Indonesia, but the lack of adherence to the rules and regulations by the different actors involved in the “business” of women migrant workers. The study shows that there is an important correlation between the corruption level of the compared countries and their performance in the migrant workers sector. Indonesia shows the poorest results in the handling of women migrant workers, while Sri Lanka gets one of the top placements among these countries. In international surveys Indonesia is ranked as the most corrupt country of the group, Sri Lanka gets the best ranking. This shows that the fight against corruption and the struggle for better governance is highly relevant for the improvement of women migrant workers` situation.
- iii. In an attempt to forcefully raise the level of security for women migrant workers, the *recruitment* practices should be the first centre of attention. In theory this field is fairly well regulated in most of the compared countries, but malpractice flourish. All countries require licensing of recruiting agencies which are given a set of rules to follow. However, a “grey market” of illegal agencies and field agents exist. Both legal and illegal actors are known to boost fees, deliver mediocre services and neglecting their client’s rights after

the law. This is particularly a problem in Indonesia, but is visible in even the in general best performing countries in the comparison. Given the crucial role of the agencies throughout the migrant workers' contract period, serious efforts should be made to get them under control. An efficient control is dependent upon transparency, which can only be guaranteed through specific laws on the public's right to access information, which today lacks in all the compared countries. In addition, a strengthening of women migrant workers unions would be of great significance.

- iv. The *protection* of and *assistance* given to migrant workers while abroad vary widely between the countries in comparison. The Philippines and Sri Lanka seem to have both excellent systems and amendable practices, while Indonesia, Pakistan and Thailand show a generally poor performance. India has some good mechanisms. Every year a large number of Indonesian women return disillusioned after working abroad, telling stories of exploitation, abuse, rape and theft. Indonesian representatives in the receiving countries rarely give sufficient support. Experience from e.g. India shows that such atrocities can be reduced in number by introducing a new form of contract that is legally binding also in the receiving country, such constituting a base for law suits against the offender. Specific bilateral agreements on protection of women migrant workers between exporting and receiving countries also prove efficient.
- v. Also regarding assistance in the important *reintegration* face of the women migrant workers, Indonesia has a lot of ground to cover. The fund, called "the Capacity Building Fund" does not function, there is no reintegration package to obtain, and no specific savings or investment system is established to assist the worker to take care of the money earned. Neither the returnees' family is offered any assistance. Again the Philippines and Sri Lanka turn out to have the best concept, offering a variety of assistance schemes to the worker and her family. Ever so recommendable, to establish such systems at length in Indonesia might be premature, considering the present state of governance in the country.
- vi. The famous Ibsen saying: "Strongest is the one who stands alone", does not apply to Indonesian women migrant workers. Standing alone as they normally are makes them a too easy pray for scrupulous operators. Although there are no legal barriers to establish trade unions in Indonesia, and indeed they are numerous, no strong and influential trade union exists tailored to fight for the interests of this special group. Even if the logistical challenges of establishing a forceful union for these workers should not be underestimated, the idea merits to be nurtured, considering the considerable benefits implied for the women migrant workers. To get it up and going would certainly necessitate external initiative and assistance. Unions will come in as a vital supplement to the central NGOs, which presently play an important role in the protection and assistance of migrant workers in all the compared countries, not least in Indonesia.



Without the NGO's efforts, the situation for this group would have been incomparably bleaker.

- vii.** An effective control and supervision of the authorities' and operators' performance can not be exercised without a public supervision instrument. A Bill on the Freedom of Public Information has been introduced to the DPR, but has made little progress. The National Law Commission has recently urged the DPR to accelerate the debate on this bill. Neither of the other compared countries in this study has passed specific laws concerning public supervision. Indonesia could such be in the forefront among them, but will presumably need a considerable input of encouragement and coaching to go ahead with it. An adoption of a public supervision bill would be a major breakthrough for the protection of migrant workers rights.

TABLE OF CONTENTS

1	Introduction	8
2	Basic information on migration in the respective countries	11
3	Legislation, governmental policies and programs:	14
3.1	Legislation and Governmental Institutions	14
3.2	Recruitment of Workers, Fees related to Recruitment, Salaries	18
3.3	Training of Prospective Migrant Workers	24
3.4	Age Limits and other Special Measures for Women Migrant Workers	28
3.5	Health, Social Security and other Social Benefits	29
3.6	Standard Contracts of Employment	31
3.7	Credit Schemes for Prospective Migrant Workers	32
3.8	Assistance to Workers in Receiving Countries and Dispute Settlement Assistance	34
3.9	Assistance to Reintegration of Workers and Assistance to Members of their Families	38
3.10	Welfare Funds for Migrant Workers	40
3.11	Savings and Investments Schemes	41
3.12	Special Remarks on the Philippines and Sri Lanka	42
3.13	Concluding Comments	45
4	The Law regarding Placement and Protection of Indonesian Workers Overseas	49
4.1	The new law	49
4.2	Statements of NGOs to the new law	50
4.3	Concluding Comments / Evaluation of the new law	50
5	Trade Unions	52
5.1	The Establishment of Trade Unions for Women Migrant Workers	52
5.2	SEWA – The Self Employed Women’s Association	53
5.3	Concluding Comments	53



6	Public supervision / Public access to documents in the public administration	54
6.1	Introduction	54
6.2	Public Supervision in International Law, Indonesian and Norwegian Legislation	55
6.3	Concluding Comments	56
7	International Conventions	57
7.1	The UN Intern. Convention on the Protection of the Rights of All Migrant Workers	57
7.2	The UN Intern. Convention on Elimination of All Forms of Discrimination against Women	58
7.3	Concluding Comments	58
8	Bilateral agreements and MOU's	59
8.1	Indonesia	59
8.2	Pakistan and India	59
8.3	Thailand	59
8.4	The Philippines	59
8.5	Sri Lanka	60
8.6	Concluding Comments	60
9	Summary	61
10	Recommendations	63
	Table of Enclosures	66

1 INTRODUCTION

Under the Women Migrant Worker Program, the World Bank Jakarta in cooperation with Indonesian institutions and organizations, aim at formulating a doable worker protection system for Indonesian women migrant workers in informal sector. A major objective is to develop a protection system which can reduce these women's vulnerability, enhance their opportunities to remit more and thereby increase their and their families' quality of life.

As a part of this project, it was decided to make a comparative study on legal aspects of social protection for women migrant workers in informal sector from Indonesia and from other big labour exporting countries in the region, and on this background formulate recommendations which are fit for Indonesia given the complexity of the problems and the poor level of law enforcement in the country. The countries included in this study are in addition to Indonesia, the Philippines, Sri Lanka, Thailand, India and Pakistan.

Work in informal sector is interpreted as work in private homes for the practical benefit of the family, such as maids and nannies. The term migration is interpreted as migration overseas.

Social protection for migrant workers has been interpreted to include various public efforts which lead or can lead to better protection for migrant workers against unacceptable working conditions, underpayment, psychological, physical and sexual abuse and other forms of inhumane treatment, both in the period of recruitment, in the working period and after the termination of the contract.

The basis when elaborating this paper has been that legal theory is of limited interest in itself. Only when legal theory and legal texts (laws, regulations etc.) are seen in relation to real life, do they give any guidance. In order to give a realistic picture of the situation for women migrant workers from the relevant countries, a description of both the legal framework as such, of how it influences on the lives of the migrant workers, and of how their situation actually is, is included in this paper. Only on this background is it possible to draw conclusions and give recommendations in a legal context.

Which rights a migrant worker is granted in her native country is often closely connected to the level of good or bad governance in this particular country. The Indonesian government's reluctance to improve the often deplorable conditions for Indonesian women migrant workers can thus not be seen as an isolated problem, but as one of many results of an insufficient level of governance. A negligence or lack of respect for women's rights and for lower classes' rights does not make the picture prettier.

The level of corruption in the native country is a strong indicator on how women migrant workers' problems are handled and how good the results are. In a recent survey on corruption in 102 countries made by Transparency International, Indonesia was ranked as number 96, Pakistan and the Philippines shared place number 77, India was ranked as number 71, Thailand as number 64 and Sri Lanka as number 52. It is not surprising that Indonesia, with one of the



worst corruption records in the world, has achieved very modest results when it comes to the rights of women migrant workers, whereas in particular Sri Lanka has achieved far better results both in their fight against corruption and in their efforts to improve the situation for women migrant workers. The corruption level in the Philippines is relatively high, which might indicate that Filipino and Filipina migrant workers do not necessarily receive the protection and assistance which they are entitled to.

It is not made a clear distinction between legal and illegal migrant workers in this paper, as the main difference between being a legal or illegal migrant worker consists of being inside or outside the scope of the usually very limited protection mechanisms which the country of origin has established.

Main concerns when choosing recommendations for Indonesia have inter alia been the high level of corruption in public sector, the poor level of enforcement of existing rules and regulations, the questionable quality of rules and regulations, the inefficient bureaucracy, the poor level of formal education among women migrant workers, the women migrant workers' dependent situation and passivity created by low education, poverty and unemployment and the long Indonesian tradition in obeying to superiors and for the females to subject to men.

In 2002, the remittances from Indonesian migrant workers through official channels were estimated to USD 3.1 billion. The actual remittances were probably much higher. The increase since 2002 is most likely substantial. Women migrant workers in informal sector constitute about two thirds of the total number of Indonesian migrant workers. Indonesian women migrant workers in informal sector are thus important contributors to the national economy. This implies that the multitude of problems and harassment faced by women migrant workers in informal sector not only constitute a human rights problem, but also an economical constraint. If Indonesian women migrant workers in informal sector were offered better conditions, their remittances to Indonesia could be much higher, contributing further to the reduction of poverty in Indonesia and to the Indonesian balance of payment.

Quite often receiving countries have other demands to the migrant worker than what has been implemented in the sending countries' legislation, for instance on the migrant worker's age or education. It has however been necessary to limit the scope of this report to the policies and regulations of the sending countries only.

When this paper was prepared, a draft bill on the protection of Indonesian migrant workers abroad was pending before the DPR. The draft bill had several encouraging components, including mechanisms to control public authorities. A law on the same subject was endorsed by the DPR in September 2004. The control mechanisms had been systematically deleted and other major alterations had also been made. What was initially said about the draft bill turned out to be of less interest. It was therefore necessary to alter the paper in correspondence with the new law. The new law has, when this is written not entered into force yet, and it is unsure when this will happen. The initial description of the legal situation prior to the coming into force of the law is therefore kept unaltered, as this is still what is legally binding.

The paper was initially finished in June 2004. Numbers and facts described in this paper with exception of the new law, are therefore based on information accessible by that date.

The paper is based on information gathered on a field trip to Sumberdem village in East Java, correspondence with a number of national and international, governmental and non governmental organizations and agencies, material from a number of governmental and non-governmental organizations in all the six countries, meetings with Komnas Perempuan Jakarta, the Jakarta office of the American Centre for International Labour Solidarity (ACILS) and ILO Jakarta, assistance from Norwegian embassies in Islamabad, Colombo, New Delhi, Manila and Bangkok, discussions with the World Bank's Migrant Worker Team and input from a brown bag meeting with participation from NGOs and other civil society organizations.

Information relating to Thai rules and regulations, policies, programs, NGOs etc. on migrant workers has been surprisingly difficult to obtain. Internet sources are indeed sparse, and in spite of umpteenth attempts to reach different involved parties, the results have been limited. The protection provided to Thai women migrant workers in informal sector may therefore be more comprehensive than what is described in this paper.



BASIC INFORMATION ON MIGRATION IN THE RESPECTIVE COUNTRIES 2

Remittances indicated below refer to both male and female migrant workers, from both formal and informal sector. Only remittances through formal channels are included, as there is no trustworthy statistics on remittances through informal channels. The total remittances are probably much higher and with ample variations from country to country.

<p>Indonesia Population: 235 million Remittances through official channels (2002): USD 3,1 billion</p>	<p>4 million registered migrant workers 3 million registered women migrant workers, 90 % in informal sector Most women migrant workers poor, little formal education, poor knowledge of foreign languages Top receiving countries: Saudi Arabia, Malaysia, Taiwan, Hong Kong, Kuwait, Singapore</p>
<p>Pakistan Population: 150 million Remittances through official channels (2002): USD 1.7 billion</p>	<p>4.5 million registered migrant workers Government discourages female worker migration Poor knowledge of foreign languages</p>
<p>India Population: 1 billion Remittances through official channels (2001): USD 2,9 billion</p>	<p>300,000 to 400,000 persons migrate annually to find work abroad Number of women migrant workers uncertain Most women migrant workers poor, little formal education, poor knowledge of foreign languages Top receiving countries: Saudi Arabia, The Emirates, Kuwait, Oman Singapore</p>
<p>Thailand Population: 64 million Remittances through official channels: information not available</p>	<p>400,000 registered migrant workers Number of women migrant workers unsure Most women migrant workers poor, little formal education, poor knowledge of foreign languages Top receiving countries: Taiwan, Singapore, Israel, Brunei, Hong Kong</p>
<p>The Philippines Population: 85 million Remittances through official channels (2002): USD 6.4 billion</p>	<p>2.6 million registered migrant workers 2 million women migrant workers Majority of women migrant workers work in informal sector Majority of women migrant workers are high school graduates Most women migrant workers have good knowledge of English Top receiving countries: Saudi Arabia, Hong Kong, Japan, The Emirates, Taiwan</p>
<p>Sri Lanka Population: 20 million Remittances through official channels (2002): USD 1 billion</p>	<p>900,000 registered migrant workers 600,000 registered women migrant workers, 92 % in informal sector Most women migrant workers poor, little formal education, poor knowledge of foreign languages Top receiving countries: Saudi Arabia, Kuwait, the Emirates, Lebanon, Qatar</p>

2.1 INDONESIA

The number of Indonesian migrant workers is estimated to be approximately 4 million. According to public statistics, between 450,000 and 500,000 Indonesians migrate annually to find work abroad. The actual number is probably twice as high when including illegal (undocumented) migrant workers. The number of female migrant workers is nearly three times as high as the number of their male counterparts. About 90 % of these women are employed in informal sector. The top six receiving countries constituted Saudi Arabia, Malaysia, Taiwan, Hong Kong, Kuwait and Singapore.

In spite of meagre salaries, long working hours and often horrid social conditions, going abroad as maid is a dream for many young, rural, uneducated Indonesian women. As it is often impossible to find paid employment in the village, the relatively “high” wages abroad are tempting. In many Indonesian villages and kampongs, a large percentage of young women are working abroad repeatedly, often leaving their children and husband back in the village. Their absence often has a negative impact on the relationship between husband and wife and on the children.

2.2 PAKISTAN

About 4.5 million Pakistanis migrated for employment abroad from 1971 to 2003. Migration from Pakistan to western countries and to richer Asian countries has, by and large, included young, educated men from better off families. Emigration to the Middle East has to a larger extent involved unskilled male workers. Unlike many other Asian countries, which encourage the migration of female workers in sectors such as social services and domestic work, Pakistan’s government discourages female worker migration. There are no formal statistics or estimates of the number of Pakistani women migrant workers in informal sector.

