

Migrant Workers in the Middle East

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List of abbreviations

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BOMSA	Bangladesh Women Migrant Workers Association
BWI	Building and Wood Workers' International
CARAM (Asia)	Coordination of Action research on AIDS and Mobility (Asia)
CMA	Centre for Migrant Advocacy Philippines
ECSR	European Committee of Social Charter
EU	European Union
FTZ	Free Trade Zone
GCC	Gulf Cooperation Council
GEFONT	General Federation of Nepalese Trade Unions
GFBTU	General Federation of Bahrain Trade Unions
ICATU	International Confederation of Arab Trade Unions
IFC	International Finance Corporation
ILM (Survey)	International Labour Migration (Survey)
ILO	International Labour Organization
INTUC	Indian National Union Congress

IOE	International Organization of Employers
IOM	International Organization for Migration
ITGLWF	International Textile, Garment and Leather Workers' Federation
ITUC	International Confederation of Trade Unions
KTUF	Kuwait Trade Union Federation
MFA	Migration Forum in Asia
MNEs	Multi-National Enterprises
MOLSA	Ministry of Labour and Social Affairs
MOU	Memoranda of Understanding
NGO	Non-Governmental Organization
NLC	National Labour Committee
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation in Europe
OWWA	Overseas Workers Welfare Administration
QIZ	Qualified Industrial Zone
POEA	Philippine Overseas Employment Administration
SLBFE	Sri Lankan Bureau of Foreign Employment

TUAC Trade Union Advisory Committee

TUC (UK) Trade Union Congress

UAE United Arab Emirates

WTO World Trade Organization

Chapter 1

Introduction

A number of areas in the world have been transformed by the globalization. Governments, societies, economies and cultures in different regions of the world are becoming increasingly integrated and interdependent. Developments of new technologies are making possible of capital, goods, services, information and ideas to move rapidly from one country and continent to another. Furthermore, as a result of the expansion of the global economy, millions of people can across borders more easily to access better opportunities in life.¹

Each year millions of people leave their homes and cross national borders looking for better securities for themselves and their families. Many migrants are encouraged by the search for higher wages and better opportunities, responding to the demand for their skills abroad, but many others are crossing borders unwillingly because of famine, natural disasters, violent conflict or simply a shortage of decent employment in their home country. Negative side of the globalization, such as increasing poverty, widening gaps in income, wealth, human rights and security issues serve as push factors towards migration. There are many positive aspects to international migration. Migrant workers can contribute to growth and development in their countries of employment through their labour. Their countries of origin greatly benefit from these workers' remittances and the skills they acquire during their migration experience. Although international migration can be a positive experience for migrant workers, many experience poor working and living conditions, including low wages, unsafe working environments, a virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia.²

With the finding of oil in the 1930s and '40s the Middle East States increasingly opened up to international migration. Between the '50s and 70s, the Middle East States developed their infrastructures by means of migrants, generally from other Arab states. Then, since the mid-70s, as the oil price increased rapidly, there was an enormous development of building and industrial projects, which led to the first, massive importation of migrant workers from Asia. For example, in the United Arab Emirates, the number of migrant workers almost increased twice in one decade, from 5 million in 1990 to over 9 million in 2001. Percentage of migrant workers in the active population in these countries is extremely high, for example, 91% in UAE, 85% in Qatar, 83% in Kuwait, 78% in Oman, 62% in Bahrain and 50% in Saudi Arabia. Without migrant workers, these countries' economies would definitely collapse, just as

¹Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 249.

²*Ibid.*

they would if oil were to disappear. The migrants are paid much less than local workers and are caught up in a kind of patronage system, whereby most are provided with miserable accommodation and suffer many kinds of discrimination.³

Among them, domestic women workers are the most vulnerable to the worst form of abuses, too frequently in conditions akin to modern slavery. They often migrate under insecure circumstances, live in cruel and harsh conditions, and are easily becoming targets of sexual exploitation and violence. Furthermore, these domestic sectors are not covered under basic legal protection and are often excluded from the purview of normal labour laws. Thus, legislation and enforcement regulating the scope of working conditions, working hours, minimum wages, and holidays and other entitlements of these domestic workers are virtually non-existent.⁴

The purpose of this thesis is to help design of adequate mechanism to protect migrant workers' dignity and fundamental labour rights in the Middle East States. Giving an attempt to achieve this objective, I will particularly focus on adequate mechanism to realize international standards of freedom of association and right to collective bargaining among migrant workers to enhance their fundamental labour rights and protect them from abuse and exploitation.

In order to properly assess the objective of this paper, in chapter 2, I will concentrate on the scope of abuse and exploitation may be experienced by migrant workers and living and working conditions of migrant workers in the Middle East to place impetus that how serious and cruel is the situation.

After that, in third chapter, I will explore what is the protective action by home and work countries in accordance with internationally recommended guidelines to protect migrant workers fundamental labour rights, prevent abuse and exploitation and to establish fair migration policy and practice both in origin and destination countries.

In the fourth chapter, I will focus on trade union action to protect migrant workers' fundamental labour rights. Within this discussion, I will outline the important and different role of International Trade Union Confederation (ITUC) and other international, regional and local trade unions to improve fundamental labour rights of migrant workers. I will also discuss about how international trade unions could assist to join migrant workers in trade unions and strengthen their solidarity in order to provide mechanism that workers can protect and combat against abuse and exploitation themselves. Then I will focus on cross-border or transnational collective action to give an attempt to increase bargaining power, establish strong transnational links and place international efforts in this region.

