



MIGRANT FORUM IN ASIA INPUT FOR UN SR ON HUMAN RIGHTS OF MIGRANTS: Good Practices and Initiatives of Gender- Responsive Migration Legislation, Policies and Practices - MAY 2019

Migrant Forum in Asia is a network of grassroot organizations in Asia that work for the protection and promotion of migrant and human rights. Migrant Forum in Asia (MFA) welcomes the decision of the Special Rapporteur on Human Rights of Migrants to identify good practices and initiatives with regard to gender-responsiveness of migration governance. MFA looks forward to providing a contribution to the issue relating to the topic in the context of migration within Asia and particularly regarding domestic workers.

In both countries of origin and destination, women and girls have countless experiences of facing ingrained violence in their life cycle, have little opportunities to express themselves in family and society, and fewer opportunities in decision making, in access to, and control over resources; the lack of these rights, sometimes institutionalized through discriminatory policies and laws, regardless of their economic independence. Within Asia, women's occupations have traditionally tended to be ascribed to the world of subsistence and reproductive care and we observe that women's work, whether undertaken within or outside of households, has tended to be unrecognized, unpaid or lowly remunerated. It also often carries negative social stigma when it is outside the immediate locality, particularly faces by migrant women.

Migrant female domestic workers are arguably the single most disregarded segment of workers in national labour laws of destination and origin countries within Asia. While there are specific policies to their recruitment processes and employment contracts, those on living and working conditions as well as gender-responsive policies are few and far in between. The care economy in response to a growing ageing population in destination countries has deemed domestic workers necessary and while their demand had been regulated through recent efforts at recruitment reform, policy and program decisions in both countries of destination and origin have been found lacking. In many cases, they have been willfully ignorant of ground realities of abuse that occurs at the place of work, thereby dehumanizing the female migrant worker and removing her from accessing her human and labour rights.

MFA would like to stress that with regard to migrant women workers, the vital action is of removing the risk from work rather than removing the worker from a risky situation, the onus of which falls upon regulatory and monitoring bodies of labour migration within the country of destination. The country of origin is largely responsible for ensuring the female worker has access to consular assistance as well as ensuring the regularity and awareness of female migrant workers prior to their departure. Lack of comprehensive gender-sensitive approaches mean that while domestic workers have access to measures of justice, their lack of freedom of movement,

the fear of legal measures and consequent unemployment or repatriation, deter them from approaching these routes of redressal. We observe that the labour system as well as local laws and attitudes within destination countries render domestic workers incapable of leaving the home of the employer without their permission. We realize that the such restrictive policies are inherently violent to the migrant woman, some of whom are inadequately aware of their gender-based rights.

In this paper, we have compiled inputs of our members and partners on ground realities of gender-responsive practices in response to the questionnaire as provided, including inputs of MFA members and partners of several countries in Asia including Lebanon, India, Bangladesh, Nepal, Malaysia, Taiwan, Japan, Philippines and Singapore. The MFA members and partners that were consulted as part of this input include:

Centre for Migrant Advocacy, Philippines

SBMI, Indonesia

Solidaritas Perempuan, Indonesia

LSCW, Cambodia

People's Forum, Nepal

NDWM, India

OKUP, Bangladesh

Bangladesh Nari Sramik Kendra, Bangladesh

ACD, Bangladesh

Lawyers Beyond Borders, Sri Lanka

Insan, Lebanon

HOME, Singapore

HMISC & HWC, Taiwan (ROC)

Defining gender-responsiveness in Asia

We observe that while in local contexts, governments are active in designing and enforcing laws and policies that seem gender-sensitive and gender-responsive, few have extended the same dimension of policy and program to their migrant women. At an international level, the promotion and participation of governments in CEDAW and other international treaties are relevant in identifying and prioritizing the basic rights of a female migrant worker within the country. However, at the grassroots, we realize that gender-responsiveness requires far deeper engagement to tackle existing gender norms and prejudice, some of which follow the female migrant worker throughout the migration cycle, from pre-decision to return after migration. Furthermore, we understand gender responsiveness as impacting all genders differently and that, while one-off programs exist under the relevant national machinery for women's issues, there is a discernible disconnect and lack of cohesiveness between these programs within these programs and those for migrants, particularly migrant women.

“Gender Responsiveness means an acknowledgement that gender makes a difference and be responsive to the needs of women, men, girls and boys in all their diversity. It is especially important to become familiar with and be responsive to the specific gender dynamics and social and cultural reference points that prescribe the roles of men and women in any given society. This requires socio-cultural research and analysis to understand what the norms and expectations are for men and women in any given context and how this might affect the program, so that interventions can be designed accordingly. This is followed by the necessity of a safe, respectful environment; an understanding of the importance of relationships in the lives of females; provision of services to deal with substance abuse, trauma, and other issues raised by victimization.”