2.3 INDIA

During the last years, the number of Indians going abroad to find work has been estimated to between 300,000 and 400,000 annually. The total number of Indian women migrant workers is unrecorded. There has been a tendency towards less migration to the Middle East countries and more migration to South East Asian countries. The South East Asian countries draw a good number of Indian women migrant workers as domestics, many of whom work in the households of people of Indian origin. The geographical dispersion of Indian migrant workers is limited, in that a substantial percentage of women migrant workers in informal sector origin from Tamil Nadu and Kerala. The majority of Indian women migrant workers in informal sector have little formal education, and many of them have not finished elementary school. Language is seen as a barrier when working abroad except for those working for other Indian nationals. The top five receiving countries are Saudi Arabia, United Arab Emirates, Kuwait, Oman and Singapore.



2.4 THAILAND

Officially, Thailand has approximately 400,000 migrant workers overseas. The number is probably much higher. There are no reliable statistics showing gender distribution or how many of them work in informal sector, let alone estimates of unregistered migrant workers. The top five receiving countries are Taiwan, Singapore, Israel, Brunei and Hong Kong. During the last years, the Thai focus has shifted from Thai workers abroad to the huge influx of illegal immigrants to Thailand from inter alia the neighbouring country Burma.

2.5 THE PHILIPPINES

The Philippines has approximately 2.6 million registered migrant workers overseas, and a huge number of unlisted migrant workers. About 75 percent of the registered migrant workers are women, mostly working in the informal sector, despite the fact that the majority of them are at least high school graduates. The top five receiving countries are Saudi Arabia, Hong Kong, Japan, United Arab Emirates and Taiwan.

2.6 SRI LANKA

There are about 900,000 registered Sri Lankan migrant workers abroad. The official estimate of unregistered migrant workers accounts to about 350,000, which come in addition. In 2000, 67 percent of the registered workforce abroad consisted of women, of which 93 percent were domestic workers. Most Sri Lankan women migrant workers have little formal education and limited knowledge of foreign languages. The top five receiving countries are Saudi Arabia, Kuwait, United Arab Emirates, Lebanon and Qatar.

3 LEGISLATION, GOVERNMENTAL POLICIES AND PROGRAMS

3.1 LEGISLATION AND GOVERNMENTAL INSTITUTIONS

	Legislation	Governmental Institutions
Indonesia	Presidential Decrees no 46 of 2000 and no 29 of 1999 on the Coordinating Board Ministry of Manpower Decree no 104 of 2002 on the placement of workers Ministry of Manpower Decree no 157 of 2003 on insurance Numerous Labour Ministerial Letters The new Law on Placement and Protection of Indonesian workers overseas, endorsed by the DPR in September 2004, not entered into force by 31.12.2004	Ministry of Manpower The Coordinating Board of Overseas Employment
Pakistan	The Emigration Ordinance of 1979	Ministry of Labour The Bureau of Emigration and Overseas Employment (BOE)
India	The Emigration Act of 1983 Draft Emigration Amendment Act of 2002 (not yet adopted)	Ministry of Labour The Protector General of Emigrants
Thailand	The Recruitment of Job Seekers Act of 1985 The Employment Seekers Protection Act of 1994	Ministry of Labour The Overseas Employment Administration Office The Employment Development and Job Seekers Protection Committee
The Philippines	The Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042) with omnibus rules and regulations implementing the act	Ministry of Labour (DOLE) The Philippine Overseas Employment Administration (POEA) The Overseas Workers Welfare Administration (OWWA)
Sri Lanka	The Sri Lanka Bureau of Foreign Employment Act of 1985 The Amendment Act of 1994	Ministry of Employment The Bureau of Foreign Employment (SLBFE)

3.1.1 Indonesia

Presently, there are two vital Ministry of Manpower decrees on the management and protection of migrant workers, one on the placement of migrant workers overseas and one on insurance. Presidential Decrees no 46 of 2000 and no 29 of 1999 regulate the Coordinating Board of Indonesian Overseas Employment. Based on these decrees, the Minister of Manpower assumes the function of chairman of the Board. Ten other ministries and agencies are represented in the Board. This coordinating body shall have a coordinated



approach to handle migrant worker issues. So far, the body has scarcely met, and no concrete steps have been taken. A number of Ministry of Manpower decrees have been issued with the intention of encouraging as many Indonesian migrant workers as possible to work overseas. Labour ministerial letters on placement fees are numerous and almost impossible to access.

Policies on migrant workers keep on changing, which has a negative effect on the process of sending migrant workers overseas. As an example can be mentioned a labour ministerial letter of January 20, 2003 putting a temporary moratorium on migrant worker placement to the Middle East. In a labour ministerial letter of May 1, 2003 the moratorium was lifted for Saudi Arabia. In the meantime, migrant workers were returned from Saudi Arabia or never allowed to go to Saudi Arabia, even though they had been trained and placed in shelters for months.

In spite of an abundance of regulations, Indonesian migrant workers regularly experience that they are forgotten by public authorities or considered barely as milk cows. Often licensed recruitment agencies whose license has been withdrawn due to irregularities, simply change name and company registration, and continue to work as before, without any kind of interference from public authorities.

The reason for the generally poor quality of the assistance given to Indonesian women migrant workers is probably multifaceted. Important key words are corrupted practices and a general indifference towards “weak” groups in the society. The situation is certainly not improved by the tendency that Indonesian women migrant workers in general are passive in claiming their rights. The reason for this is also multifaceted. Key words are patriarchal traditions, poor education and information level among the workers and former bad experiences with public authorities.

A new law on the Placement and Protection of Indonesian Workers Overseas (UUPPTKILN) was endorsed by the DPR on September 29, 2004. It had not entered into force when this paper was finished (December 2004), and it was unsure when this would happen. Basic information concerning the new law is included in this paper where relevant. For a broader analysis of the new law, see chapter 4.

3.1.2 Pakistan

The principal rules regarding Overseas Employment are laid down in the Emigration Ordinance of 1979 and in a multitude of regulations adopted under that Ordinance. The Ministry of Labour, Manpower and Overseas Pakistanis is responsible for the policy concerning Pakistani migrant workers.

The Bureau of Emigration and Overseas Employment (BOE), a department affiliated to the Ministry of Labour, is the main government agency responsible for regulating and protecting international Pakistani labour migration in private sector. The Ordinance requires all prospective migrant workers to register with BOE, and BOE is supposed to scrutinize their documents before issuing necessary certificates to migrating workers. A fee is charged for registration. BOE is responsible for regulating the work of private sector employment agents who recruit workers for overseas employers.

The Overseas Pakistanis' Foundation (OPF) is a subordinate organisation of the Ministry of Labour, with a capital base inter alia accumulated from a levy on Pakistani workers abroad. OPF maintains presence in Pakistani embassies and consular offices in countries with a large number of Pakistani migrant workers. Most of the government schemes and concessions for overseas Pakistanis are handled by OPF. OPF shall also act as a medium for policy dialogue between the government and groups of overseas Pakistanis.

3.1.3 India

The Emigration Act of 1983 regulates emigration of Indian citizens seeking employment overseas. The Ministry of Labour is the nodal ministry in regard to migrant workers. The Protector General of Emigrants, a sub-division of the Ministry of Labour, supervises the emigration of Indian workers.

The draft Emigration Amendment Act of 2002 (not yet adopted), provides for the establishment of an Export Promotion Council which inter alia shall promote employment opportunities abroad for prospective migrant workers, collect statistics and data concerning employment opportunities abroad, produce data concerning each migrant worker and administrate a migrant workers welfare fund.

3.1.4 Thailand

The Recruitment and Job Seekers Act of 1985 supplemented by the Employment Agencies and Employment Seekers' Protection Act no. 2 of 1994 are the main legal instruments concerning migrant workers.

The Overseas Employment Administration Office, governed by the Ministry of Labour and Social Welfare, is the main agency for labour migration management. Its three major guidelines regarding overseas employment are defined as promotion, control and protection.

The Employment Development and Job-seekers Protection Committee is established to supervise, consult and advice on the policy relating to both migrant workers and non-migrant workers.

3.1.5 The Philippines

The Migrant Workers and Overseas Filipinos Act no. 8042 of 1995 (RA 8042) regulates emigration of citizens of the Philippines for employment in other countries. RA 8042 establishes that the Philippines only deploys workers to countries where their rights are ensured through labour and social laws, bilateral agreements, international conventions or other protective regulations.

The Act recognizes the particular vulnerability of women migrant workers and the necessity of gender sensitive criteria in the formulation and implementation of policies and programs. The Philippines has recently adopted a Development Plan for Women which aims at establishing a policy on the phasing out of Philippine overseas domestic workers and entertainers inter alia through domestic economic opportunities for women.



The Ministry of Employment and Labour (DOLE) administers the act through the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA). POEA is in charge of the processing of employment contracts, accreditation of employers, approval of job orders, licensing of agencies, welfare services and issuance of overseas employment clearances for all overseas contract workers. OWWA provides social and welfare provisions for migrant workers, including insurance coverage, legal assistance, placement assistance, remittance services and reintegration programs.

RA 8042 requires embassies and consular offices, through the POEA to issue travel advisories and disseminate information on labour and employment conditions, migration realities etc. This information shall be published in a newspaper of general circulation every three months.

3.1.6 Sri Lanka

The Sri Lanka Bureau of Foreign Employment Act no. 21 of 1985, amended by Act no. 4 of 1994 governs labour migration. The Ministry of Employment and Labour is responsible for formulating policies and monitoring the administration of foreign employment as well as the coordination with all relevant government agencies.

The Sri Lanka Bureau of Foreign Employment (SLBFE) is the implementing branch of the Ministry. The Act sets out the duties of SLBFE which includes the control of the activities of employment agencies, to provide assistance to Sri Lankans going abroad for employment, to provide for the welfare and protection of Sri Lankan citizens employed abroad, to enter into agreements with relevant foreign authorities, employers and employment agencies in order to formalize recruitment agreements and data collection and promotion of foreign employment opportunities. SLBFE shall also implement a wide range of worker welfare programs both nationally and in host countries to ensure the protection of migrant workers throughout the endurance of the migration period.

The Act only applies to workers who are registered with SLBFE. Unregistered workers are not covered by the provisions and protections set out in the Act. Registration with SLBFE is mandatory whether the migrant worker is recruited through a licensed operator or otherwise, and each worker is required to pay a fee to SLBFE for registration. Migrant workers failing to register are liable to fines or imprisonment. SLBFE maintains a 24 hour vigil at the airports approved for departure and arrival for migrant workers. SLBFE has also instructed airlines to insist on SLBFE registration prior to the issue of air tickets to prospective migrant workers. Many migrant workers are said to be unenthusiastic about the payment of the fee due to lack of financial means, but nevertheless consider the registration system as a good and necessary measure to ensure their safety.

3.2 RECRUITMENT OF WORKERS, FEES RELATED TO RECRUITMENT

	Agencies	Fees to be paid by workers
Indonesia	Recruitment Agencies must be licensed Scores of illegal recruitment agencies	Maximum fees stated in governm. regulations (2004): Hong Kong: IDR 17.6 mill. (USD 1900) Taiwan: IDR 42.5 mill. (USD 4575)
Pakistan	Recruitment Agencies must be licensed Scores of illegal recruitment agencies	Fee for mandatory registration with POE, welfare fund, insurance (2003): PKR 5100(USD 92) Fees to recruitment agents: not regulated
India	Recruitment Agencies must be licensed Scores of illegal recruitment agencies Recruitment agencies are obliged to secure that employment contracts are enforceable by the laws of the receiving countries	Maximum fee to recruitment agents for “unskilled workers”, 2003: INR 2000, (USD 45)
Thailand	Recruitment Agencies must be licensed Scores of illegal recruitment agencies Detailed legislation on the handling of complaints from workers	Maximum fees to recruitment agency equivalent to one month’s salary, with the addition of incurred costs. Special rules apply to Taiwan.
The Philippines	Recruitment Agencies must be licensed Scores of illegal recruitment agencies Mandatory registration with POEA Victims of illegal recruitment are entitled to free legal assistance	Fees to recruitment and government agency: maximum one month’s salary, exclusive documentation and processing costs
Sri Lanka	Recruitment Agencies must be licensed Scores of illegal recruitment agencies Mandatory registration with SLBFE SLBFE database on migrant workers, including job bank services Efficient system of inquiring into complaints from workers	Fee to recruitment agency and/or SLBFE (2003): LKR 5200 – 10200, (USD 52 – 102)

The fees mentioned above are not necessarily comparable as it varies from country to country what the migrant worker must pay in addition. Detailed information on what is included in the different fees has not been accessible. It seems however pretty clear that, Indonesian women migrant workers going to Taiwan and Hong Kong, must pay considerably much more to the recruitment agent than what women migrant workers from the other five countries must pay to their agents.

3.2.1 Indonesia

Labour Ministerial Decree no KEP-104 A/MEN of 2002 regulates the recruitment of Indonesian migrant workers. Recruitment and placement shall be arranged by agencies licensed by the Ministry of Manpower. The decree sets out provisions to be fulfilled in order to get a licence and the consequences of not adhering to these provisions.



worker shall be determined in governmental regulations. Apparently there has been given such regulations, but they are difficult to obtain and generally unknown to the affected parties. The outcome is usually that the worker is demanded to pay much higher fees for registration, health checks, insurance, identity papers, passport, overseas working permit etc. than what he or she should, and that he or she must pay fees for items or services which have not been received. The worker's considerable debts to the recruitment agent established by these fees are usually repaid by deductions from the salary once she starts working, leading to miniscule funds de facto available for to the worker the first months or even years of employment.

There are examples that Indonesian regulations provoke harsh reactions from other countries. As shown in the table, fees to be paid by a migrant worker to the Indonesian recruitment agent for going to Taiwan amount to at least IDR 42.5 mill. (USD 4575). Two years ago, Taiwan suspended temporarily the recruitment of Indonesian workers after it received complaints over the exorbitant fees charged by Indonesian recruitment agencies and their unwillingness to provide adequate legal protection and insurance for workers. A new MOU between Indonesia and Taiwan was signed this week, lifting the ban.

The number of recruitment agencies is high and growing as recruitment of migrant workers is a very profitable business. In addition to licensed recruitment agencies, scores of illegal recruitment agencies exist. Another stakeholder who plays a vital but not formal role in the recruitment process is the middle man, often referred to as a sponsor. A middle man is acting as a broker between prospective migrant workers and agents, receiving payment from both. For the agent, a sponsor represents a warrant for the migrant worker. If problems arise before departure, such as cancellation or illness, the middle man may be required by the agent to find replacement candidates.

Some workers are recruited directly by foreign employers, and visa and other necessary documentation are provided by the employer. The term for this phenomenon is "calling visa". The worker must usually register with an Indonesian agent, but shall pay much less to the agent than workers recruited by the agent. Workers with sufficient contacts to arrange for work abroad this way, belong to the more fortunate ones.