³ITUC, *Migrant Workers in the Middle East* December 2007, 7.

⁴The ILO, *Rights Based Approach to International Labour Migration* 95.

The fifth chapter will outline the important role of the ILO. I will discuss international legal frameworks to elaborate how freedom of association and right to collective bargain should be applied under international standards giving particular relevance to women migrant domestic workers. I will focus on the Conventions that have particular relevance to private recruitment agencies and domestic workers. After that I will discuss the ILO's special activities to promote ratification of its Conventions and technical cooperation and special action programmes.

Finally, in the sixth chapter, the conclusion and recommendations will be laid down.

Chapter 2

Working Conditions and Abuse of Migrant Workers

2.1 Introduction

The resolution and conclusions of the 92nd Session of the International Labour Conference, 2004, observed that, “Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers’ rights, discrimination and xenophobia, as well as social exclusion”.⁵ All these negative factors deprive workers of the potential benefits of employment in another country and undermine the development impact of migration. Unfortunately, the implementation of policies to protect migrant workers has lagged far behind the growth of labour migration.

Particularly, the situation of migrant workers in the Middle East represents a typical example of these malpractices. In this region, the working conditions are extremely harsh and accidents are all-too-commonplace. Reports concerning this region consistently cite ongoing practices of exploitation by unscrupulous recruitment agencies, pay arrears, non-payment of minimum wage, breach of employment contract, confiscation of passports, enforced and unpaid overtime, poor accommodation and food etc. Furthermore, those daring to protest or to strike risk deportation and a lifelong ban on re-entry to the country. Any form of union organization is prohibited by law. Any demand for a wage rise is deemed illegal, as it is not provided for in the initial employment contract. Termination of the employment contract results in the immediate expiry of the migrant worker’s residence permit.⁶

To elaborate how serious is the situation more thoroughly, following news article from Guardian will be illustrated:⁷

‘The sun is setting and its dying rays cast triangles of light on to the bodies of the Indian workers. Two are washing themselves, scooping water from tubs in a small yard next to the labour camp’s toilets. Others queue for their turn. One man stands stamping his feet in a bucket, turned into a human washing machine. The heat is suffocating and the sandy wind whips our faces. All around, a city of labour camps stretches out in the middle of the Arabian desert, a

⁵Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 255.

⁶ITUC, *Migrant Workers in the Middle East* December 2007, 8.

⁷The Guardian, ‘We need slaves to built monuments’ Wednesday 8 October 2008
<<http://www.guardian.co.uk/world/2008/oct/08/middleeast.construction>>

jumble of low, concrete barracks, corrugated iron, chicken-mesh walls, barbed wire, scrap metal, empty paint cans, rusted machinery and thousands of men with tired and gloomy faces. Behind the showers, in a yard paved with metal sheets, a line of men stands silently in front of grease-blackened pans, preparing their dinner. Sweat rolls down their heads and necks, their soaked shirts stuck to their backs. A heavy smell of spices and body odour fills the air. Next to a heap of rubbish, a man holds a plate containing his meal: a few chillies, an onion and three tomatoes, to be fried with spices and eaten with a piece of bread. In the middle of the cramped room in which 10 men sleep, one worker in a filthy robe sits on the floor grinding garlic and onions with a mortar and pestle while staring into the void.

Hamidullah, a thin Afghan from Maydan, a village on the outskirts of Kabul, tells me: "I spent five years in Iran and one year here, and one year here feels like 10 years. When I left Afghanistan I thought I would be back in a few months, but now I don't know when I will be back." How is life, I ask. "What life? We have no life here. We are prisoners. We wake up at five, arrive to work at seven and are back at the camp at nine in the evening, day in and day out."

All of these men are part of a huge scam that is helping the construction boom in the Gulf. Like hundreds of thousands of migrant workers, they each paid more than £1,000 to employment agents in India and Pakistan. They were promised double the wages they are actually getting, plus plane tickets to visit their families once a year, but none of the men in the room had actually read their contract. Only two of them knew how to read. "They lied to us," a worker with a long beard says. "They told us lies to bring us here. Some of us sold their land; others took big loans to come and work here." Once they arrive in the United Arab Emirates, migrant workers are treated little better than cattle, with no access to healthcare and many other basic rights. The company that sponsors holds on to their passports - and often a month or two of their wages to make sure that they keep working. And for this some will earn just 400 dirhams (£62) a month. As they eat, the men talk more about their lives. "My shift is eight hours and two overtime, but in reality we work 18 hours," one says. "The supervisors treat us like animals. I don't know if the owners [of the company] know." Immigrant workers have no right to form unions, but that didn't stop strikes and riots spreading across the region recently - something unheard of few years ago. Elsewhere in Mousafah, I encounter one of the very few illegal unions, where workers have established a form of underground insurance scheme, based on the tribal structure back home. "When we come here," one member of the scheme tells me, "we register with our tribal elders, and when one of us is injured and is sent home, or dies, the elders collect 30 dirhams from each of us and send the money home to his family."

Like the rest of the Gulf region, Dubai and Abu Dhabi are being built by expat workers. They are strictly segregated, and a hierarchy worthy of previous centuries prevails.'