From a legalistic perspective, the equality between sexes (not all countries are inclusive of genders) has been recognized in several constitutions of origin countries. For example, in the Indonesia legislation system is understood by the term “equality and justice of genders” which is further explained as *“condition where the portion and social cycle of women and men are equal, balanced and harmonious. This condition can be realized if there is fair treatment between women and men. The application of gender equality and justice must pay attention to contextual and situational issues, not based on mathematical calculations and not universal. So, the concept of equality is a qualitative philosophical concept, not always quantitative.”* Gender mainstreaming strategies exist in Indonesia that aim at integrating gender, thereby becoming an integral dimension of planning, drafting, implementing, monitoring and evaluating national development policies and programs (*Presidential Instruction No.9/2000 on Gender Mainstreaming in National Development*). However, as is with other similar initiatives, the implementation of these is weak and the policy is not seen as a strong legal basis for the

government to integrate gender mainstreaming into their programs and policies. Another example is India where, in 2001, India began evaluating its economic policies with a gendered lens, to determine whether and how to better meet the needs of women and girls and to improve gender equality at scale. Gender budgeting approaches in India emphasized resource allocation for gender inclusion and gender-targeted budgeting, particularly in areas of health, education and more recently, safety. However, laws addressing migration in India date back to the 1980s, with relatively no references to female migration. The legal frameworks governing migration of India is largely “*gender-neutral*” and relatively silent on issues related to gender equality and/or the specific situation of women.

While the “*non-discriminatory*” clause in the law is important, it is also the case that the absence of specific provisions to address the needs of female migrant workers, the differential impact that migration has on women, and/or safeguards required to protect the interests of female migrants and their families, makes the laws weak from a gender perspective.

In Bangladesh for example, gender responsiveness fails to be defined due to a lack of labour laws that enable the protection and promotion of rights of female labour within the country itself. Women lack fair wages and a safe working environment within the country, where 36% of the female workforce is in the informal sector. Overseas migration statistics show women migrants are extremely marginalized. Despite, female migration in Bangladesh as domestic workers and care givers have risen nearly 340% during 2010 to 2017 (in 2010 - 27,706; in 2017-121,925). Women overseas migrants ensure remittances USD2,500 to 2,700 - however there are no special initiatives and allocation for their protection other than few safe homes/shelters in destination countries. BNSK confirms nearly 7000 workers have returned from overseas migration due to gender-based violation (includes harassment, abuse, deprivation, and physical, sexual, psychological abuse in the workplace). There exist knowledge gaps on gender-responsive frameworks in Cambodia, especially among the law enforcement and service provider. Instead of considering it as tackling the obstacles to women’s gender-specific needs, it is considered as ‘female dominance’. The lack of clarity and discourse regarding this mean that responses and different needs between women and men do not match. Hence there is a lack of engagement regarding gender based violence in the issues of migration, human trafficking and labor violation in Cambodia.

The GCC being a major destination region for migrant women from all origin countries within Asia is again accused of not accommodating gender-responsive policy. Many of the laws in the region are based on or inspired by Islamic principles and values. While the constitutions of most Muslim-majority states contain references to Sharia, its classical rules were largely retained only in personal status laws. Few countries in the region like Saudi Arabia implement a classical sharia system, where criminal law is solely based on Sharia. Against this backdrop, gender responsive and gender sensitive are only relevant insofar as they are compatible with the rules of Sharia, and not a consideration in their own right. Women in the region continue to suffer from discrimination. Equality before the law is a major challenge for Arab women in the majority of countries, especially equality in marriage, divorce, custody and inheritance. Some restrictions are

also imposed on women's freedom of movement in a number of gulf countries. Under Saudi guardianship laws women are required to obtain their guardian's approval to travel outside of the country. In the UAE, a woman working without her husband approval could be deemed "disobedient" under the law. Lebanese women are not allowed to give their children citizenship. And in the vast majority of Arab countries, a woman is entitled to inherit less than a man. Political participation is low and women's suffrage is relatively recent. Hence, women migrant workers arriving to the Middle East have to operate within a system that is prejudiced about women and that has a set of various expectations on what is the role of woman in society and what is the value of women's work. The discrimination they face is twofold; for being foreign and for being women.

Existing gender-responsive practices

Among the countries approached for this input, a major obstacle continues to be the implementation and enforcement of existing laws and policies that are intended to be gender-responsive but not migrant-responsive or vice-versa. We observe that, except for the Philippines (which has ratified C189 on Domestic Workers), other countries within Asia lack policies or programs that do both, i.e respect the nature of female migrant work while also taking into the account the specific vulnerabilities that exist and protections required to tackle these gaps.