When a prospective migrant worker is recruited, she is placed in a campus provided by the agent where she will get the mandatory training and stay until she is sent overseas. It is not unusual to spend several months or even half a year in the campus. The technical standard and the quality of the food provided are usually deplorable, and the workers are not allowed to leave without permission. The worker rarely pays for the accommodation and food directly, but the costs are deducted from the worker's salary once she has started working. If the worker leaves the shelter before going overseas, she must pay the estimated costs for the weeks or months she has stayed in the shelter directly to the agent. Whether the costs are deducted from her salary or the worker pays it directly, the price is usually exorbitant when compared to the agent's costs.

The new Law's rules on recruitment and placement of workers abroad are very similar to the rules in the above mentioned Labour Ministerial Decree. Recruitment and placement

can only be arranged by agencies or individuals who are licensed by the relevant Ministry. The law sets out provisions to be fulfilled in order to get a licence and the consequences of not adhering to these provisions.

Prospective migrant workers must be minimum 18 years old (21 years for workers in informal sector), in good physical and mental health, not pregnant and with minimum Junior High School (art. 35). Prospective migrant workers must be registered at the relevant district/municipality government agency. When a placement agreement between the agent and the prospective worker has been signed, its validity is dependent upon the endorsement of the relevant aforementioned public agency (art. 37).

When recruiting a migrant worker, the agent shall inform her about the recruitment procedure, the necessary documents, her rights and duties, the conditions and risks in the country of employment and how she can get protection (art. 34).

All costs that are necessary for the recruitment of the prospective migrant worker shall be borne by the agent (art. 39). The worker is however responsible for the payment of costs related to the handling of personal documents, the health and psychological tests, the job training and job competency certification and other costs described in Ministerial Regulations (art. 76).

In the event of a dispute between a migrant worker and the agent about the placement agreement, where an amicable settlement is not possible, the parties may ask the assistance of the relevant district/municipality authority, province authority or from the government (art. 85).

The law states that the placement agreement shall contain a guarantee from the agent implying that the agent is responsible for the fulfilment of the employer's obligations towards the worker in case the employer does not fulfil his obligations (art. 52). Furthermore the placement agreement shall identify which placement costs the worker herself shall cover.

Placement of migrant workers is only allowed in countries which either have specific agreements with Indonesia or which have laws and regulations giving sufficient protection to foreign manpower (art. 27).

Migrant workers who shall work for an "individual user" can only be placed through a "business partner" in the country of destination (art. 24). In the explanatory notes¹ to art. 24 the term "individual user" is defined as inter alia informal sector employers. The rules regarding "business partners" are to some extent stricter than rules covering other kinds of placement agents in receiving countries.

3.2.2 Pakistan

The Ordinance decides that whoever wants to engage, assist or recruit any person to emigrate, needs a license from the Federal Government. If an overseas employment



promoter is found involved in violation of the emigration laws or malpractices, action shall be taken against him by cancelling his licence or by prosecution.

The prospective migrant worker is responsible for obtaining employment visa. On receipt of the visa, he/she shall inform the foreign employer and the Pakistani embassy in the receiving country or the embassy of the receiving country in Islamabad. This registration shall give the migrant worker “complete legal protection, full assistance from Pakistani missions in the country of employment and legal assistance from the Community Welfare Attaches or the relevant embassies”.

The Ordinance decides that each prospective migrant worker shall pay a fee for registration, a fee to the welfare fund, an insurance premium and a fee for the National Identity Card for Overseas Pakistanis, to the Protector of Emigrants. The amount of these fees is stated in governmental regulations, whereas fees to recruitment agents are not regulated.

3.2.3 India

The competent authority to grant license for recruitment of Indian migrant workers is the Protector General of Emigrants (PGE). Recruitment agents are authorized to charge fees from migrant workers. The maximum amount is stated in governmental regulations. The fee is lower for unskilled workers than for skilled workers.

The act establishes that a licensed recruitment agent is under the obligation to guarantee that his clients’ employment contracts are enforceable by the labour laws of the country of employment. It is the agent’s responsibility to file copies of the contract with the concerned authorities in the country of employment.

The act furthermore establishes that the recruitment agency shall be a party to the contract of employment and that the contract shall contain provisions on wages, free food or food allowance provisions, free accommodation, working hours, overtime allowance, leave and social security benefits as per local labour laws, to-and-fro air-passage at the employer’s expense and mode of settlement of disputes.

The Emigration Act states that agents are not allowed to use sub-agents for the purpose of conducting or carrying out business. In spite thereof, there are usually at least ten sub-agents with each licensed agent.

According to various NGO sources, the recruitment process is unsatisfactory. Many migrants are cheated by agents either because the agent collects exorbitant fees or because he doesn’t provide the promised job. The fees claimed by the agent are often related to the income prospects in the receiving country, which is contrary to governmental regulations. Public action is regularly taken against erring agents by way of suspension and cancellation of registration certificates and forfeiture of bank guarantees, and consistent efforts by Indian missions abroad to check exploitation of Indian workers in foreign countries have resulted in blacklisting of many foreign employers. But when it comes to the huge number of workers cheated by agents, the number of cancelled registration certificates and blacklisted employers is small.

3.2.4 Thailand

Only persons who are licensed by the Central Registrar are permitted to engage in the overseas recruitment business. An overseas recruitment license holder is not entitled to collect or receive fees from a prospective migrant worker earlier than 30 days before departure and only when a contract of employment with an identified employer has been signed. In a notification by the Ministry of Labour from 1995, it is decided that the maximum rate an agent can charge a job seeker abroad is the equivalent of one month's salary with the addition of incurred costs. Special rules apply to Taiwan.

Before a job seeker may be sent to work overseas, the recruitment agent shall submit the recruitment contract and the employment conditions to the Central Registrar for approval. The agent shall also arrange for the job seeker to have a medical examination, and for attendance at an orientation session at the central or provincial Recruitment Registration Office.

If a job seeker has arrived in the employer's country but employment as prescribed in the recruitment contract has not been made available, the recruitment agent shall arrange for the job seeker to return to Thailand. The transportation fare and other necessary expenses incurred until the job seeker is back in Thailand shall be paid by the agent. If a job seeker has arrived in the country of employment but has been employed at lower wages or in a different job than specified in the recruitment contract, the job seeker may either request the agent to send her back to Thailand on the agent's cost, or continue to work at the conditions offered. If she makes the first choice, the job seeker shall notify the agent or his representative in writing within 90 days. In case an agent is unable to send the job seeker to work overseas within the prescribed period or if the job seeker has not got an employment as specified in the recruitment contract, or has been employed at lower wages, or in a different position than specified in the recruitment contract, and the job seeker does not agree, the agent shall reimburse all collected recruitment fees and expenses to the job seeker. In case the job seeker has been employed at lower wages than specified in the recruitment contract but nevertheless agrees to continue working, the agent shall reimburse the recruitment fee collected from the job seeker, in proportion to the actual wages the job seeker receives.

Where the employment works out as prescribed in the contract, the expenses connected to the journey to and fro the country of employment, are implicitly the responsibility of the employer.

The recruitment agency is responsible for repatriation expenses in certain situations, inter alia when a recruited worker is not given the job or the wage prescribed in the employment contract. On certain conditions, these expenses are recoverable from the fund to assist workers abroad, established by the act. The responsibility of the employment agency to arrange for repatriation ceases if the worker does not return to Thailand within 30 days after the expiry of the employment contract.

If the worker arranges for work abroad herself, she must notify the Department of Employment not later than 10 days before the date of departure. The contract between



the worker and the employer must be certified by the nearest Thai embassy, consulate general or labour office in the country of employment.

According to IOM, many complaints from migrant workers relate to recruitment agencies. Workers are inter alia burdened with much higher fees than what is decided in governmental regulations, or they are promised jobs and charged fees by licensed agencies although there are no jobs available – without the protective regulations mentioned above giving them any de facto protection.

3.2.5 The Philippines

Private recruitment agencies are licensed, regulated and monitored by POEA (The Philippine Overseas Employment Administration). A foreign employer can only recruit Filipino workers through licensed agencies or POEA. Workers who arrange for jobs themselves are required to pass through POEA for registration. Every worker is required to present his or her employment contract, passport, visa and ticket for registration with POEA before issuance of the Overseas Employment Certificate. This certificate is a document proving that the worker, agent and employer have fulfilled the necessary requirements. It is inspected by immigration officers at the airport upon the worker's departure. Failing to register is sanctioned with fines.

RA 8042 states that victims of illegal recruitment are entitled to free legal assistance and protection by the witness protection program.

According to IOM, overcharging of placement fees is a common problem for women migrant workers. Such overcharging is often associated with the layered recruitment system where labour brokers in the country of employment connive with recruitment agents from the Philippines. In between these brokers and recruiters, or working independently from them, are numerous middle men. Non-disclosure of real terms and conditions of employment is frequent.

3.2.6 Sri Lanka

The Act of 1985 provides for the licensing of employment agencies. The Act sets out detailed and strict conditions pertaining to such licenses, renewals and cancellations. The license is given by SLBFE. No licensed recruitment agent is allowed to issue advertisements or notices calling for applications for employment overseas without the prior approval in writing from SLBFE.

Recruitment agencies are authorized to charge a maximum fee from migrant workers. In addition the worker must pay a registration fee to SLBFE. If the migrant worker goes abroad without the assistance of a recruitment agency, the worker must pay the full amount to SLBFE, including the fee which otherwise should have been paid to the recruitment agency.

Victims of abuse from employers, agents or other involved parties in the host country may complain to the local Sri Lankan embassy, SLBFE or the local police. SLBFE has developed a fairly efficient system of inquiring into such complaints and of providing redress at site through the Welfare Officers or through the reconciliation division at SLBFE.

A large number of unlicensed employment agencies operate in the country and many licensed agents depend on sub agents to keep the business running. The government has not yet been able to prevent this effectively.

SLBFE maintains a data bank on all Sri Lankan citizens employed outside Sri Lanka through the information technology division. It is mandatory for all workers and agents to give required information to the bank. The Act does not provide details about who is entitled to get information from the bank. The information technology division also functions as a job bank. Any interested person can send an application for employment to the division. Application forms and information are disseminated through post offices located all over the country. The division also manages SLBFE’s website where information on SLBFE, employment opportunities and employment agencies, including blacklisted agencies can be accessed.

3.3 TRAINING OF PROSPECTIVE MIGRANT WORKERS

Indonesia	Training is mandatory Training shall be provided by recruitment agencies Length of training: 3 months
Pakistan	Training is mandatory Training is provided by the Bureau of Emigration and Overseas Pakistani (BOE) No special training for women migrant workers in informal sector
India	No mandatory and/or public training of migrant workers
Thailand	Training is mandatory Training is provided by the Ministry of Manpower Length of training: one day
The Philippines	Training (briefing) is mandatory Special training for women migrant workers in informal sector can only be organized by NGOs Length of training: one day Special training for women going to countries considered particularly difficult, including Taiwan and Libya
Sri Lanka	Training is mandatory Special training for women migrant workers in informal sector 12 days training for women going to the Middle East 21 days training for women going to other countries

3.3.1 Indonesia

Pre-departure training is mandatory for prospective migrant workers, and shall be provided by the employment agencies in coordination with the Directorate General of Overseas Manpower Placement and Development. As stated in Ministerial Decree no. 104 A 2002 the training shall at least include information on social customs and conditions in, and relevant rules and regulations of, the receiving country, procedures of departure and repatriation, information about Indonesian representatives in the receiving country, remittance programs and savings, required documents, contents of the employment contract and rights and obligations of the different parties in the contract.



There is no legislation on the length of the mandatory training. What is stated in the legislation is that the length shall be accommodated to the type of job the worker is going to get and to the various cultural difficulties the worker might meet in the receiving country. In reality, lots of migrant workers experience a training period which lasts for weeks and even months, and which has little practical value to them. It mostly consists of lectures on trivial information and on the responsibilities of the migrant worker, and it is provided while the prospective migrant worker is kept in shelter, often under difficult conditions.

The new law states that a prospective migrant worker must have a job competency certificate according to the job requirements. In the event that she does not yet have the necessary skills, the agent shall provide education and training in accordance with the job to be performed (art. 41). The training shall inter alia consist of training in the language of the receiving country (art. 42). Further provisions shall be given in Ministerial Regulations (art. 47). In the explanatory notes² it is said that job training for a prospective migrant worker may be undertaken by a training institute or unit owned by the agent.

The agent may accommodate the prospective worker in shelter prior to departure (art. 70). The workers shall be treated properly and humanely. Further arrangements shall be made in Ministerial Regulations. It is not clear from the law whether the rules on accommodation in shelter also apply to the period when the prospective worker is being trained.

The law decides that all prospective migrant workers and all migrant workers must follow a “guidance and protection program”. Further arrangements shall be made in Governmental regulations. What form and content these programs are meant to have is not possible to read from the law.

3.3.2 Pakistan

All migrant workers registered with the BOE offices shall be given a pre-departure briefing. Orientation and Briefing Centres are set up in the Protector of Emigrants Offices in Karachi, Lahore, Rawalpindi and Peshawar. During the briefing, migrant workers shall be informed about their country of employment, local customs, local conditions and relevant laws in the country of destination.

3.3.3 India

Indian overseas employment policies do not include any form of pre-departure orientation to prospective migrant workers. The Indian Migrant Forum, a NGO engaged in migrant workers’ questions organizes a pre-departure orientation program in Kerala. There are also other NGOs which are engaged in pre-departure training of migrant workers.

3.3.4 Thailand

The Ministry of Manpower is responsible for arranging pre-departure orientation for prospective migrant workers. Training is provided in 40 provinces in the country. Relatively

² Elucidation of the Law

big allocations from the government budget and the welfare fund are spent on the programs. The contents of the programs are outlined as follows: job selection, visa, passport, costs and other logistics for work (1 hour), health check-up, diseases which restrict the right to work overseas, nutrition, HIV, exercise, rest, mental health (1 hour), employment agencies, Ministry of Employment, employers and other relevant bodies (1 hour), responsibilities of employment agencies (1 hour), protection from being exploited (1 hour) and services overseas (30 min). Prospective migrant workers must pass a skill test before going overseas. The certificate is valid for two years. Only licensed entities are allowed to engage in skill test business.

In a report from a regional summit in Malaysia on pre-departure, post-arrival and reintegration programs for migrant workers, it is said that the training of Thai migrant workers often has marginal results, partly due to many of the migrant workers' low literacy level, previous bad experiences with training and lack of ability to question officials and demand information that they feel is relevant. It is furthermore said that language and communication is one of the major problems for Thai migrants. Thailand does not have a strong tradition of foreign languages, and although English is taught in schools, most people have little command of the language from their early education. Insufficient communication not only means difficulties at work, but also means that access to information is severely limited and that health services are difficult to access. Better language training would be of great importance to prospective migrant workers.

3.3.5 The Philippines

The pre-departure orientation seminar is a mandatory one-day briefing given to workers by entities duly accredited by OWWA (Overseas Workers Welfare Administration). The seminars issue standard pre-departure reminders regarding the documents workers must have on departure, their rights and obligations under the employment contract, what to expect upon arrival, where to go in times of need, travel tips, how to remit savings, health care, occupational safety and risks and rewards of working. The seminars are administered by accredited institutions and trainers.