2.2 Forms of Abuse and Working Conditions of Migrant Workers

To describe forms of abuses and working conditions in general an example of migrant workers abuses in Jordan will be laid down.⁸ The National Labor Committee (NLC) has issued reports of migrant labor abuses in clothing factories in Jordan in May 2006. This report and ongoing updates bring an international attention on the issue of migrant workers in Jordan. The government of Jordan has made progress to protect migrant workers and is supporting with other local stakeholders a new program called Better Work, launched by the International Labour Organization (ILO) and the International Finance Corporation (IFC).

However, the NLC is keep going to cite cases of abuse. In September 2008, the NLC reported strikes at the Mediterranean factory in Jordan, which employs approximately 1,400 migrant workers from Bangladesh, Nepal, Sri Lanka and India. According to the NLC, Mediterranean factory workers reported the following abuses:

- Passport withholding
- Physical abuse by management
- Unpaid overtime of up to 99 hours per week
- Contract substitution
- Unfair withholdings for monthly food allotment
- Threats of imprisonment or forcible deportation for speaking out
- No days off
- Wages below Jordanian minimum wage for guest workers

2.2.1 Exploitation by Unscrupulous Recruitment Agencies

In the Middle East Countries, a major issue regarding migrant workers is the abuse and exploitation of unscrupulous private recruitment agencies. This practice carries with intrinsic risks, as it effectively avoids the system of accountability. A shift to direct recruitment and employment of migrant workers will considerably decrease risks to workers, suppliers and international companies.

In origin countries, the abuses of indirect recruitment start at the village level. Recruitment agencies normally rely on subagents who go to rural villages to seek prospective workers for overseas jobs. In Sri Lanka, for example, such subagents are unlicensed and often provide workers with false contracts and charge high commissions. Licensed central agencies in Sri Lanka are not accountable for the practices of these subagents.⁹

This malpractice has been exacerbated by the harmful alliance between recruitment agencies, local governments, employers, and sometimes with criminal gangs. The general abuses that frequently reported are charging illegal and excessive migration costs, providing incorrect information about employment,

⁸ BSR, 'International Labour Migration: A Responsible Role for Business' 5.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

⁹Ibid 14.

send migrants where there actually no jobs do exist and target to women migrant workers as victims of human trafficking, like forcing them into prostitution and sex industry.¹⁰ Particularly, illegal and excessive recruitment fees often force migrant workers into debt-bondage. Some may be forced to tolerate circumstances of forced labour or near-slavery to reimburse debts owed to recruiters and traffickers.¹¹ For example, in Pakistan, the recruitment agents charged migrant workers a huge amount for their visa applications. The fees are diverse on the sort of visa and nature of work. A company-sponsored visa to Saudi Arabia could be as much as \$2,900, while an open visa (or Azad visa) would be around \$1,450. According to a report of Sri Lanka, the most of migrant workers were unaware of the legal cap of \$50 is confirmed by the Sri Lankan Bureau of Foreign Employment (SLBFE) on fees charged by hiring agents.¹² According to the ITUC report on Migrant workers in the Middle East 2007, Sri Lankan workers have to pay up to \$1000 to the recruitment agencies bringing them to Jordan. Sometimes they received a contract in English stipulating that they would also have the right to free food and medical care, but when they arrived they realized that they had to pay for these costs themselves.¹³

However, these abuses are worsened owing to weak regulation of recruiting agencies. According to the International Confederation of Free Trade Unions –Asian and Pacific Regional Organization Report 2003,¹⁴ “Employment agencies caught for their malpractices and even illegal works are quite often found escaping any punishment. If at all a punishment is given, the penalty”.

In Philippines’ case (see annex 1), they have a mechanism to observe recruitment agencies but there are still many way of escaping from the monitoring of local recruitment agencies and their foreign counterparts. The careless surveillance and regulation of recruitment agencies are also reason of the high recruitment and placement fees. Some of them reported that later they realized that their employers had already paid for the cost of their travel and employment. Moreover, in some cases, the expenses even included payments to the airport official who accompanied them through immigration.¹⁵

2.2.2 Poor Living and Working Conditions

Migrant workers generally arrive with a 3-year renewable contract in the Middle East but one of the most common complaints was non-compliance on the terms of contract on the employers, including wage,

¹⁰The ILO, *Rights Based Approach to International Labour Migration* 159.

¹¹UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 29.

¹²Adnan Sattar, *Migration - Trafficking Nexus: The Case of Pakistan* (2007).

¹³ITUC, *Migrant Workers in the Middle East* December 2007, 7.

¹⁴The ILO, *Rights Based Approach to International Labour Migration* 78.

¹⁵UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 28

leave and other entitlements, such as holidays and sick leave. Additionally, in a number of situations, the contract did not stipulate the arrangement for their meals and accommodation.¹⁶

2.2.2.1 Wages

According to the ITUC' report, a young Indian worker who arrived in Jordan a year ago complained that; "We were promised a salary of \$300, but even with overtime we only get \$190 or \$200." The amount deducted from their salaries to cover food expenses also varies widely and can be as much as JD45 (around €45). In general, migrant workers who work at construction site on Dubai receive 150\$, textile sector in Jordan receive 190-200\$.¹⁷ With regard to domestic workers, the monthly wage for Filipino domestic workers is approximately \$125-150 in Bahrain, \$187-375 in Dubai, and \$200-400 in Lebanon. The monthly salary for Bangladeshi domestic workers is approximately \$100 in Bahrain and the UAE, and \$125 in Lebanon. For Sri Lankan domestic workers is approximately \$125-140 in Bahrain and the UAE, and \$120-150 in Lebanon¹⁸