India¹ is yet to pass or implement several fundamental laws concerning female migrant workers despite possessing the draft versions and seeking public opinion for the same. For example, Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 is yet to be made into a law. A rudimentary form of a Domestic Workers policy was drafted by the National Commission for Women and, the government after seeking public opinion, is yet to pass the policy. The Emigration Act which was to be newly introduced in 2018 (an updated version to the existing Emigration Act of 1983 which does not include references to female migrants), is also yet to be passed. The Ministries of Home Affairs, Women and Child Development and the National Commission of Women are specifically involved in formulating, implementing, enforcing and monitoring schemes, provision, programs and laws for women that tackle trafficking, gender-based violence and discrimination. However, most of their mandate is largely concerned with gender-based violence within the country and there has not been sufficient or discernible coordination with the Ministry of External Affairs in designing a comprehensive policy or position on Indian female migrant workers. Other initiatives are as below:

- **Recruitment reform:** From August 2016, recruitment through the six state-run recruitment agencies was made mandatory for Indian nurses and domestic workers. Additionally, there is a minimum age criterion (30 years) for all women (except nurses) emigrating on ECR (Emigration Check Required) passports to ECR

¹ Sijapati, Bandita; Nair, P.M (2014). *Gender and Safe Mobility: Promising Global and Regional Practices*. IOM.

countries, irrespective of the nature of employment. The registration of foreign employers in the E-migrate system after they are validated by the concerned Indian Mission has also been made mandatory, as has embassy attestation for the direct recruitment of ECR passport-holding women migrants to ECR countries. Civil society members have criticized age-specific restrictions as discriminatory against female migrants with the inherent assumption that they are vulnerable below that age and effectively shifting the responsibility of ensuring their protection from the government to the females themselves.

- **Anti-trafficking efforts:** In 2002 the Indian Ministry of Women and Child Development prepared a National Plan of Action to prevent and combat human trafficking. Other efforts include: amendments to the Indian Penal Code to define and punish trafficking of all sorts including organ trade (Section 370) and to address child trafficking; establishment of Anti-Human Trafficking Units (AHTUs) (Section 370A); and establishing discretionary funds through the Ministry of External Affairs to Indian embassies and consulates to assist with medical care, rehabilitation, repatriation, and legal assistance to migrant workers in Gulf countries, some of whom may be victims of trafficking.
- **Embassy Support Abroad:** Indian embassies in the GCC region are known to run shelters for distressed Indian female migrant workers who may have been trafficked or have escaped from employers' residences due to exploitation or abuse. Embassies also work closely with Samaritans and community-based organisations in assisting distressed domestic workers in terms of communicating with employers, unscrupulous agents and issues of lack of pay and compensation. Other initiatives not specific to female workers include labour helplines and helpdesks run by labour attaches along with legal assistance.
- **National Human Rights Commission (NHRC):** The NHRC is an autonomous body with the mandate to: conduct legislative reviews; investigate cases of human rights violations; promote awareness-raising in collaboration with NGOs; and make recommendations to the government on promotion and protection of human rights. A landmark initiative by NHRC was a national survey on human trafficking in India over the period 2002-2004 which exposed the weaknesses of the response system and paved the way to create a national system to prevent and combat human trafficking.

Indonesia had recently signed Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers in October 2017 as a revision of Law No. 39/2004. This new law integrates gender equality and justice as one of the principals. However, unfortunately the law could not be implemented properly because among the 27 implementation regulations mandated by the law, only 1 regulation currently exists. However, the Presidential Decree No.11 and No.72/2018 concerning the Government's Plan of Activities in 2019 mandates all implementing regulations for Law No. 18 of 2017 concerning the Protection of Migrant Workers must be issued, and this

is reinforced by Presidential Decree No. 11 and 12/2019. The Ministry of Women Empowerment and Child Protection also developed a training module entitled Mental Strengthening for Indonesia Women Migrant Workers. This module was built in collaboration with migrant workers union and CSOs related to the rights of women migrant workers. The module began since 2016 and currently reaches around 300 people each year from various regions of origin of migrant workers especially Java, Sumatera, Sulawesi, East Nusa Tenggara, and West Nusa Tenggara.

The **Bangladesh** government has adopted the ‘Expatriate Welfare and Overseas Employment Policy’ in 2016. One of the principles of the policy is to respect ‘gender sensitivities’ as per the national and international treaties, rules, regulations in formulation of further laws, policies and actions in relation of labour migration in Bangladesh. As part of civil society activities, BNSK has been advocating with Ministry of Labour and Employment, Ministry of Women and Children Affairs, Ministry of Expatriates’ Welfare and Overseas Employment and Parliamentary Secretariat to ratify ILO Convention 189. Along with MFA, Bangladesh National Domestic Workers Union, Bangladesh Institute of Labour Studies (BILS), Bangladesh Worker’s Party, Bangladesh Sramik Karmochari Federation etc., it has advocated to ensure national policy, law and regulation for the domestic workers of Bangladesh and has raised its concern to the Senior Secretary to Parliamentary Secretariat on domestic worker’s needs in country and overseas.

In **Sri Lanka**, the Ministry of Foreign Employment and the Sri Lankan Bureau of Foreign Employment is responsible for the welfare of all migrant workers. A major policy decision regarding female migrant workers specifically is the **Family Background Report (FBR)**. The FBR requirement is a directive introduced in 2013 by the Ministry of Foreign Employment Promotion and Welfare (MFEPW) and its successor Ministry of Foreign Employment (MFE) and implemented by the Sri Lanka Bureau of Foreign Employment (SLBFE) with the intention of reducing the adverse psycho-social implications of children left behind by the migration of mothers. According to this requirement, females with children under the age of five years are not “recommended” for foreign employment, while females with children above five years will only be recommended for migration if satisfactory alternative care arrangements are in place to ensure the protection of children. The introduction of the requirement has implications on two groups; namely, mothers aspiring foreign employment and their children. Up until the introduction of the FBR, females had the power to make their own migration decisions while on the other hand, their children have often remained voiceless in the mother’s migration decision. With the FBR requirement, the state has gained control over females’ decision to migrate for domestic employment with the intention of maintaining the best interest of the children who would be left behind. However, Family Background Report in Sri Lanka has in fact to lead to corruptive practices and forgery in issuance of FBRs and migration through other channels to avoid the FBR requirement.