There are special pre-departure seminars for domestic workers. Only NGOs are allowed to conduct such programs as a check and balance measure against tempting malpractices of recruitment agencies. Special pre-departure seminars are also arranged for migrant workers going to countries which are deemed as particularly difficult, including Taiwan and Libya.

In a research by CARAM Asia, it was concluded that the Philippine pre-departure training program for prospective migrant workers was among the best in Asia.

In an IOM study it is pointed out that while recruitment agencies are obliged by government rules and regulations to provide a mandatory pre-departure orientation seminar and to brief their workers on employer-specific information, a number of them just provide workers with a certificate of attendance.



3.3.6 Sri Lanka

Preparing the migrant for overseas employment shall primarily focus on protecting the migrant worker from abuse and exploitation. An opinion widely expressed by concerned individuals at governmental and non-governmental level is that a migrant worker shall be capable of assimilation with the host country's norms and be able to conform to the attitudes expected by the employer. In 1996, pre-departure training was made compulsory for migrant domestic workers, and a training certificate became a requirement for registration with SLBFE. There are training centres all over Sri Lanka except in the northern, war-torn provinces, and several thousand women are trained every month. One day refresher training programs are organized for repeat migrants.

The training provided to prospective women migrant workers in informal sector covers a wide range of topics, including housekeeping and use of modern equipment, basic knowledge of English and/or Arabic, pre-migration arrangements, financial management including information on banking and savings, strategies to overcome disorientation to core values, emotional pressure, loneliness, culture shock, anxiety, re-integration etc. Migrants to countries in the Middle East receive 12 days training while migrants to other countries receive 21 days' training.

In an ILO Case Study, the following is pointed out concerning the training course for prospective migrant domestic workers:

"The training is characterized as an orientation to their future life and sensitization to six key issues which have proved to be the main cause of harassment at the scene of employment and conflict with the family left behind. The key problems are lack of skills to handle modern household gadgets, inability to communicate with the employer in a language understood by both parties, inability of the migrant worker to integrate herself with the social and cultural environment of the host country, poor knowledge of migrant workers' rights and obligations and poor management of earnings. The mandatory training has helped to eliminate some of the problems encountered by migrant workers and also contributed to raise the self-confidence, status and image of Sri Lankan housemaids. The shortcomings of the training can be remedied through more resources for training facilities, bearing in mind that the female prospective housemaid is a capable individual with the potential to achieve an output of work expected by the employer.

Over the last decade SLBFE has introduced significant measures to prepare migrants for overseas labour. Both manpower and finances have been used to facilitate communication between the prospective migrant and LSBFE and to ensure that a worker does not leave the country unprepared for the tasks ahead. Most prospective migrant workers view the training program conducted by SLBFE as useful and regret that some workers do not appreciate the efforts of the trainers. When questioned on which component was most useful to them they unanimously agreed that it was the information on the expected role at the scene of employment. The

tips on protecting themselves from sexual demands of their employers as well as countrymen were appreciated. They remembered the anecdotes related by their instructors. Many had kept copious notes and were seen to be carrying the exercise books at the airport”.

3.4 AGE LIMITS AND OTHER SPECIAL MEASURES FOR WOMEN MIGRANT WORKERS IN INFORMAL SECTOR

Indonesia	Minimum age 18 years New law: minimum 21 years
Pakistan	Minimum age 35 years
India	Minimum age 30 years
Thailand	Minimum age 18 years
The Philippines	Minimum age 25 years
Sri Lanka	Minimum age 18 years

Neither of the countries has rules implying maximum age for women migrant workers. In reality women who have passed the age of 35-40 years are not longer in great demand by foreign employers.

3.4.1 Indonesia

The new law states that prospective workers (men and women) who shall work in informal sector, must be at least 21 years old (art. 35, ref. also explanatory notes³ to art. 24). Women prospective workers (formal and informal sector) must not be pregnant.

3.4.2 The Philippines

All domestic migrant workers must be over 25 years old, trained and certified as domestic workers and proficient in English or the language of the host country. All domestic workers departing for overseas employment are processed by the Central Processing Unit for Service Workers. This unit is also responsible for the accreditation of foreign placement agencies and employers recruiting domestic workers. Only foreign placement agencies that are licensed by the labour office of the host country are granted accreditation. There are particular minimum requirements for the employment contract, which has to be registered and authenticated by the embassy.



3.5 HEALTH, SOCIAL SECURITY AND OTHER SOCIAL BENEFITS

Indonesia	All workers must be covered by a life- and medical insurance Insurance policies can only be acquired from insurance companies licensed by the Ministry of Manpower
Pakistan	Overseas Pakistani Foundation (OPF) offers a voluntary insurance scheme
India	Migrant workers shall be covered by a life- and medical insurance Minimum terms for the insurance police regulated by law Insurance policies can be acquired from any registered insurance company
Thailand	Information not available
The Philippines	Migrant workers shall be covered by a life- and medical insurance The mandatory Filipino Welfare Fund registration fee includes this insurance Several voluntary investment schemes which includes social security
Sri Lanka	Migrant workers must be covered by a life- and medical insurance The mandatory Bureau of Foreign Employment (SLBFE) registration fee includes this insurance

3.5.1 Indonesia

Labour Ministerial Decree no 157 of 2003 decides that all migrant workers shall be covered by a death- and disability insurance, a so-called Indonesian Workmen Insurance or TKI Insurance. The migrant worker may acquire the insurance police from any insurance company licensed by the Minister of Manpower. The Minister is in the process of considering new rules implying that the insurance may be acquired from Jamsostek - a public insurance and pension scheme.

The insurance premium must be paid when the worker has obtained public authorization to go abroad as migrant worker, and costs IDR 400.000 for 30 months. The maximum insurance compensation in case of death or total permanent disability caused by accident is IDR 20 million. The decree contains a standard list of compensations related to various kinds of injuries. The insurance shall also cover legal expenses in case of criminal or civil lawsuits in the receiving country and repatriation costs if particular problems. A worker's claim on insurance proceeds must be initiated by the worker herself, but is only presented to the insurance company if the Director General of Indonesia's Overseas Workers or the local authority has given his recommendation. Insurance proceeds shall only be paid to the worker if the Director General or the local authority has given his recommendation.

The experience so far has been that most women migrant workers do not fully realize the benefit of insurance and have no knowledge of the procedures they must follow in order to benefit from it. Furthermore it is reported that many of the licensed insurance companies have turned out to be extremely bureaucratic and negative towards prospective proceeds receivers, and that almost no migrant workers have received any compensation.

All prospective migrant domestic workers who go through legal channels must undergo a medical check-up at an Indonesian hospital designated by the destination country. There have been many incidents where the worker has been given the necessary certificate,

but where a second medical check-up in the receiving country has shown unsatisfactory results, whereupon she is deported back to Indonesia.

The new law (art. 26.2.e and art. 68) states that the agent has the duty to control that prospective migrant workers are included in a manpower social guarantee program and/or has an insurance policy. Further regulations shall be given in Ministerial Regulations. In the explanatory notes⁴ it is stated that the insurance must give at least the same protection as what is defined in the Manpower Social Security Program.

Before going overseas, the prospective migrant worker must go through a physical and mental health test (art. 48). The worker is obliged to document that she has passed such test with satisfying results (art. 51e). The agent is prohibited from placing workers who have not passed such test.

Whatever is the reason for repatriation, the agent shall provide health facilities to migrant workers who are sick during repatriation (art. 75).

3.5.2 Pakistan

The governmental Overseas Pakistanis' Foundation has installed a voluntary insurance scheme which covers migrant workers from consequences of disablement and illness and compensates their relatives in the event of the worker's death. Migrant workers who become disabled abroad due to accidents, can get interest free loans to procure alternative income. OPF also provides a pension scheme, with a variety of options on the amount of contribution, payment of contribution and maturity time.

3.5.3 India

In a notification by the Ministry of Labour dated November 13, 2003 it is decided that all migrant workers must be covered by an insurance policy. The policy may be bought from any registered insurance company operating in India. Unless the worker is able to prove that she is properly insured, she will not be given the necessary emigration clearance.

3.5.4 Thailand

Information not available.

3.5.5 The Philippines

The mandatory payment of the Filipino welfare fund fee entitles the migrant worker to inter alia a life and medical insurance coverage and death benefits.

The governmental Development Bank of the Philippines' investment certificates (KICs) is a voluntary saving mechanism where redemption values can be used inter alia to finance hospitalization costs for migrant workers and their families. Purchase of KICs entitles every certificate holder to a life insurance coverage equivalent to the amount of certificates purchased.



3.5.6 Sri Lanka

The mandatory registration with SLBFE includes an insurance covering death, permanent disablement and serious illness. The insurance instalments are standardized and relatively low. In an ILO case study it is reported that a vast majority of women migrant workers interviewed, appreciated the insurance scheme.

A medical examination prior to departure is optional provided that the receiving state does not demand it. SLBFE has proposed that medical examinations be made mandatory for all and to be performed by a panel of specialist doctors appointed by health authorities in Sri Lanka.

3.6 STANDARD CONTRACTS OF EMPLOYMENT

In the following, “standard contract” refers to a contract containing specifications of rights and duties concerning all or most of the central aspects of the employment relationship. In addition to formalities such as name and addresses of the parties, salary, designation of working place etc, it also includes specifications of other central topics, such as working hours, kind of work, overtime payment, right to leave, holidays, food allowances, accommodation, who shall bear the costs of medical assistance, conflict solution mechanisms, legal enforceability etc. A standard contract may serve as a reminder to the migrant worker on what he or she should focus on when negotiating an employment contract.

Indonesia	Standard contract is mandatory for workers migrating to a number of countries: Jordania, Quwait
Pakistan	None
India	None
Thailand	Voluntary standard contracts elaborated by Thai authorities
The Philippines	Voluntary standard contracts elaborated by Philippine authorities Standard contracts mandatory for workers migrating to some countries
Sri Lanka	Voluntary standard contracts elaborated by the Bureau of Foreign Employment (SLBFE) Standard contract mandatory for workers migrating to some countries

3.6.1 Indonesia

Based on Ministerial Decree no. 104A/MEN2002, Indonesia has established several standard contracts for migrant workers which are defined into each kind of job for each destination country. The contracts state migrants’ obligations and rights, including wage and working hour.

3.6.2 Thailand

Thai authorities have elaborated a voluntary standard contract for migrant workers. The contract states inter alia the wages, the duration of the contract, the probation period in conformity with local labour laws, working hours including the right to one day leave per week, overtime allowances, medical treatment paid by the employer and conflict solution mechanisms.

3.6.3 The Philippines

The Philippines has established several standard contracts for migrant domestic workers, of which some are mandatory. Some of the contracts have been adopted through bilateral agreements, some have been prescribed by receiving countries and others have been developed by the Philippine government. In cases where a standard contract is not used, POEA has set minimum requirements for the individual contract, which also has to be registered and authenticated by the relevant embassy.

The experience with standard contracts has in many ways been good, but there are also reported incidents where the contents of the contracts have not been explained well enough to the worker and where the worker has experienced substitution of the contract once she gets to the jobsite.

3.6.4 Sri Lanka

The Sri Lanka Bureau of Foreign Employment Act decides that SLBFE shall formulate and implement voluntary model contracts of employment which ensure fair wages and standards of employment. The SLBFE experience is that the introduction of standard contracts to a certain extent has curbed exploitation.

In terms of a series of MOU's between SLBFE and recruitment agents, it has become compulsory for employers from Kuwait, Saudi Arabia, Oman, Qatar, United Arab Emirates, Lebanon, Jordan, Cyprus, Singapore and Hong Kong wishing to hire Sri Lankan housemaids to sign a standard contract, which has to be endorsed by the relevant Sri Lankan Embassy prior to obtaining the seal of approval.

The content of the different standard contracts is inter alia the particulars of the parties, conditions under which the contract is offered, monthly wages, duties, hours of work, rest days, leave, undertakings to provide food, lodging, medical care and transportation to host country, termination of contract and conflict solving mechanisms, insurance coverage and provisions in the event of death of the worker.

A recent ILO case study concludes that certain deficiencies persist, e.g. that the contents of the contract are not explained well enough to the worker or that the contract is substituted once the worker gets to the jobsite. The standard contracts have however helped SLBFE to ensure a few basic rights for the workers who enter into such contracts, such as protection against unfair termination of contracts and non payment of wages. The document is also a good basis for possible negotiations between Sri Lankan Embassy staff, local agents and employers.



3.7 CREDIT SCHEMES FOR PROSPECTIVE MIGRANT WORKERS

Indonesia	Under consideration
Pakistan	None
India	None
Thailand	Under consideration
The Philippines	Migrant Workers Loan Guarantee Fund provides pre-departure loans
Sri Lanka	Several state banks offer credit to prospective migrant workers Fees to SLBFE may be paid in subsections

3.7.1 Indonesia

It has recently been announced that the Minister of Manpower have sought the support of several private and state-owned banks to provide credit schemes for prospective migrant workers. The intention is to establish a bank credit scheme ranging from Rp. 10 to 30 million to cover recruitment and training fees, necessary document and air tickets. The workers shall enjoy a low interest rate, and the repayment of the credit shall not overburden them and their families. The intention is to curb the current problem of migrant workers being dependent upon usurers and labour exporters in rural areas who often demand excessive interest rates.

3.7.2 Thailand

A project has been launched to establish a credit scheme with funding from the Overseas Welfare Fund to help prospective migrant workers to go abroad.

3.7.3 The Philippines

RA 8042 establishes the Migrant Workers Loan Guarantee Fund which provides inter alia pre-departure loans. The loan scheme has the aim to prevent sponsors, brokers or money lenders to take advantage of prospective migrants lacking the financial means to go overseas. Loans from the fund can be used to cover expenses such as placement and processing fees, air fares, subsistence allowances and clothing.

3.7.4 Sri Lanka

Several state banks and financial institutions have initiated schemes to grant credits to prospective migrant workers. The Sri Lanka Export Credit Insurance Corporation (SLECIC), a statutory body of the Ministry of Trade, can on certain conditions provide bank guarantees to prospective migrant workers to cover travel costs, SLBFE registration fees, visa fees etc. Due to heavy formalities and strict conditions to obtain such guarantee, few prospective migrant workers utilize the scheme.

The registration fee which migrant workers must pay to SLBFE (see paragraph 3.2.6) may be paid in subsections if the worker is unable to pay in full before departing.