2.2.2.2 Working hours

The law approves voluntary overtime with voluntary payment, as long as it does not surpass 60 hours a month and 14 hours a week, which amounts to a 62-hour working week in total. However, according to many employees, it is common to have to work until 3 or 4 o'clock in the morning on a Thursday so that they can take their statutory day off on Friday. They're not supposed to work more than 10 hours per day but many are compelled to work 13-14 hours per day and some of them as many as 18 hours a day, including on Fridays.¹⁹

2.2.2.3 Accommodation and food

Migrant workers are also living with extremely harsh accommodation and conditions. They live in a shack like house and cramped in a small room with 10 to 20 people. It is common that 10 people sharing in 12 square meters. They live in low hygienic standards without adequate sewage outlet and garbage disposal. Migrant workers also complain about no adequate shower, clean toilet and enough drinking water. Moreover, owing to their low wages, they could not afford decent and enough food.²⁰

¹⁶ITUC, Migrant Workers in the Middle East December 2007, 3.

¹⁷ITUC, Migrant Workers in the Middle East December 2007, 4-5.

¹⁸ UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 28, Box 4.

¹⁹ITUC, Migrant Workers in the Middle East December 2007, 7.

²⁰ITUC, Migrant Workers in the Middle East December, 2007, 2.

2.2.2.4 No social protection

Many migrant workers are also living with no social protection. Work accidents are by no means uncommon in this region, especially on the construction sites but many workers have no social insurance. Access to health care is a crucial aspect to protect against any disease and work accidents. Such access is fundamental labour rights and should be timely, appropriate, affordable, confidential, and non-discriminatory. Generally, migrant workers in this region had experienced with difficulties to access to health care services.²¹ According to Nepalese embassy statistics from January- October 2011, 13 migrant workers committed suicide, 22 work-related deaths were documented and 92 deaths were unexplained.

2.2.2.5 Discrimination and xenophobia

In this region, migrant workers are frequently subjected to unequal treatment and opportunities and other discriminatory behaviour. For example, in Bahrain, the difference in the wage gap between a native workers and a migrant worker is about 300 euro per month. However, this gap is huge because general salary of migrant worker do not exceed 150 euro per month.²²

Migrant workers also experience racism frequently. Particular with domestic workers from Africa and Asia are being subject to racism owing to the servant like work, the working conditions and the low wages. Furthermore, migrant workers experience increasing xenophobia. For example, an Egyptian worker in Jordan speaks of the tense relations with the Jordanian population. He said that “The bosses want Egyptians because they know they can pay them less, and the Jordanians then blame the Egyptians for “taking jobs away” from the Jordanians. The way these people look at us, the way they speak to us... it’s obvious that they don’t like us”.²³

2.2.3 Sponsor or Kafala System and Restriction on Shifting Employers

Under the sponsorship systems of the Middle East countries, nationals or companies can hire large numbers of migrant workers who are dependent on their employers. However, the abuse and exploitation to migrant workers have been exacerbated by this sponsor system in this region. According to the **kafala** (literally, ‘guaranteeing and taking care of’ in Arabic) system in the Middle East, an employer is wholly responsible to sponsor a migrant worker’s visa and support full economic and legal needs for him/her

²¹ITUC, Migrant Workers in the Middle East December, 2007, 4.

²²ITUC, Migrant Workers in the Middle East December, 2007, 5.

²³ITUC, Migrant Workers in the Middle East December, 2007, 4.

during the contracted period. Legally, the sponsored migrant worker can work only for his/her sponsor. In the case of a domestic worker, the programme makes it obligatory for her to stay in her employer/sponsors' home.²⁴

Unfortunately, this sponsor programme can derive migrant workers into more vulnerable position by creating excessive dependence on her employers or sponsors. However, a number of migrant workers said that the convenience of the sponsor system, such as no requirement of immediate fees, the simplicity of recruitment and the simple process of administration played a significant role to make the decision to migrate the Middle East countries.²⁵

Not only the sponsor system but also the policy of banning shifting employers derives migrant workers into more vulnerable position. According to the UAE's Ministerial Decree No. 360 of 1997 Concerning the Entry and Residence of Expatriates, a six months ban will be imposed on migrant workers who wish to terminate their contract. This means if a worker wishes to be hired again, he/she must wait until the period of six months has passed. If the employee breaches the employment contract, the Law stipulates that a one-year ban will be imposed by the Immigration Department. Some skilled workers such as engineers, doctors, teachers, and accountants are except from the six months ban. This law seriously hampers realization of migrant workers' rights and dignity because it '(1) deters worker from filing complaints and (2) stops complainants in pursuing a case'.²⁶

For instance, in case of sexual and physical abuse, it is difficult to prove in UAE courts and not all workers are motivated to initiate legal action against their employers. Because migrants workers are not aware of their legal rights, have limited access to legal support, or are reluctant to undergo the emotional trauma associated with complicated and expensive court proceedings. Exploitation and intimidations from the employer's side may also be a reason for not to process legal actions. Furthermore, the ban policy attaches migrant workers to brutal and cruel employers because many migrants are not able to survive months of unemployment. Economic factors, such as debt for recruitment agencies or employers and family members whose lives are dependent on remittances put migrant workers under pressure to keep going employment.²⁷

²⁴ N. Shah, *Management of Irregular Migration and its Consequence for Development: GCC 6-7*.