Existing initiatives by the SLBFE include :

- **Zero Chargeable Recruitment Fees for Female Domestic Workers** - Maximum chargeable recruitment fees were introduced in 2009 under Amendment No. 56 to the original Sri Lanka Bureau of Foreign Employment (SLBFE) Act of 1985 to protect migrant workers from agents charging arbitrary recruitment fees, in some instances charging both employer and employee. In this context, the employers/sponsors cover the entire cost of recruitment and travel of female domestic workers to the Middle East and recruitment agents are not allowed to charge any fees, hence the term zero chargeable.
- **Mandatory Pre-Departure Training**- In Sri Lanka, pre departure training was made mandatory in 1996 for those pursuing foreign employment. Such mandatory pre departure training was introduced as part of a package including training, SLBFE registration, and welfare benefits. Specifically, the training had to be completed and certified for the migrant to register with SLBFE, and registration was compulsory for eligibility for welfare benefits such as pre departure loans, scholarships for children, insurance coverage, and others. All female domestic migrant workers going to GCC countries must obtain the 21-day residential pre-departure training. Female domestic migrant workers going to Saudi Arabia must also pass the NVQ3 level and obtain the certification before they leave.
- **National Media campaign on Safe Labour Migration**- The launch of the National Media Campaign on Safe Labour Migration in January 2019 initiated by the Ministry of Telecommunication, Foreign Employment and Sports and SLBFE (i.e. through hotline number 1989 which helps in information on employment opportunities and for the complaints and grievances of foreign employees and their family members).

Forthcoming initiatives by the Sri Lankan government include the following:

- Adopting a single window automation with Telecom and IT process that will be initiated by the Ministry of Telecommunication, Foreign Employment and Sports. This will bring a true digital transformation to pre and post recruitment process so not only Sri Lanka achieves greater efficiencies, better transparency and convenience whilst striving to minimize, eliminate and eradicate malpractices and human smuggling.
- The FBR will be revised based on recommendations given by a five-member Ministerial Sub-committee of the Cabinet. It is hoped that the government provides an alternative that promotes safe and responsible labour migration, protects the left-behind children and family of all migrant workers and respects the right to equality and non-discrimination in Sri Lanka's constitution and international obligations.
- The draft Sri Lanka Employment Migration Authority Act – which will set up an Employment Migration Authority to replace the Sri Lanka Bureau Foreign Employment (SLBFE) and have a more overarching role in various components of the industry.

In **Nepal**, the constitution of Nepal mentioned forced labor as part of Article 29, the right against exploitation. Likewise, the Foreign Employment Act 2007, (Article 8) ensures the equal and fair treatment of potential migrants, regardless of gender. In addition, an important perspective included in the Foreign Employment Policy, 2012 was that of women and girl migrants and the challenges they face in migrating, such as through irregular channels, lack of information, and lack of protection from rights' violations, particularly for domestic workers. More importantly, Government of Nepal has endorsed the Women Domestic Workers Guideline, 2015 on domestic workers overseas. The guideline is expected to address problems by holding employers and local recruitment agencies in the destination country responsible for domestic migrant workers welfare. The major features of this guideline include: (i) compulsory bilateral agreement in sending migrant domestic workers (ii) ensure free of cost recruitment for domestic workers (iii) provision of rescue and repatriation (iv) provision for standard employment contract for domestic workers, etc.

Additionally, Nepal has recently concluded bilateral agreements regarding Nepali women migrant workers or providing separate provisions for them, with Israel, Jordan and Malaysia. After the restructuring of State in Nepal into three tiers of government (federal, provincial and local), the Ministry of Federal Affairs and Local Development has formulated the 'Gender Responsive Budget Localization Strategy' for the implementation of gender equality and women empowerment programs at the district, municipal and VDC level in an effective manner. The gender responsive budget prioritizes the selection of programs on the basis of gender mainstreaming, and equitable distribution of benefits derived therefrom.

The **Philippines** has been foremost in recognizing the need for protection of domestic workers, being the first and only country in Asia to ratify the C189. The government is also involved in a tripartite consultative arrangement with civil society and recruiting companies to formulate comprehensive policies. Specific laws and policies include the:

- i. **Republic Act 8042** wherein stated "*the State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.*". It further defines gender sensitivity ("*cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes?*").
 - a. It also includes Sec. 19. Establishment Of A Migrant Workers And Other Overseas Filipinos Resource Center which specifies Migrant Workers and Other Overseas Filipinos Resource Center with the services of gender sensitive programs and activities to assist particular needs of women migrant workers;
- ii. **OWWA Act of 2016 R.A 10801** – it specifies welfare assistance, services, and programs provided by the OWWA shall be gender-responsive, taking into consideration the different impacts of labor migration to men and women.