3.8 ASSISTANCE TO WORKERS IN RECEIVING COUNTRIES, ASSISTANCE TO SETTLEMENT OF DISPUTES

Country	Responsible Authority	Services Provided
Indonesia	Indonesian Embassies and Consulates Labour Attachés in major receiving countries	Substantial variations, from poor to relatively good
Pakistan	Pakistani Embassies and Consulates Community Welfare and Labour Attaches in major receiving countries	Shall provide necessary assistance including dispute settlement assistance
India	Indian Embassies and Consulates Welfare and Labour Attaches posted in major receiving countries	Shall provide necessary assistance including dispute settlement assistance
Thailand	Thai Embassies and Consulates Labour Attaches in major receiving countries	Shall provide necessary assistance including dispute settlement assistance
The Philippines	Philippine Embassies and Consulates Labour offices and resource centres in countries with more than 20,000 Filipino workers, open 24 hours/day, 365 days/year, staffed with minimum 4 officers, female staff in countries with many women migrants	Counselling, information, legal assistance, welfare assistance, dispute settlement assistance, procurement of medical and hospital services, advisory programs on social integration, registration of unregistered workers, orientation programs for returning workers, shelter
	Welfare Officers in cities with many Filipino workers	Multitude of welfare and skill developing programs
	Legal Assistance Fund	Covers costs related to disputes through loans
	Emergency Repatriation Fund	Covers costs of repatriation of workers in emergency through loans,
	Migrant Worker Loan Guarantee Fund	Provides family assistance loans to tide workers and their families through diverse emergency situations
Sri Lanka	Sri Lankan Embassies and Consulates Labour attachés and Welfare Officers in countries with more than 25,000 Sri Lankan workers	Welfare initiatives, assistance to dispute settlement, legal actions regarding wages, compensation, renegotiation of contracts etc., shelter, safe houses
	Embassies in the Middle East are staffed with legal officers, female representatives and medical officers, and shall provide	Free assistance to housemaids

3.8.1 Indonesia

Indonesian embassies shall assist Indonesian migrant workers with practical problems by arranging for lawyers, give legal support, find shelter, provide health facilities etc. In reality there are huge variations in the services provided. In some receiving countries the services are acceptable and even good, whereas in other countries there is very little to be obtained by contacting the embassy. The lack of structure and regulations is probably one of the reasons for this. Furthermore, embassy consular services are often not equipped



to cope with demands from Indonesian women workers who face labour problems or abuse in their overseas jobs.

A decree initiating the establishment of so-called advocacy teams was signed in November 2003 by seven cabinet members including the Foreign Minister and the Minister for Women's Empowerment. The advocacy teams shall provide protection and legal assistance to migrant workers, help them in solving labour disputes and assist in repatriation. According to the Minister of Manpower the first phase includes the establishment of five teams in five cities in Saudi Arabia. Kuwait is the next priority. Little results have been reported yet. A similar decree was signed two years ago, but failed to bring any significant changes.

When problems occur, many migrant workers leave the employer and the country of employment without asking for any assistance from Indonesian authorities or the agent. The main reason for this is probably other migrant workers' often bad experience with Indonesian embassies and agents, which make them consider it a waste of time to ask for help.

The new law states that the Government shall provide protection to migrant workers throughout the recruitment period, during placement and after the termination of the employment contract (art. 7 and art. 72). Indonesian embassies and consulates shall provide protection to migrant workers overseas in accordance with laws and regulations (art. 78). This includes inter alia legal aid *in conformity with laws and regulations in the receiving country*, assistance in case conflict about the content of the employment contract (art. 80) and "guidance and supervision". The law gives no more details.

3.8.2 Pakistan

Community Welfare Attachés and Labour Attachés are posted in the most important Pakistani manpower importing countries. At the moment there are attachés in five towns in the Middle East and in two towns in England. The attachés shall maintain liaison with Pakistani workers in the host countries and provide them with necessary help to solve problems and assist them in settling disputes with employers through reconciliation and arbitration and if necessary through courts. Furthermore they shall promote Pakistani workers abroad and take care of the welfare of Pakistani migrant workers. In embassies without labour attachés, other staff at the embassies shall provide the same services.

3.8.3 India

All Indian missions in countries with a large concentration of Indian workers shall have a Labour Attaché and/or a Welfare Officer. In theory all possible help shall be provided to Indian migrant workers by Indian missions, including assistance to settlement of disputes by bringing the matter before the foreign employer and/or the government of the host country.

In cases where a migrant worker decides to file a complaint against the employer, she has two options: She may inform the Indian embassy in the country of employment. This is mainly done by workers lacking the means to return home. Embassy officials sometimes

seek the help and assistance of the local government to take action against the employer. The embassy shall also pass information on the complaint to the relevant Protector of Emigrants office in India (POE). If a registered recruiting agent has recruited the complainant, POE refers the complaint to the concerned agent, seeking explanation. If POE finds the explanation unsatisfactory, the case is referred to the police for investigation.

The second option is that the worker files the complaint to POE after she has returned to India. POE shall then forward the complaint to the Indian embassy in the country of employment for further action. If a registered agent has recruited the worker, the POE office seeks the agent's explanation. If the agent does not provide satisfactory explanations, the case is referred to the police for investigation.

The employer against whom the complaint has been made will be blacklisted if found guilty through preliminary investigations. This information is passed on to the relevant embassy and all registered agents in order to ensure that workers are not supplied to this employer in the future.

In reality these complaint mechanisms are not always very efficient.

3.8.4 Thailand

The Overseas Employment Administration Office (OEAO) shall protect the rights of Thai workers while working overseas, prevent labour fraud and secure the best possible terms and conditions of employment for Thai migrant workers. The responsibilities of OEAO include administering Thai workers overseas, protecting their rights, coordinating overseas employment information and responding to overseas employers' demands. Labour Attachés are located in main destination countries. Thai workers are obliged to notify the Thai embassy in the country of employment of their arrival.

The Overseas Workers Welfare Fund (see below) has been established inter alia to support and assist Thai migrant workers with any problem they may encounter in the country of employment.

3.8.5 The Philippines

Philippine embassies shall through the Philippine Overseas Labour Offices (POLOs) and the Overseas Filipino Resource Centres (FWRC), provide counselling, legal assistance and liaison services to workers in distress. POLOs and FWRCs are established in countries with more than 20,000 Filipino workers. The offices shall be supplied with a minimum of four persons, including a labour attaché, a Foreign Service officer, a welfare officer and a centre coordinator. There are usually also interpreters in the offices. In countries which are categorized as particularly problematic, the centres shall also be supplied with a lawyer and a social worker. In countries with particularly many Filipina migrant workers, the government attempts to have female labour attachés or female welfare officers. For the time being the Philippines maintains 45 Filipino labour attachés, 20 FWRCs and 34 POLOs around the world.



POLOs and FWRCs shall provide counselling and legal services in disputes, welfare assistance including procurement of medical and hospital services, information, advisory programs to promote social integration, registration of unregistered workers, human resource development, gender sensitive programs and orientation programs for prospective returning migrants. The offices shall be operating on a 24-hours basis, including Saturdays, Sundays and holidays. POLOs cooperate closely with the Ministry of Foreign Affairs and DOLE to enforce the obligations of recruitment agencies and foreign employers in respect of migrant workers' welfare.

25 foreign welfare officers (FWOs) have been deployed to key cities and provinces characterized by a dense population of Philippine migrant workers. The welfare officers shall inter alia link migrant workers and their families with relevant governmental and non-governmental organizations, conduct surveys on their needs, develop and monitor programs, devise appropriate policies, maintain an information base to respond to queries and network and collaborate with relevant governmental agencies and NGOs.

The Legal Assistance Fund shall through loans, cover all costs that may arise in any dispute in which a Filipino migrant worker is involved if the worker doesn't have sufficient means. The migrant worker must pay back the loan, but without interest. The Emergency Repatriation Fund is established to cover the costs of repatriation of workers in emergency. The Migrant Worker Loan Guarantee Fund may give so-called family assistance loans, which refers to loans granted to currently employed migrant workers or their dependents in the Philippines to tide them over during emergency situations.

3.8.6 Sri Lanka

Currently labour attachés are posted in 8 countries in the Middle East and welfare officers in 15 countries throughout the world. The intention is to have welfare officers in all countries where there are more than 25,000 Sri Lankan workers. The attachés and officers shall look after the welfare of migrant workers. When problems arise they shall take action directly against the employer or the respective government agency in order to settle them. In some countries safe houses have been set up to provide shelter to Sri Lankan migrant workers who have fled from their employers.

Victims of abuse from employers, agents or other involved parties in the host country may complain to the local Sri Lankan embassy, SLBFE or the local police. SLBFE has developed a fairly efficient system of inquiring into such complaints and at providing redress at site through the Welfare Officers or through the Reconciliation Division at SLBFE.

Sri Lankan diplomatic missions shall provide a range of services to migrant workers, including shelter to runaway workers, medical services and repatriation. The missions shall also, within the laws applicable in the relevant host country, institute legal actions to obtain payment of wages and compensation. Since January 2003, Sri Lankan embassies in the Middle East have been staffed with legal officers, female representatives and permanent medical officers to provide free assistance to housemaids.

The government’s sustained advocacy to offer a better deal for abused migrant workers has resulted in a series of progressive measures to ensure the safe return home of the worker. In the event of the worker wanting to remain, the embassy shall intervene to renegotiate the contract with the assistance of the embassy’s welfare officers.

The establishment of a Migrant Assistance Centre in close proximity to the main airport in Colombo is a measure to help the returnee in numerous crisis situations such as being forcibly repatriated, sick, injured or without money.

Although Sri Lankan diplomatic missions carry the mandate to serve the interests of the workers, embassies are often criticized for lack of interest, sensitivity and power in dealing with disputes between employers, workers and agents. The missions on the other hand are reported to be lacking staff and financial resources, and are also at times curtailed by laws, rules and regulations imposed by host countries. Plans have recently been set out by the government to strengthen the training of embassy personnel and related staff in order to give them better knowledge of and ability to solve problems faced by women migrant workers in informal sector.

3.9 PUBLIC ASSISTANCE TO REINTEGRATION OF WORKERS AND TO MEMBERS OF THEIR FAMILIES IN THE HOME COUNTRY

Countries	Assistance to reintegration	Assistance to family members in home country
Indonesia	Little or none	Little or none
Pakistan	Little or none	Little or none
India	Little or none	Little or none
Thailand	Information not available	Information not available
The Philippines	OWWA runs onsite reintegration programs in numerous receiving countries Training in development of small businesses and other self employment offered to prospective returnees Information desks on major Philippine airports	Training in development of small businesses and other self employment offered to family members in home country National network of families of migrant workers Training seminars for NGOs working with migrant workers and family members back in the Philippines
Sri Lanka	Subsidised loan scheme for investment in self employment Further services under consideration	Family development program by SLBFE and UNICEF with the aim to increase the employment rate in home villages Further services under consideration

3.9.1 The Philippines

OWWA (Overseas Workers Welfare Administration) runs onsite reintegration programs for prospective returnees in more than 20 countries and 30 major cities. Training seminars



and individual counselling are conducted to equip migrant workers with knowledge and skills that can facilitate employment on return to the Philippines. OWWA reintegration desks have been established at the most important Philippine airports and local government units to provide essential information on reintegration programs with a particular focus on informing the migrant workers and their families about socio-economic options and opportunities. OWWA has also programs for returned migrant workers which offers inter alia training in project planning, small business development, small business planning and management and skills training.

DOLE (the Ministry of Labour) has created partnership with a number of NGOs which offer business development services to returning migrant workers and their families. Several governmental credit and microfinance programs for returning migrant workers and their families have been established.

DOLE and OWWA regional offices have established a national network of Philippine migrant workers' families to serve as the voice of the sector. Through the network, migrant workers' families can be consulted and their particular needs addressed. It also serves as a mutual support system where matters of concern can be discussed, problems solved and common goals pursued.

Several NGOs offers various services to families of migrant workers and to workers heading for home. To strengthen these organizations, OWWA conducts training seminars on leadership and organizational planning.

3.9.2 Sri Lanka

A subsidised loan scheme administered by the government is available for returning migrant workers who wish to invest in self-employment activities. The loan scheme also meets other identified needs of migrant workers, such as investment in land and housing. The government finances and administers an education scholarship scheme for children of returning migrant workers.

SLBFE and UNICEF are conducting a family development program in 5 districts in Sri Lanka. The objective of this program is to help families of migrant workers to invest their savings in self-employment activities and to enable them to face difficulties they may encounter as a result of the spouse/parent/child migrating for employment.

SLBFE is in the process of considering the establishment of a social security network for families of migrant workers. Work has been initiated in three districts to identify services needed by families such as health services, educational facilities and advisory services, and to ascertain ways and means of providing these services through governmental and non governmental organizations.

SLBFE is in the process of considering facilitating self employment projects for returning migrant workers, the setting up of counselling centres in schools and the setting up of day care centres for children of women migrant workers.

3.10 WELFARE FUNDS FOR MIGRANT WORKERS

Indonesia	The Capacity Building Fund, with the mandate to cover numerous activities. In reality very limited assistance to migrant workers
Pakistan	The Workers Welfare Fund is financed i.e. by fees from workers Shall provide education, training, housing, medical facilities etc. for migrant workers and their dependants in Pakistan
India	Welfare Fund proposed in two pending bills
Thailand	The Overseas Welfare Fund No mandatory fees for workers Shall provide financial assistance to pre-departure training, on-site skill training courses, repatriation etc.
The Philippines	The Welfare Fund is financed i.e. by a USD 25 fee on foreign employers No mandatory fees for workers Shall provide various welfare activities, various loan schemes, scholarships, life- and medical insurance, death benefits, training, education, reintegration assistance
Sri Lanka	The Welfare Fund is mainly financed by fees on foreign employers No mandatory fees for workers Shall provide various welfare activities, rehabilitation programs for returning migrants, assistance to families of migrants, training of prospective migrants, assistance in the receiving country, repatriation of abused housemaids, safe houses

3.10.1 Indonesia

All migrant workers must pay a so-called assistance and protection fee equivalent to USD 15, which is to be transferred to the Capacity Building Fund. Means from the Fund shall be used on activities such as legal assistance in the country of employment, enhancement of human resources, promotion of Indonesian migrant workers abroad, assistance to migrant workers pre-departure, in the country of employment and on return home, conflict settlement assistance, repatriation of workers with various problems etc. etc. The whereabouts of the Fund are obscure due to lack of transparency and accountability.

The new law contains no rules regarding any welfare fund.

3.10.2 Pakistan

The Pakistani Welfare Fund is managed by the Overseas Pakistanis Foundation (OPF) for the welfare of migrant workers and their dependants in Pakistan. Education, training, housing, medical facilities etc. shall be organized for migrant workers and their families by OPF with means from the Fund. The Fund is financed inter alia by fees from migrant workers.

3.10.3 India

India has not yet established a welfare fund for migrant workers. Both the Emigration Amendment Bill from 2002 and the Unorganized Sector Workers Bill from 2003 (both pending) propose the setting up of a welfare fund for migrant workers. The bills' intention



is that such fund shall be utilized for meeting eventualities like transportation of stranded workers, transportation of dead bodies of workers, financial assistance to families of workers who die or become seriously ill while in foreign employment etc. No assistance shall be provided from the fund to illegal migrant workers.

3.10.4 Thailand

The help given by the Overseas Welfare Fund includes financial assistance to pre-departure orientation sessions and skill training courses and assistance to cover repatriation costs. The Fund is mainly financed by the government, recruitment agents and overseas employers. Migrant workers may contribute to the fund on a voluntary basis. Workers who are not recruited by licensed agents may contribute to the Fund in order to be entitled to the Fund’s benefits. A project has been launched to provide credit from the Fund to help prospective migrant workers to go abroad.