²⁵ Gwenann S. Manseau, *Contractual Solutions for Migrant Labourers: The Case of Domestic Workers in the Middle East*, pp. 29-30.

²⁶ Migrant Forum in Asia, *Women Migrant Workers in UAE 8*.

²⁷ *Ibid.*

2.2.4 Unprotected under National Laws

Migrant workers are hardly ever given adequate protection under destination country laws in the Middle East, either in policy or in practice. In some countries, laws authorized differential treatment of migrant workers. In others, no legislations are specifically subject to migrant workers and are rarely enforced in favor of their protection. Finally, export processing zones and free trade zones (FTZs) often have independent legislation regarding worker rights and protections, which usually fall short of protecting migrant workers.²⁸

United Arab Emirates: ‘Provisions of UAE Labor Law No. 8 (1980) apply to both UAE nationals and migrant workers. The law also sets out the terms of recruitment of workers by UAE employers, regulates maximum working hours and provides for annual leave and overtime. However, the law does not set a minimum wage, fails to recognize the right of workers to organize and bargain collectively, and contains an explicit ban on labor strikes for all workers, including migrants. In practice, little evidence exists of enforcement in favor of migrant workers’ rights. In addition, and with particular relevance to the manufacturing sectors, the UAE FTZ authorities maintain their own standard employment contracts, which have in the past contained clauses that contradict specific provisions of the Federal Labor Law.²⁹

Jordan: ‘Following the discovery of widespread abuses of migrant workers in the Qualified Industrial Zones (QIZs) in 2005, the Jordanian government enacted several reforms to address the issues, including increased number of work inspectors, worker hotlines for complaints, and fines for employer violations. However, no formal changes to the labor law were achieved, despite advocacy for reform by international and domestic trade unions. A condition of the US-FTA signed in 2006 was to allow migrant workers the right to organize; however, on July 12, 2008, the upper house of the Parliament removed pending legislation provisions that would have allowed migrant workers to join unions. The Ministry of Labor (MOL) says it remains committed to comprehensive labor law reform at its next session in November. Currently MOL notes that even though the right is not codified in law, migrant workers are allowed de facto representation by the National Apparel Union in practice. But as long as unionization for migrant workers remains illegal, such organizing offers limited meaningful protection.’³⁰

²⁸ BSR, ‘International Labour Migration: A Responsible Role for Business’ 18.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

²⁹ Ibid 19

³⁰ Ibid.

2.2.5 Denial of Freedom of Association

The Middle East may seem as ‘a dark area for trade union rights’, the region of the least protected union rights in the world. In this region power of trade unions is extremely weak and density of trade union is enormously low. Moreover, these rights are not guaranteed by most of the Constitutions of countries in this region. Regarding all the Middle East States, only Kuwait, Bahrain and, recently, Oman, allow trade unions. Except for Kuwait, none of them have ratified ILO conventions 87 and 98 on freedom of association and right to collective bargain.³¹ According to the latest ITUC “Annual Survey” of violations of trade union rights around the world, “Migrant workers remain the most vulnerable group in the region. In some cases their rights are not protected by law, in others they are actually barred from union membership. Frequently they dare not organize or take part in collective action for fear of beatings, dismissal or deportation”.

For instance, in 2007, in the United Arab Emirates 4,000 Indian workers involved in a strike to protest at their low wages and harsh working conditions, the Government’s forced them back to work under the threat of imprisonment and deportation, while rejecting to deliberate the reasons of their complaints. Similarly, in July 2008, after Bangladeshi workers in Kuwait went on strike and held mass demonstrations to persist on better wages and working conditions, the Government deported over 1,129 Bangladeshi workers.³²

In Bahrain, migrant workers are allowed to join trade unions but fear of losing their jobs stops them from joining unions. They are employed under fixed term contracts and they fear that the employer will not renew their contract. Despite the risks, strikes and demonstrations are a daily occurrence in the private sector. They are usually protesting for the non-payment of wages or dangerous working conditions. In March 2007, Building and Wood Workers International (BWI) protested against the deportation and lifelong ban on the re-entry of 200 workers from India, Nepal, Bangladesh and Pakistan, who went on strike to support of the demand made to their employer for a \$70 increase on their basic pay of \$150.³³

³¹ITUC, *Migrant Workers in the Middle East* December, 7.

³² The ILO, *Rights Based Approach to International Labour Migration* 175.

³³ITUC, *Migrant Workers in the Middle East* December, 2007, 7.

2.2.6 Lack of Access to Effective Remedies

Migrant workers often lack of access to effective local remedies. Even where such methods are present, workers' access is hampered by lack of knowledge of how the local system works, inability to speak the local language, and fear of retribution or repatriation for voicing concerns. Workers who want to report mistreatment confront powerful discouragements to accessing legal remedies. Where visas are bond to particular employers, as is the case in most destination countries, employers may take penal measures against workers who file official complaints, including putting their visa status at risk.³⁴