- iii. **R.A 9710 Magna Carta of Women** – provides a detailed definition of what constitutes “Discrimination Against Women”²
- iv. **Provision for Gender Focal Point Officer in Philippine Embassies and Consulates** – The officer is expected to be primarily responsible in handling gender concerns of women migrant workers.
- v. **DOLE Memorandum Order of June 28, 2013**³ to put in place “corrective measures”:
 - a. Deployment of 13 female and 1 male personnel to augment Philippine Overseas Labor Offices (POLOs) in three countries, namely, Kingdom of Saudi Arabia (nine personnel); Jordan (three personnel); and Kuwait (two personnel).
 - b. Immediate installation of the Foreign Labor Operations Information System (FLOIS) in all 37 POLOs overseas, with the Middle East POLOs as a priority. The system will record all POLO transactions and store data which will be accessible to DOLE, Philippine Overseas Employment Administration, and the Overseas Workers Welfare Administration. The FLOIS is intended to monitor the number of wards being accommodated in Migrant Workers and Other Filipinos Resource Centers, commonly known as Bahay Kalinga.
 - c. Pursuant to the bilateral agreement with Saudi Arabia on the recruitment and deployment of household service workers, development of a streamlined process of recruitment and deployment in both Saudi side and Philippine side and the development of a joint onsite dispute settlement system, case handling, repatriation, and operation of the Saudi mega-recruitment agencies.

The government’s responses first and foremost are, by and large, all aimed at protection of migrant workers, although these responses are not all necessarily gender responsive. One example is the Household Service Workers Policy Reform Package which consists of 8 Governing Board resolutions from the Philippine Overseas Employment Administration (POEA) issued in 2006. Among these include the 25-year-old minimum age requirement for domestic workers which was later lowered to 23 years after civil society involvement and advocacy.

Most destination countries are accused of not addressing such fundamental issues as well as the fact that domestic worker is not covered under the Employment Act, which displays the inherent belief that domestic work is not work, leading to exploitation of migrant women. Within the

² It refers to any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges. A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices. Provided, finally, That discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act.

³ In light of the controversy on the ‘sex-for flight’ scam in some Philippine Overseas Labor Offices (POLO)

GCC region, few reforms are seen with regard to domestic workers, except in the realm of recruitment and compensation practices. Some good practices to close the gender gap between men and women migrants can be found in a number of countries. For instance, Bahrain recently introduced measures to allow women migrant workers to sponsor their spouses. Previously it was only possible for men to sponsor their wives. The UAE⁴ has also similar rules allowing women in certain positions to sponsor their spouse. Although conditions for female migrant workers are harder to satisfy.

Singapore as a destination country, has a provision of enhanced penalties for crimes against domestic workers. If an employer of a domestic maid or a member of the employer's household is convicted of — (a) an offence of causing hurt or grievous hurt (b) wrongfully confining (c) assaulting or using criminal force (d) any act that is intended to insult the modesty (e) attempting to commit, abetting the commission of, or being a party to a criminal conspiracy to commit, an offence described in paragraphs (a) to (d), the court may sentence the employer of the domestic maid or the member of his household, as the case may be, to one and a half times the amount of punishment to which he would otherwise have been liable for that offence. However, this provision is largely limited to very egregious cases of physical violence. In general, there is limited redress available for nonphysical violence, intimidation, coercion and even confinement. The fundamental issues of domestic workers' employment tied to one single employer, isolation and lack of social support are not addressed by the provision. Moreover, the attempts of origin Government of Philippines and Indonesia to provide protection to domestic workers through the mandatory signing of contracts are not recognized by the government of Singapore.

⁴ More information could be found on the link below: <https://government.ae/en/information-and-services/visa-and-emirates-id/residence-visa/sponsoring-residency-visa-by-expatriates>

Challenges to ensuring gender-responsiveness in governance

As previously mentioned, women migrant workers in the Middle East operate in an environment that constrains women's freedoms in public settings. For example, it can be very difficult for women domestic workers in Saudi Arabia to flee abusive employers not just because of sponsorship rule which render the status of the worker dependent on the employer, but also because of constraints placed on women's freedom of movement. The absence of public services that support citizens generally and women particularly, have had negative repercussions on sectors that are dominated by women migrant workers. The lack of child care and elderly care service in much of the region, and socially held stereotypes about the role of women in the household, coupled with the increase in the number of Arab women who enter labor market, are all factors that contribute to an increased demand over the poorly regulated, disproportionately female, sector of domestic work. In this regard, putting in place public policies in destination countries, that provide services to citizens in areas that are considered traditionally as women's domain such child care and elderly care, as well as generous maternity and paternity leave policies, could have an indirect effect of alleviating some of the exploitative labor conditions that are found in sectors of the care economy.