3.10.5 The Philippines

Filipino workers going abroad must be covered by the Welfare Fund administered by OWWA (Overseas Workers Welfare Administration). A membership fee equivalent to 25 USD per worker per year is charged on the foreign employer. The Fund finances inter alia various welfare initiatives in host countries, pre-departure and business loans, scholarships, life and medical insurance coverage, death benefits, training and education of workers and reintegration assistance. According to several NGOs, the management of the Fund is not sufficiently transparent and accountable and it is complicated to get assistance from it. Its capital and accounts are unknown to the public, including concerned groups like migrant workers and NGOs.

3.10.6 Sri Lanka

The Sri Lankan Welfare Fund is mainly financed by fees levied on foreign employers when employment contracts are signed. The Fund shall be used on welfare activities for migrant workers including training and information programs for prospective migrant workers, assistance to migrant workers abroad and their families, repatriation of abused housemaids from embassy premises, safe houses in a couple of capitals, rehabilitation programs for returning migrants and guidance and information to the families of migrant workers.

3.11 SAVINGS AND INVESTMENTS SCHEMES

Indonesia	Minuscule initiatives
Pakistan	Strong incentives to channel remittances through official channels
India	Minuscule initiatives
Thailand	Minuscule initiatives
The Philippines	Interesting schemes through state owned banks
Sri Lanka	Strong incentives to channel remittances through official channels

3.11.1 Indonesia

Little attempt has been made by Indonesian authorities to help and encourage Indonesian migrant workers to make savings, to administer their savings in an adequate way, to make suitable investments or to encourage them to use official channels for remittances. Some NGO's have initiated actions on migrants' savings, alternative investments for community development and reintegration.

3.11.2 Pakistan

The Pakistani government attaches great importance to the role of overseas Pakistanis in the economic development of the country. In this regard, a package of incentives for overseas Pakistanis who send their remittances through official banking channels has been announced by the Finance Minister. The incentives include various benefits in public education, housing and enterprise schemes. Furthermore, private banks have been directed to reorganize their arrangements for remittances to ensure outreach to labour migrants.

3.11.3 The Philippines

Philippine banks and financial institutions offer investment and savings instruments particularly adapted to the needs of migrant workers and their families. The Pag-Ibig Overseas Programme is a voluntary savings program which aims at providing Filipino overseas workers with the opportunity to save for their future and to make housing mortgage available. The Development Bank of the Philippines' Kinabukasan Investment Certificates (KIC's) is a saving mechanism where redemption values can be used inter alia to finance tuition fees of migrant workers and their families and hospitalization costs. Purchase of certificates entitles every certificate holder to a life insurance coverage equivalent to the amount of the certificates purchased.

3.11.4 Sri Lanka

Local banking representatives participate in the pre-departure training to raise awareness of remittance management options and subsidized loan schemes. Sri Lankan bank representatives are posted overseas in locations where large numbers of Sri Lankans are employed. They shall help in the processing of remittances and provide guidance and support to the remitter. The linking up of housing loan facilities to non-resident foreign currency accounts, attractive lottery and gift schemes and aggressive promotional campaigns have ensured that savings to a large extent are channelled through formal channels.

3.12 SPECIAL REMARKS ON THE PHILIPPINES AND SRI LANKA

3.12.1 The Philippines

Some considerations concerning the Philippines' policy on women migrant workers made in a report by Patrick Sakdapolrak named Protection of Women Migrant Workers: Policies



of Selected Sending and Receiving Countries made for the World Bank, Jakarta recently, are worth quoting:

“Migrants from the Philippines are comparatively better-off than their counterparts from other countries. The Philippines has enacted a law that seeks to comprehensively protect rights and welfare of migrant workers throughout the process of migration. The particular better conditions of Filipina foreign domestic workers in receiving countries can be addressed to 4 main points.

Firstly, the POEA (Philippine Overseas Employment Administration) sets up certain requirements for women who want to work as a foreign domestic worker including restriction on age, requirements on qualifications and language proficiency. They have to undergo a pre-departure educational and preparation program similar to the foreign domestic workers from Indonesia. The Filipinas nevertheless get more substantial and detailed information about inter alia their rights under the employment contract so that they are overall better prepared and empowered for employment overseas.

Secondly, the review of receiving countries’ policy has shown that the employment contract is the only mean by which the employer is legally bound to the domestic worker. The terms in the contract builds the base on which foreign domestic workers can make claims. Thus the POEA seeks to ensure certain standards for the contract of domestic workers. It does so by centrally process female domestic workers and by requiring employers to register, sign and authenticate the employment contracts with the relevant foreign mission of the Philippines.

Thirdly, the Philippines seek to ensure the protection of its workers overseas through bi-lateral agreements. It has done so with a large number of countries.

Lastly, the Filipino Labour Centres in major receiving countries are required by the RA 8042 to assist their nationals. They do so not only by providing reactive help for migrant workers already in distress, including services such as legal assistance, dispute counselling, temporary shelter etc. Besides this the Labour Centres also provide proactive means including welfare and information services such as information for arriving migrants and returning migrants, human resource development, reintegration preparation, cultural and sport programs. These services not only empowers the workers and enhance their skills, it also provides a possibility for workers to build networks with fellow migrants. This is especially important in countries like Saudi Arabia where there are few possibilities for the migrants to do so.”

Relevant parts of the conclusions in a report by inter alia Tita Naovalitha and Farida Sondakh (Migrant Worker Team, World Bank, Jakarta) after a study trip to the Philippines in June 2003, are also worth quoting:

“In spite of the fact that the government and the NGOs have developed clear mechanisms to support and protect overseas female workers, violations of their rights still occur. According to many NGOs, responses by governmental agencies (POEA and OWWA) to overseas female workers’ cases are slow and sometimes not sufficient. But even though violations still happen and the services are not optimum, government services for migrant workers along with NGO participation could decrease the level of violations of overseas female workers.

In spite of the shortcomings, there are a number of things that Indonesia could do with reference to the Philippines: pass a law on the protection of migrant workers, form independent institutions like POEA and OWWA to give proper services for migrant workers, establish a trust fund like the OWWA Trust Fund to be used for various activities such as to protect migrant workers, increase their welfare and support Indonesian embassies in providing services for overseas female workers, establish Indonesian migrant resource centres like the Philippine’s FWRC offices and POLO offices and establish a network between the government, relevant NGOs in Indonesia, relevant NGOs in host countries and Indonesian communities in host countries in order to support migrant workers.

On the other hand, Indonesia should develop their own recruiting and training mechanisms that would fit for Indonesian migrant workers who have different basic capacities than the Filipina migrant workers. Unskilled female workers with low educational background dominate Indonesian migrant workers, which must be taken into consideration when reorganizing the recruitment process and pre-departure training. Indonesia should also develop their own program aimed at enhancing migrant workers’ and their families’ capacity to manage their remittances for productive use.”

3.12.2 Sri Lanka

In a recent ILO case study on Sri Lanka it is pointed out that most Sri Lankan migrant workers share similar views and levels of knowledge on government initiatives and programs. Despite the government’s initiatives on inter alia standard contracts and control of recruitment agencies, workers have little concern over these issues and therefore pay little attention to them. Although workers are aware of standard contracts, the contract is often composed by the recruitment agent on the request of the worker. Exploitation by recruitment agents by charging exorbitant fees, creating wage differences and the lack of proper working conditions and employment terms have not been a cause for collective agitation or advocacy among the workers, although there is an awareness of the problem. There is certainly also a level of passive acceptance regarding these issues in that they are being considered as a part of the trade.

On asking migrant workers about their experience with different governmental initiatives, many acknowledged the initiatives of the government to protect migrant workers from going into exploitative situations. But, both male and female workers feel that the authorities could be more assertive in negotiating with host countries on workers’ rights



for minimum wages and more conducive work conditions. The portraying of Sri Lankan housemaids as the cheapest in the market has created a false image detrimental to the workers. They can not overcome this low status image since the government authorities have failed to negotiate for higher minimum wages.

In Concluding Observations by the UN Committee on the Elimination of Discrimination against Women, 2002 it is said: *“The Committee is concerned about the increasing number of women who migrate from Sri Lanka in search of work and find themselves in situations where they are vulnerable. Despite the protective measures taken by the State party, including mandatory registration and insurance coverage, these women are often subject to abuse and sometimes death. The Committee urges the State party to ensure the full and effective enforcement of the measures taken to protect women migrant workers, including preventing the activities of illegal employment agencies and ensuring that insurance covers the disabled and jobless after they return to Sri Lanka”.*

3.13 CONCLUDING COMMENTS

The Sri Lankan and Philippine legislations and policies on migrant workers are predominantly comprehensive and logical, and include a number of efficient tools to assist and protect migrant workers. Both countries’ legislation and policies may serve as a reference framework when elaborating new structures in Indonesia. It is however necessary to bear in mind that not all the Philippine and Sri Lankan initiatives have turned out to be all that successful.

Despite detailed regulations in some of the six countries, migrant workers continue to experience overcharging of fees, non-appearance of jobs and other forms of swindle from recruitment agents and related personnel. Prospective migrant workers from all six countries also experience the negative consequences of the presence of huge numbers of unlicensed recruitment agencies and different kinds of middle men. Taking into consideration the moderate results achieved by the other countries with regard to coping with corrupted recruitment agents and middle men, a copying of these countries policies on recruitment agencies will not by itself necessarily lead to any improvement in Indonesia. It is instead reason to think alternatively on how such bad practices may be limited. The establishment of viable trade unions and the implementation of principles on public supervision could be powerful supplements in the struggle for a better system. This will be elaborated in paragraph 5 and 6 below.

Philippine legislation states that victims of illegal recruitment are entitled to free legal assistance and protection by the witness protection program. A similar rule should be considered implemented in Indonesia legislation.

Adequate training of prospective migrant workers is essential in order to make the worker fit for the work and able to protect her own interests. A worker who is both able to perform a decent job and is aware of her own rights and duties, is obviously much better fit for the tough surroundings meeting many migrant workers, than a poorly trained and poorly informed worker. Both the Philippines and Sri Lanka seem to have adequate training programs for

migrant workers. The Sri Lankan model seems to be particularly effective for prospective women migrant workers in informal sector and of particular relevance given the similarity between Indonesian and Sri Lankan women migrant workers in terms of level of education and lack of foreign language skills. The Sri Lankan policy on training of women migrant workers should therefore be studied more closely, in order to get inputs to a strongly needed improvement of the training of Indonesian women migrant workers. The result of this may for instance be an initiative to establish pilot projects on better training through NGOs in cooperation with Indonesian authorities, recruitment agencies and their interest organizations in order to improve the quality of the training offered to migrant workers. The Philippine rule implying that only NGOs are allowed to conduct the training/briefing of women migrant workers in informal sector should also be considered.

Prospective Filipina migrant workers in informal sector must be fluent in English or the language of the country of employment before going abroad. Adequate knowledge of a relevant foreign language is undoubtedly an important guarantor for a migrant worker. As English is the formal language of the Philippines and prospective migrant workers are more or less fluent in English even before planning to work abroad, the rule does not imply any particular obstacle for the prospective migrant worker. The implication of a similar rule in Indonesia would however be that most prospective migrant workers in informal sector never could work abroad. Any initiative here is therefore not recommendable.

As concerns social security, the mandatory insurance scheme introduced in 2003 seems adequate. Some problems remain though. The fact that insurance policies only may be acquired through insurance companies licensed by the Minister of Manpower is not a good system. This solution is however under reconsideration. The most striking problem seems however not to be the complicated insurance scheme as such, but that the migrant workers have little understanding of the importance of a proper insurance coverage and of the procedures to follow in order to receive compensation. Initiatives to raise women migrant workers' understanding of the insurance scheme might therefore be useful.

The lack of legal enforceability of employment contracts is a major problem for migrant workers. Employers and agents feel free to treat migrant workers as it pleases them, without any fear of legal sanctions. With a legally enforceable contract, the migrant worker is enabled forcefully to negotiate with the employer or the agent, and may eventually bring the conflict to court. The Indian Emigration Act establishes that a licensed recruitment agent shall be under the obligation to guarantee that his clients' employment contracts are enforceable by the labour laws of the country of employment. The implementation of a similar protective measure in Indonesian legislation should be considered.

The possibility of introducing standard contracts for Indonesian women migrant workers in informal sector should be studied closer, taking into consideration the experiences made by the Philippines and Sri Lanka.

The issues of legally enforceable contracts and standard contracts must be viewed in context with the need for more and better bilateral agreements / MOU's with receiving countries (see chapter 8).



Considering both the recent initiative by the Indonesian Ministry of Manpower and the risk for new and corrupted practices, it is not recommendable to lobby credit schemes for prospective migrant workers for the time being. Initiatives relating to such schemes might be relevant when other mechanisms to protect migrant workers have been improved and when the results of the Ministry of Manpower's initiative are seen.

The services rendered to Sri Lankan and Filipina migrant workers in the countries of employment are considerably much better than the services given to Indonesian migrant workers abroad. The organizing of the services given to Sri Lankan and Filipina migrant workers should be studied further. A particular focus should be put on the following three issues, with the aim to produce proposals to Indonesian authorities and to promote them through lobbying and political dialogue:

- a) The Sri Lankan solution, that victim of abuse from employers, agents or other involved parties in the host country may complain to the local Sri Lankan embassy or to SLBFE, which shall provide redress.
- b) The Sri Lankan initiative to have female representatives, permanent medical staff and legal officers in the embassies in the Middle East providing free assistance to housemaids.
- c) The organization of the Philippine POLO offices, which shall provide inter alia counselling, legal services, welfare assistance including procurement of medical and hospital services, programs to promote social integration and orientation programs for returning migrants and which shall be operating on a 24-hours basis every day.

Initiatives to raise the awareness of members of Indonesian Foreign Service for the situation for migrant workers and their various needs of assistance might be useful. Such awareness rising must be done in cooperation with the Ministry of Foreign Affairs. An initiative to establish cooperation with the Ministry on this topic should be considered. Such initiative must be seen in context with the project intended to develop systems for inter alia legal and counselling services and medical referrals at Indonesian foreign missions described above.

The establishment of an Indonesian fund similar to the Philippine Legal Assistance Fund, which through loans shall cover all costs that may arise in any dispute in which a Filipino migrant worker is involved if the worker doesn't have sufficient means, is not yet recommendable in Indonesia due to the risks of new corrupted practices.

Both the Philippines and Sri Lanka offer considerably much better services to their returning migrant workers and their families than Indonesia. The Philippine services are particularly interesting. The Philippine programs on reintegration should be studied further. A particular focus should be put on the following two topics, with the aim to produce proposals to Indonesian authorities and to promote them through lobbying and political dialogue:

- a) OWWA's onsite reintegration programs, including training seminars and individual counselling in the receiving countries.
- b) The establishment of a national network of Philippine migrant workers' families to serve as the voice of the sector, established by DOLE and OWWA's regional offices.