In UAE,for example, 'a worker wishing to make a complaint against his or her employer is required to submit a formal report in English or Arabic, along with his or her passport. Most migrant workers do not speak either English or Arabic, some are illiterate and unable to write the required report, and their passports are commonly withheld by employers. In practice, therefore, the conditions for filing a formal dispute in UAE effectively render access to legal channels for complaints virtually impossible for most migrant workers. In addition to policies, the dispute resolution system in UAE lacks coordination, transparency and accountability. Three government bodies have the authority to address worker dispute cases and very little coordination exists among them. The federal government maintains no comprehensive data (including statistics) on labor dispute cases lodged with government agencies. Thus, there is no transparency regarding the number of cases resolved, how they were resolved, or whether they were enforced. In researching its 2006 report on migrant worker treatment in the UAE construction industry, Human Rights Watch was unable to document any instances in which an employer was sanctioned, either by prison time or financial penalties, for nonpayment of wages to employees'.³⁵

2.3 Women Migrant Domestic Workers

Women migrant domestic workers are particularly vulnerable to abuse and exploitation due to the nature of domestic work which is private and often "invisible". What goes on in the home, behind closed doors,

³⁴BSR, 'International Labour Migration: A Responsible Role for Business' 18.

< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

³⁵ Ibid.

is considered a private affair, so migrant domestic workers often have to suffer abuses in silence, without any form of recourse, and amid general indifference.³⁶

2.3.1 Living and working conditions

Misled by unscrupulous recruitment agencies, they do not realize the fate awaiting them until they arrive, when it is too late. Their working conditions can differ extremely, in some cases reaching to virtual modern slavery and forced labour. Their employers often withhold their passports, and many prohibit them from leaving the house. Due to dependence on the mercy of their employers, they work extremely long hours (average 15-16 per day), sometimes without payment. In some cases they are forced to sleep in the kitchen or other parts of the house where they have no privacy and dependent on their employer's good will when it comes to food. They are often becoming victims of physical and sexual abuse. Sometime they are forced in to virtual slavery, target to women migrant workers as victim of human trafficking, like forcing them into prostitution and the sex industry.³⁷ Their situations are worsened by unethical behaviour of many recruitment agencies which are misinforming or failing to inform prospect migrant workers regarding wage, working conditions, and visa related issues, charging excessive recruitment fees, substituting contracts and threatening migrant workers when they bring complaints against their employers. For example, the agency charges between ten and fifteen times the first salary of the domestic workers that has just arrived in Lebanon. Employing a young Ethiopian costs the employer around 2400 dollars (ticket, visa, medical check up, legalised contract, etc.). Sixty percent of this amount goes into the pockets of the agency, whilst the young Ethiopian will receive probably no more than 150 dollars a month (only 100 dollars in the case of Sri Lankan women).³⁸

2.3.2 Physical and Sexual Abuse

Many of women migrant domestic workers had been experienced both physical and verbal abuse by their employers. It was ordinary event in their daily life. The common manner of employers which domestic workers usually face was that carrying orders aggressively, shouting, continuous scolding and criticizing mask an underlying threat of violence. Those forms of abuse are also originated from the inheritance of

³⁶ITUC, *Migrant Workers in the Middle East* December, 2007, 12.

³⁷The ILO, *Rights Based Approach to International Labour Migration* 159.

³⁸ITUC, *Migrant Workers in the Middle East* December, 2007, 12-13.

slavery and of subjecting the new house workers to the old norms of interaction between the owner and the slave. In many cases, children of employers were involved to punch, kick or bite the domestic workers without provocation and were hardly ever punished by their parents. In general, they experienced beatings, slapping, being burnt with boiling coffee. Broken ribs, scars, bruises and hospitalization were frequently reported. Sometimes young men in the home sexually harassed them and/or offered money in exchange for sex. If they denied, in some instance, physical violence was also accompanied. Owing to these verbal, physical and sexual abuses, many so-called suicides of domestic workers have been reported.³⁹ In 2007, as during previous years, disturbingly large numbers of young girls were mutilated, some killed, or are suffering serious trauma as a result of the particularly serious abuses they face in most countries of the Middle East.⁴⁰

2.3.3 Restriction on Movement

Restriction on movement during working hours and free time is also a significant problem. According to the interviews, in many cases, they were locked in the employers' house, particularly when the employers had gone out. Confining the worker's movement seems to be a normal to avoid the worker from escaping. Moreover, if they are not literally locked in, the workers are generally not allowed to leave the employers' house without explicit permission. Apparently, agencies advise employers to lock in the workers since there would be no guarantee that they would not run away. Also the employers' presumption is that too much free time will only make the employee more expensive and complaints.⁴¹

2.3.4 Food

Abuse may also happened when the employer refuse to give food or not allowing the worker to prepare her own food. They are often relied on the 'handout' of the leftovers from the family meal. In many cases, they don't receive enough food or being given food that they dislike.⁴²

³⁹ Anti slavery international, *Trafficking in women, forced labour and domestic work in the context of the Middle East and Gulf region* 30

⁴⁰ ITUC, *Migrant Workers in the Middle East* December, 2007, 12.

⁴¹ Anti slavery international, *Trafficking in women, forced labour and domestic work in the context of the Middle East and Gulf region* 29-30.

⁴² *Ibid* 31.