Finally, a number of policies in the region explicitly discriminate against women migrant workers especially with regards to family rights. For instance, in Lebanon women domestic workers are not allowed to have children and could be arbitrarily deported for violating this unspoken rule. In Jordan, if pregnant, domestic workers could be deported. In the UAE doctors who diagnose an unmarried woman as pregnant are obliged to turn them over to the police. They can then face jail and deportation.

In origin countries however potential migrant women are still affected by existing social inequalities related to gender, caste and ethnicity, creating knowledge gaps on how to address their rights and their absence or inadequate representation in the world of work and policy dialogues. Besides in origin countries within Asia, women and girls are often not empowered to take decisions regarding their own migratory process, often migrating in distress as a result of decisions made by family members and circumstances such as diminishing livelihood options, loss of habitat, domestic violence and other similar factors. A woman often must seek the approval of her father, brother, husband, in-laws, and sometimes the village head/chieftain, in order to work or learn skills which might make her employable, while still bearing the almost sole responsibility of caring for her children. Women are also in many origin countries restricted from the use of technology due to moral policing, making it difficult to leverage the benefits of technology such as acquiring knowledge, awareness, financial skills and accessing opportunity.

In terms of migration governance, **lack of coordination** among the respective ministries in India, Indonesia, Cambodia have become too big to ignore especially with regard their burgeoning issues of domestic workers. **Knowledge gap and perception on gender** remain big issues to implement any form of gender-responsive program or policy. Many local government and

service providers do not have any specific knowledge or concept on what gender-responsive or being gender-sensitive means. In handling trafficking cases, law enforcement officers do not have an adequate understanding of trafficking, specifically regarding female migrants overseas. With regards to **regulated and safe recruitment systems** controlled by the state, the challenges persist with regard to ensuring better working conditions for women workers and well as accountability of recruitment systems to decent work as well as policy-level approaches to social protection, mobility and labour. Recently, the countries of Sri Lanka, Philippines, Indonesia and Nepal have banned their female migrant domestic workers from travelling and working in certain countries. Such reactive policies such as **migration bans** do not prevent people from migrating being discriminatory based on gender, class and age and in fact, they lead to undocumented and irregular forms of migration which leads to further exploitative conditions.

Country specific challenges in migration law and policy include :

- i. The **Bangladesh** government had passed a law named “Overseas Employment and Migrants’ Act” in 2013. However, there is no particular law to deal with the recruitment of women migrant workers.
 - a. Furthermore, the Overseas Employment and Migrants’ Act 2013 states that the concerned recruitment agent and the employer are jointly or severally liable to ensure conditions of the job contract which should cover wages, accommodation, duration of employment, compensation in case of death or injury, costs of migration etc. but there is no action to implement the article of the Act.
 - b. Returnees being a victim of abuse, exploitation, or rights violation are common among women migrant workers. The Migrant Act 2013 allows them to file a criminal case, or a complaint in the court or the concerned government department respectively. The Act says that the government must adopt rules to resolve complaints through ‘Arbitration’. The government has yet to formulate such an Arbitration Rule , which hinder existing victims in getting proper compensation and justice against abuse and exploitations in the migration process that they face.
 - c. According to the Expatriate Welfare and Overseas Employment Policy 2016, the government of Bangladesh is supposed to develop a Comprehensive Protection Framework for the protection of migrant workers at Pre-departure, departure, onsite (duration in destination country, and upon returning), which is not in place yet.
- ii. In **India**, laws addressing migration in India date back to the 1980s, which in itself is a challenge.
 - a. The previously mentioned Trafficking of Persons (Prevention, Protection and Rehabilitation Bill) 2018 faces lots of criticism, say that the law is neither clear or comprehensive. Many of the provisions are an overlap of the IPC for example Section 370 of the IPC prohibits all forms of trafficking for exploitation and

carries a minimum punishment of seven years and a maximum punishment of life imprisonment.

- b. The bill is insufficient for victims of trafficking as it doesn't cover overseas migrants despite their vulnerability.
 - c. It also puts the onus on the victim, for protection from prosecution is available only where the victim can show that they committed the offence under coercion/compulsion/threat and were subjected to a reasonable apprehension of being killed or subjected to grievous hurt or injury to themselves or another person who they are interested in.
- iii. **Indonesia** still enforces the Minister of Manpower Decree No. 260 of 2015 on Termination and Prohibition of Placement of Indonesian Migrant Workers for Individual Users (domestic works) in the Middle East.
- a. Termination of placement of migrant workers in the domestic sector is a limitation on the right to work for migrant domestic workers and violates the General Principles regulated in Article 1 of the 1990 Migrant Convention, namely the principle of non-discrimination.
 - b. This perspective even still appears in Law No. 18/2017 that legalizes the subordinated practices through permit letter as one of the required documents for prospective migrant workers. Law No. 18/2017 also regulates their placement process as private sector responsibility. The implementation of this policy ensures the increasing of the vulnerability of women migrant working in domestic sector.

The success of gender responsive infrastructure development is not assessed from the proportion of men and women, but from the accommodation of the needs/problems of men, women, including the elderly, disabled, children, and vulnerable groups in an equal & fair treatment throughout Indonesia.