As concerns the Capacity Building Fund, it should be considered to intensify the interrogation of its whereabouts, accounts and budgets in order to make sure that the relevant governmental authorities are not allowed to relax.

The background information on savings and investment schemes in the six countries is sparse. It is therefore not possible to recommend particular initiatives or solutions.



THE LAW ON THE PLACEMENT AND PROTECTION OF INDONESIAN WORKERS OVERSEAS

4

4.1 THE NEW LAW

The mandate for a new law on the protection of Indonesian workers overseas and their families is enshrined in the recommendation of the President at the annual People's Assembly in 2002 to speed up the passing of a law and to amplify efforts to push for bilateral agreements with destination countries to protect migrant workers' rights. A bill elaborated by Committee No. 7 of the DPR in close cooperation with the NGO alliance Kopbumi, the University of Brawijaya and the Ministry of Women's Empowerment was presented to the DPR more than two years ago. The President's approval of the bill to be deliberated by the DPR was given in the end of June this year. The new Law on the Placement and Protection of Indonesian Workers Overseas was endorsed by the DPR on 29 September this year. The endorsed law is substantially different from the draft bill in that it provides far less protection for the migrant worker. The law has not yet entered into force. It is unclear when this will happen.

The law is to a great extent based on institutions and solutions which already exist. The law offers very limited protection to migrant workers. The few rules on protection are extremely general, and it is difficult to see how any governmental body might consider itself responsible for helping the individual migrant worker asking for assistance.

The Government is given the authority to regulate as well as to implement and supervise the migrant worker policies. The law has no rules regarding public supervision, participation of non governmental bodies or other forms of external control of the enforcement and implementation of the law.

The law covers all kinds of Indonesian workers overseas, also workers in informal sector. The law does not formally exclude migrant workers who are not recruited through licensed agents. The limited services to prospective migrant workers before departure are however mostly procured by licensed recruitment agents. Prospective migrant workers who are not recruited by a licensed agent are thereby implicitly excluded. The law does not give any right to protection and assistance for undocumented/illegal migrant workers.

The law requires prospective migrant workers to possess a minimum of secondary school education or equivalent. Female labour force, particularly in rural areas, is mostly preliminary school graduates or dropouts. Working abroad in informal sector has been one of the very few opportunities to improve their and their families' living standards. The requirement of minimum secondary school will either lead to a worsened living standard for these women or encourage forging of documents and identities and in turn motivate them to be illegal workers.

The legislator has not taken into consideration the problems caused by poor economic background, which is also usually the case for women migrant workers in informal sector. An example here is the necessity for the workers to finance various documentations. To be a migrant worker a person must possess a Foreign Registration Card, which requires a number of supporting documents (art. 62). There is no clarification as to the cost ceiling. The law (art. 100) states that failure to produce and finance these documents, leads to the cancellation of departure or to the repatriation at the worker's own expenses.

The draft bill contained several rules which could lead to a better situation for migrant workers: other concerned agencies and institutions could be members of the control body for migrant workers policies; the public should be entitled to carry out supervision on the placement operations of workers "in case of breach of the Operating Body that has caused loss against workers" - which would have increased the possibilities for inter alia the media, NGOs, governmental bodies and engaged individuals to execute pressure on public authorities; a Protection Fund for Migrant Workers should be established with means derived from operators, the governmental budget and district and town budgets, but not from migrant workers, and which could only be used for the protection of workers. The draft bill furthermore contained far more specific rules on what kind of assistance migrant workers were entitled to and from whom.

4.2 STATEMENTS OF NGOS TO THE NEW LAW

The Coalition of Pro-Indonesian Migrant Workers, consisting of members from the strongest NGOs on the migrant worker area, has launched a joint declaration and a legal analysis on the new law. The declaration states that the law is unacceptable because its provisions are not protective towards Indonesian migrant workers, requests the government to immediately issue a Government Regulation in lieu of the law in order to delay its promulgation and request the government within the period of the suspension of the law to prepare a new draft law. The legal analysis inter alia points out that the law is based on a "wrong mind construction", where human labour is considered as a mere commodity and where the need for protection of individuals has been neglected. The Coalition has declared that it will submit a draft law to relevant authorities within four months.

4.3 EVALUATION OF THE NEW LAW

The law implies a highly needed tidying up in a chaotic legal structure, but does not imply any improvements for migrant workers, rather the opposite. It seems that the placement focus has been much stronger than the protection focus when the final version of the new law was elaborated. This may not be a surprise bearing in mind that the recruitment business is big business. If the law enters into force without major changes, it will imply another step backwards for Indonesian migrant workers.

The question is then whether it is feasible to get a law with an acceptable content through article by article changes, or whether only the adoption of a new law is acceptable. In many



countries with strong democratic traditions and elaborate social protection systems, laws and ministerial regulations may often be quite general and unspecific. The assistance and protection given to every citizen, rich or poor, are all the same acceptable or even good seen from the demanders' point of view. The reason for this is probably the cultural and historical background and all the control mechanisms which exist parallel to these laws and regulations, such as public supervision of public authorities (i.e. the individual's right to obtain all kinds of information from public authorities), strong trade (labour) unions, a strong and free press etc. etc. No public authority would dare to interpret laws and regulations in a manner which would unacceptably harm the individual. In Indonesia, where democratic values are so new, where control mechanisms are sparsely elaborated, and where the enforcement of existing laws has been less than satisfactory, it is maybe reason to be sceptical to a law with very vague definitions of the individual's rights, such as is the case with this new law.

On this background it is reason to consider working for a comprehensive alteration of the legal framework, preferentially through the elaboration of a new law. What form such effort should take depends on the resources. It is worth considering supporting the work of the Coalition of pro-Indonesian migrant workers (see paragraph 4.2 above), which has stated that it will elaborate a new draft bill within four months.

5 TRADE UNIONS

5.1 THE ESTABLISHMENT OF TRADE UNIONS FOR WOMEN MIGRANT WORKERS

Throughout history, organizing in trade unions has proved to be the most efficient way to improve working conditions and salaries for all kinds of workers. During the industrial revolution in Europe in the 19th century, the common workers' working conditions and salaries were generally deplorable and working hours extensive. Little by little labour organizations were established by frustrated workers and a gradual improvement of working conditions and salaries were to be seen. Today, it is unthinkable for many workers throughout the world to not be organized, as it is considered to be the only genuine safety mechanism they can rely on. This is especially the case in developed, rich, well functioning, democratic countries. The experience is that when many people with common interests unite, the collective becomes considerably much stronger than the sum of individuals, fighting for his or her own interests alone.

Indonesia is member of the central ILO conventions on trade unions, implying that there are no legal barriers for establishing such organizations.

Indonesia has an abundance of, but few strong, trade (labour) unions. There are also abundances of small trade unions established by women migrant workers in informal sector, but neither of them is strong, and they tend to use more energy on fighting each other than on fighting for the rights for their members. This indicates that external initiative and assistance is needed.

If Indonesian women migrant workers in informal sector were able to establish a trade union tailored for their particular interests, with a creative and motivated leadership and with sufficient initiative to attract the interest of many migrant workers, this could be the first major step towards a better situation for the workers. Many women united under a good leadership would be a force to take into consideration, in contrast to the current situation, where numerous powerless individuals have no ability to be heard or seen by the authorities.

Due to their lack of experience and a possible passive attitude, women migrant workers will most certainly need assistance to establish such an organization. This could be done through training and guidance, and through assistance to the establishment of a pilot project in one region or town in Indonesia, which eventually could lead to the establishment of a trade union for women migrant workers. The objective for such an organization must be to attract sufficient members to constitute a strong and powerful group, be able to formulate demands and negotiate with public authorities, recruitment agencies etc. The union's activities might in the long run be expanded to include services such as training schemes, insurance schemes, loan schemes etc. It is also reason to believe that the involvement of the women migrant workers themselves in the establishment and running of a trade union would create the feeling of ownership, which undoubtedly will be beneficial to the organization.



5.2 SEWA – THE SELF EMPLOYED WOMEN’S ASSOCIATION

Inspiration and ideas to the establishment of a successful trade union can be found in the history of SEWA – the Indian Self Employed Women’s Association. SEWA was established as a trade union in 1972, and has today **more than 3 million members**. The union is open for membership to self-employed women workers all over India. The membership fee is minuscule. It is an organization of poor, self-employed women workers. These are women who earn a living through their own labour or small businesses, who have no fixed employee-employer relationship and depend on their own labour for survival. They are poor, vulnerable and often illiterate. They have no welfare benefits like workers in the organized sector.

SEWA’s main goal is to organize women workers for full employment, meaning employment whereby workers obtain work security, income security, food security and social security, including at least health care and child care. Even though SEWA has no particular activities related to women migrating for work overseas, many focal points are similar, such as the background and working conditions for its members. SEWA organizes workers to achieve their goals through the strategy of struggle and development. The struggle is against the many constraints and limitations imposed on them by society and the economy, while development activities strengthen women’s bargaining power and offer them new alternatives.

SEWA has helped women take a number of initiatives in organizing savings and credit services, health care services, child care services, insurance schemes and legal aid. The services are provided in a decentralized and affordable manner. They have also become a source of self-employment for some of the women. The insurance scheme was established in 1992 to assist members in times of crises. In 1993, 32,000 members were covered through an annual individual premium of Rs 60 (about USD 2). This gave them some protection against the various crises that continuously threaten their lives and work. An additional Rs 15 per annum ensures that their husbands get life insurance. SEWA is also providing legal education and support in court cases and is running a legal advisory centre. Further information can be found on www.sewa.org.

5.3 CONCLUDING COMMENTS

It would benefit women migrant workers in informal sector if they were able to establish a strong trade union. Due to their lack of experience and a possible passive attitude, they will most certainly need assistance to establish such an organization. Such assistance could be given in the form of training and guidance, and through assistance to the establishment of a pilot project. The objective for such an organization must be to attract sufficient members to constitute a strong and powerful group which is able to formulate demands and negotiate with public authorities, recruitment agencies etc. The union’s activities might in the long run be expanded to include services such as training schemes, insurance schemes, loan schemes etc.

6 PUBLIC SUPERVISION / THE PUBLIC'S ACCESS TO CASE DOCUMENTS IN PUBLIC ADMINISTRATION

6.1 INTRODUCTION

The terms “public supervision” and “the public’s access to case documents in public administration” are used as synonyms in this paper.

One of the major reasons why so many Indonesian citizens experience absence of legal rights and unsatisfactory attitudes and activities by public authorities is that there are few or no efficient mechanisms or sanctions which can be used by the public to stop such bad practices. This is also the case for women migrant workers. As mentioned before in this paper, Indonesian rules, regulations, governmental programs etc. are in most cases satisfactory seen from a pure theoretical point of view. What lacks is the ability for the little man or the little woman to be heard if they not obtain the rights they are entitled to.

A keyword to change this situation is *control*. Control can be executed in many ways, inter alia through public knowledge and engagement. If many people become aware what is actually taking place and confront relevant public authorities with their findings, it is more likely that relevant authorities will see it as necessary to improve. Even more so if the press gets interested in the case. An efficient way to execute such control is through public supervision or the public’s right to access case documents in public administration.

The right for the public to access information from public authorities has an essential role to play in the structure of a ripe democratic country. Through the exercise of this right, the public will be able to play a significant role in public decision-making and exercise control over governmental agencies. One of the essential aspects connected with the right to access information is public participation. Full public participation requires transparency. A lack of transparency on the part of the government hampers public participation and the accommodation of the public’s views.

The right for the public to access information from public authorities may inter alia include the right to read correspondence, minutes from meetings, project outlines, decisions, budgets and accounts from all kind of governmental institutions. The right must of course have certain limitations.

Initially, it will probably not be the average migrant worker who will utilize the right to public supervision, but rather bigger and stronger entities such as NGOs, newspapers and magazines, television channels, intergovernmental organizations and engaged and strong individuals. In the long run it is a fair chance that also the individual migrant worker or migrant workers’ associations will see the benefits implied in such regulation and use it themselves.



6.2 PUBLIC SUPERVISION IN INTERNATIONAL LAW, INDONESIAN AND NORWEGIAN LEGISLATION

The right to access and obtain information is an internationally recognized human right, and is enshrined in article 19 of the International Convention on Civil and Political Rights. This right is also accommodated in article 28F of the Indonesian Constitution of 1945, which reads as follows: "Every person shall enjoy the right to communicate and obtain information for the purposes of personal and social development, and the rights to seek, obtain, possess, keep, manage and convey information through whatever channels may be available for such purposes".

To date, Indonesia still lacks specific legislation and regulations that guarantee the public's right to access information. While a number of laws and regulations touch on this area and provide rights in particular fields of governance, studies show that the way in which these rights are accorded depends greatly on the attitudes of the public servant involved. There are some agencies and institutions that readily provide access to information, while others seem to regard all sorts of information as being top secret. This divergence has probably arisen as a result of a lack of legal clarity over which type of information must be categorized as being secret and which type should be made available to the public.

The lack of access to information on the migrant workers rights' arena hampers the possibility of individuals, NGOs, the media and other actors to fight efficiently for the amelioration of these rights. If for instance interested newspapers or NGOs were given access to the government's correspondence, minutes or accounts relating to the protection of migrant workers, there could be much more public participation and thereby pressure on the government to make a substantial effort.

A draft Bill on the Freedom of Public Information was introduced to the DPR as a private member's bill on 21 March 2002, but has since then made little progress in the national legislature. The bill covers the public's right to information on some public activities, correspondence, programs, initiatives etc. In the publication "Law Reform Policies, Recommendations" from the National Law Commission of Indonesia dated December 2003, it is recommended to include more detailed and explicit guarantees upholding the right of access to public and legal information. Furthermore the Commission recommends the DPR to take immediate action to accelerate the adoption of this highly important bill.

The Norwegian act of 19 June 1970 No. 69 relating to public access to documents in public administration (annexed) is by international legal experts considered as one of the most important safeguards for the protection of a well functioning democracy in Norway and as a model act for other countries. By this law the public has been able to play an important role in public decision-making and in exercising control over the government.

The act decides that public administration case documents are public unless clearly stated in the same act. The most important exceptions are documents drawn up by an administrative agency for its internal preparation of a case, documents containing information which, if it were to be disclosed, could be detrimental to the security of the realm, national defence or

relations with foreign states or international organizations. Furthermore information that is subject to a duty of secrecy imposed by or pursuant to statute is exempted from public disclosure.

Neither of the other countries legislation on migrant workers evaluated in this paper has specific rules concerning public supervision.

6.3 CONCLUDING COMMENTS

The public's right to access information from public authorities has an essential role to play in the structure of an established democratic country. Through the exercise of this right, the public will be able to influence public decision-making and exercise control over governmental agencies. Full public participation requires transparency. A lack of transparency on the part of the government hampers public participation and the accommodation of the public's views. On this background the implementation of public supervision principles in Indonesia should be considered, both for the benefit of migrant workers' rights and for the benefit of the democracy as such. This may inter alia be done through the monitoring of the adoption of the draft Bill on the Freedom of Public Information.