2.3.5 Access to Health Care

Generally, women migrant workers experienced many difficulties to access to health care services. They are excluded from health benefit schemes and the majority of the women are being dependent on their employers for treatment when they became sick.⁴³ In Bahrain and the UAE, women domestic workers are covered under their employer's family health scheme and consequently do not have access to independent and confidential health care services. Moreover, women migrant workers do not have sufficient time by their employers to rest and recover from an accident, injury, or surgery. They were also scared of negative consequences of becoming ill because it may lead to non-renewal of contract or termination of employment. Therefore, in some cases, they do self-medication and in other cases, women did not seek any treatment at all when they became ill. Affordability was another main problem. If the cost of treatment was not covered by the family health scheme, an employer often deducted it from the worker's salary.⁴⁴

2.3.6 Not Covered under National Labour Law

A further obstacle to ensuring the rights and dignity of migrant domestic workers in working countries is the exclusion of domestic work from the purview of national labour laws. Workers in domestic or informal sectors are not covered by labour, safety and other relevant law of the most countries in this region, in order that there are no legal means to administer, office and inspectors to enforce them.⁴⁵ Although there is existing applicable legislation, it is not possible for domestic workers to take advantage due to extensive non-compliance of labour inspection. Labour inspection hardly ever conducted in the informal sector or private households in most of countries in this region.⁴⁶

2.4 migrant workers in irregular status and human trafficking

Due to their insecure legal status, migrant workers in an irregular status easily become victim of extortion and are highly vulnerable to abuse and exploitation by employers, recruitment agents, corrupts bureaucrats and criminal gangs. The basic human rights of migrants in an irregular status often violated in spite of the protection they should be entitled under general international human rights instruments,

⁴³UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 36.

⁴⁴ UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 36.

⁴⁵Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 257.

⁴⁶ UNDP, *HIV Vulnerabilities of Migrant Women: From Asia to Arab States* 34

ratified by most countries. Fear of detection and possible deportation scares migrant workers away from available legal services presented to them. Women in irregular status are twice as vulnerable, owing to the high risk of sexual exploitation to which they are frequently exposed.⁴⁷ There are a number of migrant workers in irregular status in the Middle East countries, for example, between 250,000 and a half million Egyptian workers are undocumented in Jordan and there are 100,000 migrant domestic employees working legally in Lebanon, of which 80,000 come from Sri Lanka. Another 50,000 migrant domestic workers are estimated to be employed there illegally.⁴⁸

Trafficking of human beings reveals the dark side of globalization, where criminal gangs control and network across borders, because of rapidly developed international communications and transport.⁴⁹ Human trafficking is now the third most profitable illegal business in the world after arms and drug. Trafficking has become one of major source of organized crime income. Most of women victims of human trafficking are forced into prostitution and sex industry.⁵⁰ It is frequently reported that a number of migrant workers ended up by human trafficking in the Middle East. These states have received serious censure from the international community for trafficking of human beings. Four of six GCC countries placed on a blacklist of countries trafficking in people in 2008 by report of the United States of America Staten Department 2008 but removed Bahrain and UAE since they had made substantial progress in their record. Especially, women migrant workers are easily becoming victims of human trafficking throughout the clandestine recruitment by immoral hiring agencies in both the home and work country. For example, the number of migrant workers who come from certain Asian countries that has been the victim of trafficking brought into the Middle East by recruitment agents in the guise of domestic workers and then was forced into prostitution.⁵¹

Counterfeit of documents, such as passports and visa stamps, is a means likely to be inherently tied up with smuggling and trafficking. Recruitment agents, especially in origin countries, have often played a key role in arranging fraudulent visas. Entry into a country of the Middle East on a fake visa or fake passport puts the prospective migrant at the risk of deportation upon arrival, if caught. This makes prevention of human trafficking of human beings more difficult in this region.⁵² Hundreds of Nepalese women migrate to Gulf region looking for better work and remuneration were missing. According to

⁴⁷Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 256.

⁴⁸ITUC, *Migrant Workers in the Middle East* December, 2007, 4.

⁴⁹Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 257.

⁵⁰ B. Jamal, *Women Victims of Human Trafficking in Globalized World of Entertainment and Sex Industry: Humiliation of Women Dignity and Existence* 1.

⁵¹Migrant Forum in Asia, *Women Migrant Workers in UAE* 10.

⁵²*Ibid* 11.

family members they become victims of prostitution and slavery. In 2010, 242 Nepalese women migrant workers were never heard again.⁵³

2.5 Sub-Conclusion

There is no doubt that many of migrant workers in the Middle East experience harsh living and working conditions and their rights and dignity are seriously violated. Private recruitment agencies, callous employers and corrupt local governments derive them into serious abuses and undue hardship. Also unfair migration policies such as sponsor system and denial of freedom of association have been increased their vulnerability. Consequently, there is still much need to be done to protect rights and dignity of migrant workers that is a large and urgent unfinished agenda.

In a first place, governments have a responsibility to ensure well-being of migrant workers. Examples of good practice in various countries of the world can encourage improvements in working conditions for migrant workers. These consist of, for example, 'having competent institutions to supervise recruitment and migration; encouraging migrants to sign contracts whose provisions have been approved by competent national authorities; including migrant workers in work-related health programmes; and establishing specialized agencies to monitor and reduce discrimination'.⁵⁴

Owing to its complexity of issues arising from labour migration, it should be based on comprehensive, multi-faceted and based on international standards.⁵⁵ Accordingly, in order to protect rights of migrant workers and minimize the harmful consequences, both migrants sending and receiving countries should take adequate action that based on international legal frameworks and guidelines. The next chapter will look at the action by home and work countries protecting migrant workers which form the foundation on the international standards.

⁵³<F:\GENDER Feminization of Migration.mht>

⁵⁴The ILO, *Rights Based Approach to International Labour Migration* 113.

