

Minimum Standards for Labour Migration from South Asia

In 2013, the United Nations Population Division estimated the world's stock of migrants, defined as persons residing outside their country of birth, at 232 million people. In South Asia, the annual outflow of migrant workers from the five main source countries in South Asia totals some 2.8 million migrants¹. The main flow of these migrants is to the six Gulf Cooperation Council (GCC) member states and Malaysia, which rely heavily on foreign labour, with a total of some estimated 25 million migrant workers.

Labour migration generates substantial benefits for both countries of origin and destination. Countries of origin benefit primarily in the form of remittances, but also through professional, cultural and social skills gained during overseas employment, including transfer of technologies. However, despite the large contributions that migrants make to the countries of origin as well as destination, the current governance system failed to generate a fair and equitable distribution of the profits between the migrant workers, the employers and intermediaries.

In the GCC countries, the ratification of key international instruments related to the situation of migrant workers is low: none of the countries have ratified the international conventions related to migration⁷. Also the ratification level of the eight ILO conventions identified as the "fundamental" principles and rights at work⁸ remains low. The absence of global, regional or even bilateral policy agreement on the movement of labour between countries of origin, transit and destination creates a governance gap that leaves migrant workers vulnerable to human and workers' rights abuses.

Given this, the South Asian countries must unite to demand better terms of employment for their workers, increased protection and maximise potential from migration for their development. General principles that should apply:

- Protection of workers can be ensured through multilateral and bilateral labour migration frameworks, which generate rights, workers can invoke;
- All countries involved should ratify International and specifically ILO and UN standards regarding decent work and labour migration, and are the benchmarks regarding decent work. As such, they should be referred to in these bilateral and multilateral agreements;
- These agreements will cover all categories of migrant workers, including domestic workers;
- No workers can be discriminated on the basis of caste, colour, disability, creed, religion, ethnic origin, nationality, sex, etc.
- Human trafficking and bonded labour is to be avoided, in line with the UN Protocol on trafficking, ensuring prosecution of violations and assistance to victims.

¹Sources: **India**= Ministry of Overseas Indian Affairs, 2014, http://moia.gov.in/writereaddata/pdf/Annual_Report_2014-15.pdf; **Pakistan**= Bureau of Emigration and Overseas Employment, 2015, <http://www.beoe.gov.pk/migrationstatistics/1971-2015%20%28upto%20Feb%29/COUNTRY-1971-2015.pdf>; **Nepal**= Department of Labour and Employment, 2014, www.ilo.org/kathmandu/whatwedo/publications/WCMS_312137/lang-en/index.htm; **Bangladesh**=Bureau of Manpower, 2015, <http://www.bmet.gov.bd/BMET/viewStatReport.action?reportnumber=20>; **Sri Lanka**=Bureau of Foreign Employment, 2012, <http://www.slbfe.lk/page.php?LID=1&MID=54>.

⁷The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families and the two ILO conventions Migration for Employment Convention, 1949 (C97) and the Migrant Workers Convention, 1975 (C143).

⁸See <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>. These "fundamental" conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

- Women migrant workers are entitled to special attention and protection, as a cross cutting issue.

SARTUC hence invites SAARC member states to agree and apply a set of minimum standards for labour migration:

1. Respect migrant workers' right to organize

- Migrant workers have the right to join/form trade unions and to bargain collectively. Freedom of association and the right to collective bargaining are fundamental human rights.
- Employment contracts cannot prohibit or discourage migrant workers to form/join trade unions and to bargain collectively.

2. Reduce migration costs for migrant workers

- All costs linked to recruitment and travel should be employer based and made transparent and publicly available

3. Agree and enforce minimum wages

- Appropriate minimum wages are set in the hosting countries in accordance with art. 3 ILO Minimum Wage Fixing Convention, 1970 (No. 131), to determine the minimum wage for migrant workers from South Asia;
- Workers performing the same job should receive equal pay.
- Payment of wages must reflect the terms of the contract and payments should be timely and with the frequency specified in the contract.
- Payment of wages should be done to a bank account held by the migrant worker.
- Migrant workers should have complete control over their earnings.

4. Develop and enforce a standard employment contract

- A standard employment contract for migrant workers should be developed, agreed and enforced by all South Asian countries.
- The written contract shall be provided to the migrant worker in his/her local language or a language he/she understands.
- The individual employment contract shall specify all terms and conditions for the employment as per the model standard employment contract¹⁰.
- The worker's consent to the employment contract should be obtained without coercion, pressure or deceit.
- Ensure a zero tolerance for contract substitution.

5. Ensure safe and decent working and living conditions

- The migrant workers shall enjoy safe and decent conditions of work of OHS ILO standards, and living, free of any sort of harassment, harsh or inhumane treatment.
- Employer must provide accurate details, in the employment contract, on the nature, tasks, scope, and conditions of work and living provided to the migrant worker.
- All conditions of work, including regular hours, overtime, days off, breaks and terms for termination should be clearly defined in the employment contract. Mechanisms such as

¹⁰ The Annex to the ILO Recommendation No 86 provides an overview of what should be included in an employment contract for a migrant worker (Art 22).

independent and regular labour inspection need to be in place to monitor that the actual working conditions are in line with those specified in the employment contract.

- If provided, the employer shall ensure accommodation and living conditions to migrant workers which offer privacy, are safe, clean and hygienic and meet with international standards.
- Migrant workers are entitled to a personal and social life. Their freedom of movement is not to be restricted and should not be confined to living quarters outside of their working hours.
- Employers should take account of migrant workers' dietary needs related to health or religious requirements, and make appropriate arrangements.

A monitoring mechanism needs to be in place to monitor that the living conditions are safe and decent.

6. Ensure access to social protection

- Hosting countries are to ensure access for migrant workers to Social Protection services in accordance with ILO R202, so that migrant workers, documented or not, have the same access and quality of social protection services in the hosting countries as nationals;

7. No-tolerance to document confiscation

- Workers should maintain free and complete possession of their identity and travel documents and residency papers.

8. Ensure proper procedures at the time of contract termination and allow change of employer

- Employment contracts are for a period of minimum two years and renewable.
- Employers bear the costs for return of the employee.
- After completion or termination of an employment contract, migrant workers will dispose of 90 days to arrange his/her affairs.

9. Ensure access to justice and complaints procedures

- In case of a dispute between a migrant and his/her employer, the migrant shall have ensured access to legal assistance and the appropriate courts or shall otherwise obtain redress for his/her grievances.