INTERNATIONAL CONVENTIONS 7

7.1 THE UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Indonesia	Not signed
Pakistan	Not signed
India	Not signed
Thailand	Not signed
The Philippines	Ratified in 1995
Sri Lanka	Ratified in 1996

The Convention entered into force on July 1, 2003. Below is a resume of main articles in the convention:

The convention is applicable during the entire migration process (art.1 no.2). Migrant workers and members of their families are entitled to effective protection by the country of employment against violence, physical injury, threats and intimidation by public officials, private individuals, groups or institutions (art.16 no.3). It is unlawful for anyone other than a public official duly authorized by law, to confiscate identity documents or documents authorizing entry or stay in the country of employment (art.21). Migrant workers and members of their families shall have recourse to the protection and assistance of consular or diplomatic authorities of their country of origin (art.23).

Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the country of employment in respect of remuneration, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice are covered by these terms. Migrant workers shall have the right take part in meetings and activities of trade unions and of any other associations established in accordance with law (art. 26).

Migrant workers and members of their families shall enjoy the same rights to social security granted to nationals provided that they fulfil the requirements in the applicable legislation and bi- and multilateral treaties (art. 27 nr. 1). Migrant workers and members of their families have the right to receive medical care urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the country concerned. Emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment (art. 28).

The convention primarily places the responsibility for the migrant worker's welfare on the receiving state. It would undoubtedly be advantageous for Indonesian migrant workers if all receiving countries were parties to the convention.

There is no indication that Indonesia is planning to sign the convention in the near future. The

civil society organization Convention Watch and the NGO Komnas Perempuan are lobbying the ratification of the convention in Indonesia.

7.2 THE UN INTERNATIONAL CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Country	The Convention	The Optional Protocol
Indonesia	Ratified	Signed on February 28, 2000 Not yet ratified
Pakistan	Ratified	Not signed
India	Ratified	Not signed
Thailand	Ratified	Ratified
The Philippines	Ratified	Ratified
Sri Lanka	Ratified	Ratified

The convention sets out rules that are aimed at securing the political, social, economical and cultural rights of all women, inter alia in the field of employment and social security. An optional protocol to the convention establishes the Committee on the Elimination of all forms of Discriminations against Women. The committee monitors states parties' compliance with the convention and receives and considers complaints from individuals or groups within its jurisdiction. Both the convention and the optional protocol have entered into force.

The following statement was made by the UN Rapporteur on Human Rights for Migrant Workers on a regional summit in Colombo in 2002: *"A gendered approach to the problems experienced by women migrant domestic workers is absolutely imperative. This will ensure that women are at the centre of attention for all stakeholders and that they are at the centre of the decision making. A gendered approach also means that the domestic sphere is opened to public scrutiny. The home is recognized as a workplace and those employed within the home are protected in terms of their rights as human beings, as workers and as women. Work related strategies must ensure that the home is no longer a sanctuary for human rights violators."*

7.3 CONCLUDING COMMENTS

It would benefit both Indonesia and Indonesian migrant workers if Indonesia became member of the UN International Convention on the Rights of All Migrant Workers and Members of their Families. Indonesia's membership in the convention should therefore be monitored.

The UN International Convention on Elimination of All Forms of Discrimination against Women is relevant for women migrant workers. Indonesia's membership in the convention should be used to advice Indonesian authorities to improve the policies on women migrant workers. Furthermore Indonesia should be encouraged to ratify the optional protocol in order to enhance international scrutiny of its fulfilment of the obligations in the convention.



BILATERAL AGREEMENTS AND MEMORANDUM OF UNDERSTANDINGS

8

8.1 INDONESIA

Indonesia, though one of the largest origin countries of migrant workers, does not have strong bilateral agreements or MOU's (in the following referred to as agreements) concerning migrant workers with any of the important destination countries. The apparent lack of legal protection in most receiving countries makes more and better agreements necessary.

An agreement between Indonesia and Malaysia was signed in May this year, and negotiations are proceeding with South-Korea and Taiwan. The agreement with Malaysia requires migrant workers to have certain qualifications in accordance with their respective fields of work. Furthermore Malaysian employers will be required to hire Indonesian migrant workers directly from authorized Indonesian recruitment agencies and pay the workers at least the prevailing Malaysian minimum wages of about 260 USD a month. The agreement also institutionalizes that Indonesian migrant workers must be covered by a health insurance policy which must be presented to Indonesian immigration officers prior to embarkation. The agreement pays no particular attention to the protection of women migrant workers in informal sector. The contents of the two agreements presently negotiated are not disclosed.

The NGO Kopbumi (the Indonesian Migrant Workers Consortium) has for some time been lobbying the government to enter into bilateral agreements with other countries to protect the rights of Indonesian migrant workers. The NGO GPPBM has taken initiatives to formulate a draft bilateral agreement and draft standard contract for the protection of Indonesian migrant domestic workers in Saudi Arabia.

8.2 PAKISTAN AND INDIA

It has not been possible to find information on agreements entered into by Pakistan and India with receiving countries.

8.3 THAILAND

Thailand has bilateral agreements regarding migrant workers with Malaysia, Taiwan and Japan, and is working on the conclusions of a similar agreement with Qatar.

8.4 THE PHILIPPINES

The Philippines has concluded labour agreements with at least 12 receiving countries. Most agreements with Middle East countries aim at promoting and strengthening areas of cooperation in field of labour, employment and manpower development, enhancing the

welfare and well-being of workers and protecting workers' rights. Agreements with European countries are more focused. For instance, the agreement with Switzerland involves the exchange of professionals and technical trainees for short-term employment, whereas the agreements with United Kingdom and Norway aim to facilitate the recruitment of Filipino health professionals. The agreement with Taiwan was implemented to enable employers to hire Filipino workers without the intervention of labour recruitment agencies from the Philippines or Taiwan.

Although bilateral labour agreements have proven to be effective in addressing issues and concerns affecting the employment of migrant workers, it takes time to develop and implement these agreements. In recent years the Philippines has veered away from adopting general agreements and worked towards the adoption of more focused and specified agreements, which are easier to negotiate and put into operation with host countries.

8.5 SRI LANKA

The Sri Lanka Bureau of Foreign Employment Act sets out that in order to promote and develop employment opportunities for Sri Lankans outside Sri Lanka, SLBFE may enter into agreements with foreign governments, foreign employers and employment agencies. So far, no bilateral agreement has been concluded. Negotiations are said to be in progress with a few countries. The government considers introducing some kind of code of conduct between Sri Lanka and countries which are important receivers of Sri Lankan women migrant workers.

8.6 CONCLUDING COMMENTS

Bilateral agreements which effectively protect the rights of migrant domestic workers may be difficult to obtain because of the unequal positions of origin and destination countries. It should however be considered to try to convince Indonesian authorities of the value of negotiating agreements with receiving countries. When promoting such agreements, the need for legal protection of migrant workers in receiving countries should be emphasized. Furthermore, agreements should focus on free and adequate healthcare in the receiving country, and possibly also decisions on minimum salary for workers. It could be advantageous to learn from the Philippine experience of negotiating quite specific agreements.

Such initiatives should be coordinated with initiatives to elaborate contracts of employment legally enforceable by the labour laws in the receiving country and the introduction of standard contracts (see paragraph 3.13).



SUMMARY 9

Deceived and abused women migrant workers can be found in all the six countries of comparison, also in those countries where the government policy, rules and regulations are deemed satisfactory. The multitude and magnitude of problems faced by migrant workers are not always a result of insufficient protection mechanisms or abusive recruitment agents and employers. It will always represent a challenge to work in the home of a family whose language, culture and attitudes are different. This involves in itself a conflict potential. The difficulties are sometimes caused by the worker herself. The problems can also be a consequence of insufficient education, limited knowledge of foreign languages, patriarchal traditions and a background of poverty and unemployment, which implies that many workers are willing to accept conditions and risks which would have been unthinkable for workers in a stronger position.

Labour exporting countries must carefully balance between promotion of overseas employment and protection of their migrant workers abroad. As the labour market for migrant workers in informal sector is the buyer of labour's market, it is worthwhile to bear in mind the inevitable fact that an upper limit exist for how favourable the conditions and legal protection for women migrant workers in informal sector can be before they start to loose their international competitiveness. In a speech by UN Special Rapporteur on the Human Rights of Migrants in 2002, it was noted that as Filipina domestic workers had been enabled to ascertain their rights, their competitiveness in the export labour market was perceived to have decreased, thus resulting in fewer jobs. This should however not prevent the progressive moves from rolling ahead. There is indeed broad space for improvements in Indonesia before this limit is touched. The best long term solution to unemployment and poverty is however sustained growth of the national economy, which could ensure a choice of opportunities at home.

The current Indonesian system set up to monitor and assist women migrant workers in informal sector, is modest given the dimension of problems faced by these women. The regulatory system and management capacity does not provide an adequate framework to protect women migrant workers. The initiatives taken by the government so far, turns out to have limited value, since migrant domestic workers continue to face harassment, exploitation and abuse throughout the process.

The work being done by many Indonesian NGOs is fundamental for the amelioration of the situation for Indonesian women migrant workers.

As shown above, Sri Lanka and the Philippines have achieved much better results in protecting their own migrant workers than Indonesia, Pakistan, India and Thailand. As mentioned in chapter 1, the corruption level in Sri Lanka in particular is considerably lower than in Indonesia. It is reason to believe that there is a clear linkage between the level of corruption and the level of protection for migrant workers in a country.

The level and quality of protection for migrant workers in Sri Lanka and the Philippines can be difficult to achieve in Indonesia even if Indonesia makes the same efforts and priorities, before there have been made considerable achievements in the fight against corruption. The fight for better conditions for Indonesian migrant workers may such bee seen as part of the process towards the eradication of corrupt practices and the achievement of good governance.

The overall impression of the Philippines' and Sri Lanka's policies and laws on women migrant workers is that they are both in structure and substance, comprehensive, systematic and professional. There have been made thorough efforts to protect Filipina and Sri Lankan women migrant workers in informal sector. The legislation, policies and achievements of both the Philippines and Sri Lanka can serve as an important reference when building up new structures in Indonesia, with the necessary adjustments to make them applicable in the Indonesian environment. Also the policies and laws of India and Thailand seem to be of higher quality than the policy and regulations of Indonesia.

Acceptable working conditions, safety and security for women migrant workers in informal sector would be of major importance, both for the migrant worker herself, her family, her community and for the entire Indonesian nation. Women migrant workers contribute with large amounts of money to their home societies, and thus contribute both to the reduction of poverty and to the balance of payment in Indonesia.

In order to make significant improvements for Indonesian women migrant workers in informal sector, considerable efforts are needed over time. Many actors are working for such improvement, but neither of them seems to be strong enough, and neither of them seems to have comprehensive programs which can lead to substantial improvements. If the World Bank decides to further contributing to such improvements, important inputs in terms of human resources must be made available.



RECOMMENDATIONS 10

1. LEGISLATION

A comprehensive alteration of the legal framework, preferentially through the elaboration of a new Law on the protection of migrant workers should be monitored.

2. TRADE (LABOUR) UNIONS

The establishment of a strong trade union for women migrant workers in informal sector should be considered initiated. Such initiative could be made through training and guidance, and through assistance to the establishment of a pilot project, which eventually could lead to the establishment of a new and strong trade union for women migrant workers.

3. PUBLIC SUPERVISION

It should be considered to work for the implementation of public supervision principles in Indonesian legislation, both for the benefit of the democracy as such and for the benefit of migrant workers' rights, through lobbying and political dialogue.

4. LEGAL ASSISTANCE

It should be considered to work for a rule similar to the Philippine rule stating that victims of illegal recruitment are entitled to free legal assistance.

5. TRAINING

The Sri Lankan policy on training of women migrant workers should be studied closely, in order to get inputs to a strongly needed improvement of the training of Indonesian women migrant workers. The Philippine rule implying that only NGOs are allowed to conduct the training of women migrant workers in informal sector should also be considered.

6. INSURANCE

An initiative to raise women migrant workers' awareness of the mandatory insurance scheme should be considered.

Initiatives recommended in point 7, 8 and 9 below should be coordinated.

7. CONTRACTS OF EMPLOYMENT – LEGAL ENFORCEABILITY

Legislation implying that licensed recruitment agencies shall be under the obligation to

make their clients' contracts of employment enforceable by the labour laws of the country of employment, and that it shall be the agencies' responsibility to file copies of the contracts with the concerned authorities in the country of employment, should be initiated and monitored.

8. AGREEMENTS WITH RECEIVING COUNTRIES

Indonesian authorities should be encouraged to negotiate bilateral agreements / MOU's with receiving countries, bearing in mind the need for legal protection of migrant workers in receiving countries by demanding that contracts of employment are considered as valid, legally binding documents, legally enforceable under the labour laws of the receiving country. Furthermore, agreements should focus on free and adequate healthcare for migrant workers in the receiving country and minimum salaries similar to possible minimum salaries in the receiving country.

9. ASSISTANCE TO MIGRANT WORKERS IN RECEIVING COUNTRIES

The organizing and the content of the services given to Sri Lankan and Filipina migrant workers by governmental officers, agencies and embassies in receiving countries should be studied further. A particular focus should be put on the following three issues:

- a) The Sri Lankan provisions relating to complaints from migrant workers.
- b) The Sri Lankan initiative to have female representatives, permanent medical staff and legal officers in the embassies in the Middle East, providing free assistance to housemaids.
- c) The organization of the Philippine POLO offices, which provide inter alia counselling, legal services, welfare assistance including procurement of medical and hospital services, programs to promote social integration and orientation programs for returning migrants, operating on a 24-hours basis, 365 days a year.

10. AWARENESS RISING OF THE INDONESIAN FOREIGN SERVICE

The need to raise the Indonesian Foreign Service's awareness of the situation for migrant workers and their need for assistance should be evaluated. Such awareness rising may be done in cooperation with the Ministry of Foreign Affairs, taking into consideration other ongoing projects, with the aim of contributing to possible training seminars, background material etc.

11. REINTEGRATION

The Philippines' programs on reintegration should be looked closer into, with a particular focus on two topics, with the aim to produce proposals to Indonesian authorities and to promote them through lobbying and political dialogue:



- a) OWWA's onsite reintegration programs, including training seminars and individual counselling.
- b) The establishment of a national network of Philippine migrant workers' families to serve as the voice of the sector, established by DOLE and OWWA's regional offices.

12. UN CONVENTION ON MIGRANT WORKERS

Indonesia's membership in the UN International Convention on the protection of the rights of all migrant workers and members of their families should be monitored.

13. UN CONVENTION ON DISCRIMINATION AGAINST WOMEN

Indonesia's membership in the UN International Convention on elimination of all forms of discrimination against women should be used as an argument towards Indonesian authorities to make them improve the policy on women migrant workers.

14. UN CONVENTION ON DISCRIMINATION AGAINST WOMEN

Indonesia's membership in the optional protocol to the UN International Convention on elimination of all forms of discrimination against women should be monitored, in order to enhance international scrutiny of its fulfilment of the obligations in the conventions.

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