- iv. The Government of **Nepal** currently does not include nor acknowledge the protection for domestic workers in the Foreign Employment Act 2007. Lack of access to justice of women domestic workers is another challenge as they lack evidence due to their undocumented status. Age restrictions of 24 years exist for domestic workers planning to work in the GCC.

Specific recommendations

Interventions to have more gender responsive policies on migration cannot happen in vacuum. They are at the intersection of both fairer migration policies and gender equality for all. Gender responsive policies must be deeply rooted in efforts to achieve gender equality principally in countries of destination but also in countries of origin, as it is often the case that women migrant workers are at the receiving end of a long chain of exploitation that affects migrant and non-migrant women, (with many cases involving women exploiting other women). Improving the gender equality situation in countries of destination will improve the conditions for migrant women. At the same time, discussions of gender responsive policies cannot be dissociated from the larger advocacy for fair migration policies. In the MENA region in particular this means moving towards more flexible employment models with mobility rights at the heart of it, fair remuneration on par with nationals, clear employment conditions, and fair and ethical recruitment. Business also has a role to play in shifting the realities on the ground. Going back to the domestic work sector, in many countries in the region, freelance domestic work is not allowed (with the exception of some domestic workers in Bahrain who fall under the new flexi system), this is despite the need that many households report for domestic services not necessarily in the form of live-in domestic workers. In this regard, partnerships between government and businesses in making cleaning services and regulating the particular industry more widely available with the necessary standards and rights protection, could help shift the focus from a very heavy employer centered model, to a more corporate managed model, with more space for monitoring, accountability and redress for rights violations.

While government and community people have been active in reaching out to women and girls in at-risk villages and towns, these efforts are at best scattered and rarely mainstreamed into local policy or practice. Many times, information is offered too late in the migration process to change high risk patterns relating to trafficking. This is often the case relating to women whose only preparation before leaving is to receive pre-departure training a few days prior to leaving. Interestingly, most women and girls continue with their decisions to go abroad, suggesting that effective anti-trafficking interventions should be focused and deeply engaged with.

1. Policy level recommendations

- 1.1. **Ratification of C189 Domestic Workers Convention, 2011** – C189 has been ratified poorly with only the Philippines being a ratifying country within Asia. Ratification becomes extremely important especially for the countries that have consulted for this input. In place of acknowledging and enforcing this progressive rights-based document, countries are still choosing to formulate reactive policies and programmes without evaluating its impact on the female migrant workforce.
- 1.2. **Recognizing female migrant workers in migration policy and legislation** – the most basic requirement, not yet fulfilled by many origin and destination countries, the recognition of the contribution of female migrant workers as well as their rights and

protections due is the foremost step in ensuring gender-responsive governance measures. Women migrants have a right to equal access to employment, adequate income and social protection. An inclusive National Urban Policy should integrate migration and the needs of migrants, in particular women migrants, their aspirations and empowerment and ensure their right to the city and better infrastructure, and gender-friendly service delivery.

- 1.3. **Recognizing domestic workers in labour laws** in both origin and destination countries enabling fair and ethical recruitment, better employment conditions, increased monitoring and better enforcement capabilities of local actors.
- 1.4. **To ensure that all migrants have access to the full spectrum of physical and mental health services**, including sexual and reproductive health, and to education, vocational training, decent work, social protection, justice and due process.
- 1.5. **Ensure women have equal and independent access to travel documents**
- 1.6. **Defining gender concepts and the importance of gender-sensitive and gender-responsive laws and policies** within government mechanisms
 - 1.6.1. Developing capacity building programs for government officials and local actors including police, immigration and health officials with the involvement of civil society in establishing a mutual and common understanding of gender-based issues, particularly with respect to migrant women.
 - 1.6.2. Research on the implication of gender-responsive law and policy to support the implementation of gender responsive policy, especially in relation to migration and human trafficking. Further developing national indicators for the same.
- 1.7. **Incorporating monitoring mechanisms** into law on recruitment, workplace conditions. Networking and link as well as inter-regional coordination and cooperation with NGOs need to be seriously considered.
- 1.8. Ensure comprehensive socio-economic, psychological and legal services aimed at facilitating the **reintegration of women** who have returned
- 1.9. Ensure effective sanctions against actors that **violate the rights of migrants** in the jurisdiction (COD)
 - 1.9.1. Countries of destination to develop legislation that explicitly prescribes criminal punishment for cases of abuse and exploitation of women as under the migrant labour law.
- 1.10. **Bilateral labour agreements** should include two different types of provisions which can benefit female migrant workers: (a) general good practices that have a positive impact on women, such as protective provisions in sectors not covered by national labour law, e.g., domestic services; and (b) gender-specific provisions such as gender impact assessments; the inclusion of gender advisers with expertise on migration at all stages, from creation to implementation of such agreements, and gender sensitivity training for all staff involved in the process.

2. Countries of origin

- 2.1. Altering policies and laws regarding age restrictions, requirement of permission from male members of the family and other such discriminatory initiatives that undermine the independence of the female migrant worker.
- 2.2. To include gender-sensitive and progressive education and awareness as a mandatory part of pre-departure training for potential female migrants.
- 2.3. Including female domestic migrant workers as a group requiring specialized policy and program initiatives beyond recruitment processes.
- 2.4. Establish reporting and monitoring system specifically for issues pertaining to female domestic workers.
- 2.5. Community-based knowledge building activities can aim at identifying women from low income households seeking jobs abroad and provide them necessary information.

2.5.1. Embassies

- 2.5.1.1. Organize domestic workers community of support
- 2.5.1.2. Provide free legal and shelter support
- 2.5.1.3. Strengthen monitoring capabilities of workplace conditions particularly for domestic workers
- 2.5.1.4. The political inclusion of migrants by allowing overseas voting rights would also democratize governance.
- 2.5.1.5. Avoid reactive policies of enforcing migration bans
- 2.5.1.6. Ensuring gender sensitization training for embassy and shelter personnel in dealing with migrants workers that are pregnant, have a child and/or are victims of sexual assault
- 2.5.1.7. Embassy involvement in ensuring provision of reproductive healthcare for migrant worker in countries of destination rather than only assisting in their deportation/repatriation
- 2.5.1.8. Appoint or create space for a officer/staff at the embassies that is responsible for the issues of female domestic workers and victims of sexual assault and violence.

2.5.2. Country-specific

2.5.3. Sri Lanka:

- 2.5.3.1. The development of the Family Care Plan for all migrant workers should be the solution, instead of attempting to further revise the existing FBR. This would allow for a more comprehensive picture to emerge from the family unit and would include other members in the family including those sharing the caregiver responsibilities in the

absence of the mother or father and others who can stand in, when the designated caregiver is unavailable.

2.5.3.2. Establishment of mandatory pre-migration advisory and counselling sessions for all those interested in or thinking of migrating for employment at the District Secretariat Level in order to ensure that prospective migrant workers can work with the Development Officers to develop a care plan as part of the mandatory advisory session.

2.5.3.3. Pre-Departure Training are essential for protecting the rights of migrant workers, but they are not sufficient. To improve the effectiveness of pre departure training, it should be linked to post-arrival activities (orientation). Information need to be shared through the most effective means with stakeholders at both COO and COD to ensure that all parties are aware of both training content and methodology as well as potential challenges identified pre departure which may need additional attention and follow-up post- arrival.

2.5.4. Bangladesh:

2.5.4.1. Comprehensive Plan of Action (in line with its national migration policy) needs to be developed for undertaking gender-responsive programs and activities.

2.5.4.2. Coordinated efforts of Ministry of Expatriates' Welfare and Overseas Employment (MoEWE), Ministry of Foreign Affairs (MoFA), Ministry of Women and Children Affairs (MoWCA) is essential to tally the achievement with the target set in the perspective plan, 7th Five year plan and Annual Development plan.

2.5.5. Indonesia:

2.5.5.1. Eliminating business-oriented paradigms and arrangements in the governance of the placement of migrant workers.

2.5.5.2. Conducting a comprehensive evaluation as a step to revoke Minister of Manpower Decree No. 260 of 2015 on Termination and Prohibition of Placement of Indonesian Migrant Workers for Individual Users in Middle Eastern Region Countries including the cancellation of the placement program which was stated in the Technical Agreement with Saudi Arabia and strengthened by Ministerial Regulation No. 291 of 2018 because it contradicts the principle of protection in the 1990 UN Convention on the Protection of the Rights of Migrant Workers and All Members of Their Families and General Recommendation CEDAW No. 26.

Engaging and broadening Civil Society participation in policy, law making and gender responsive programming:

➤ In policy processes:

- Involvement in consultative processes at the time of reviewing bilateral agreements.
- To monitor the measures that regulate recruitment agencies and comply with minimum standards in line with ILO Convention No. 181.
- To conduct, use and disseminate research and data on the gender dimensions of migration, including the experiences of women migrant workers. Documenting cases of WMW and influence both to origin countries as well as destination countries.
- Conduct regular performance audits⁵

➤ In service provision

- Provide services and assistance to migrant women who are victims of rights violations in the jurisdiction (COD), including access to justice, social services and healthcare.
- To provide female migrant workers with special assistance to administrative processes, access to integration services, language and skills upgrading courses and legal services.
- Conduct sustained capacity building programs on gender and migration; gender sensitivity and gender-responsiveness so the principles and meanings of these terms will be fully understood, lived and applied in the conduct of duty --for both policy makers (executive and legislative) and frontline service providers of government agencies including those posted abroad at the embassies/ consulates and overseas labor offices.⁶

⁵ Center for Migrant Advocacy conducted two participatory performance assessment of two government agencies, namely Philippine Overseas Employment Administration (2016) and the Overseas Workers Welfare Administration (2017);

⁶ CMA served as resource on Gender and Migration in DOLE's pre-departure orientation for labor personnel to be deployed abroad; also in Foreign Affairs Department's cadetship course for personnel for deployment abroad.