⁵⁵The ILO, *International labour migration: A rights-based approach* 117.

Chapter 3

Protective action by Home and Work Countries

3.1 Introduction

According to Professor John Ruggie - who in 2008 proposed a concept for human rights and companies based on three pillars:⁵⁶

- **The State duty to protect** against human rights abuses, including by business, through appropriate policies, regulation and dispute resolutions.
- **The corporate responsibility to respect** human rights, that is, to act with due diligence to avoid infringing the rights of others.
- **Access to effective remedy** for victims of human rights abuse, including through court or in-house processes⁵⁷

Concerning the state duty to protect, states have two obligations in accordance with UN human rights. First, State parties to refrain from violating the rights of persons within their territory and/or jurisdiction. Second, States must ensure the enjoyment or realization of those rights. In turn, ensuring that rights holders enjoy their rights requires protection by States against other non-state actors, including business entities. The state duty to protect is a standard of conduct and result. That means the States are not held responsible for human rights violation for itself, but may be regarded in breach of their duties if they fail to take adequate steps to prevent it and to punish and redress it when it takes place.⁵⁸

To apply this principle into this thesis, certain obligations are imposed on both origin and destination countries to provide adequate means to protect fundamental labour rights of migrant workers from abuse and exploitation. Migration policies and practices can only be viable and effective when they are established on a strong basis of legal norms and control under the rule of law. Most measures required to govern labour migration and ensure adequate protection for migrant workers can be found in the framework of international human rights and labour standards. It is essential to apply and build this body of national legislation upon the minimum standards accepted at the international and regional level. Moreover, even when countries are not able to adopt international or regional standards in full, they nevertheless should use them as standards for the development of national legislation and policy. The non-binding ILO Multilateral Framework on Labour Migration provides a wide-range of policy options to assist States in achieving consistency with international standards.⁵⁹

3.2 Protective Action by Home Countries

⁵⁶ < <http://www.ioe-emp.org/en/policy-areas/business-and-human-rights/index.html> >

⁵⁷ M Sepulveda, *Human Rights Reference Handbook* 16.

⁵⁸ Promotion of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Rights to Development, UN HRC/11/13 22 April 2009, 6-7.

⁵⁹ The ILO, *International labour migration: A rights-based approach* 146.

Countries of origin, particularly developing countries with a large number of migrant workers are frequently confronted with the dilemma of how to promote employment opportunities abroad for their nationals while also protecting their rights and dignity. Due to little chance of employment prospects at local market and the economic benefits from foreign exchange remittances, some countries are likely to pursue more of their national to work abroad. At the same moment, they realize that they cannot simply turn a blind eye to the abuses that can be experienced by their nationals. Recently, this policy dilemma is being faced by a number of countries that send workers, to the Middle East countries, where extensive and serious abuses of migrant workers presents. Obviously, protection of migrant workers' rights should start in the home country. In the Philippines, the Republic Act 8042, The Migrant Workers and Overseas Filipinos Act of 1995, states that "the State does not promote overseas employment as a means to sustain economic growth and achieve national development". It further provides that the State will deploy overseas Filipino workers only to countries where the rights of Filipino migrant workers are protected. But even while the 1995 Act down plays the dependence on overseas migration as a national policy, the Philippines continues to promote overseas employment, as seen in the increasing numbers of Filipinos migrating abroad, all too often to abusive conditions.⁶⁰

Action to protect and promote the well-being of migrants by home countries should generally consist of follows:⁶¹

Standard setting and enforcement

- Minimum standards for employment contracts
- Exit control measures
- Bilateral agreements including social security
- Restrictions on exit of selected categories of workers, especially minors and young women

Supervision of private recruitment

- Licensing of recruitment firms
- Performance guarantees and penalties
- Limits on recruitment fees
- Measures against illegal recruitment and clandestine migration

Support services

- Information and counselling services prior to departure
- Labour attaché services on-site

⁶⁰The ILO, *International labour migration: A rights-based approach* 153-154.

⁶¹The ILO, *International labour migration: A rights-based approach* 155.

- Social insurance
- Community facilities and centres for workers abroad
- Support services for families left behind
- Returnee training and employment assistance
- Emergency evacuation or repatriation

In following section, these recommended policies and regulations which have particular relevance to migrant workers in the Middle East will be discussed more thoroughly.

3.2.1 Ratification of Relevant International Conventions

Ratification of relevant international Conventions regarding labour migration by countries of origin reveals that they are taking care of the protection of their citizens and represents an important step towards such protection. Wider ratification by home countries may raise their ethical status when attempting to persuade destination countries that the latter should tolerate by the standards of protection set out in these instruments.⁶²

3.2.2 Better Information and Better Protection

Adequate preparation for the labour migration and information about migration process will have a significant impact on well-being of migrant workers in destination countries e.g. the regulation of employment agencies and recruitment fees, pre-departure assistance, with regard to correct information on life and work abroad, on-site services and support to get access to legal remedies.⁶³

Once their nationals are left their home countries, countries of origin have slight control over the working conditions of their nationals in other countries. But they can in any case attempt to ensure that migrant workers are well informed before their departure, therefore they can avoid harsh employment conditions without being appropriately informed. Countries of origin have the first and foremost duty to protect migrant workers during the pre-departure stage when migrants are still in their territory. The crucial period is when migrants make a decision whether or not to leave the home country for employment. During this period, providing trustworthy and precise information is indispensable before they go through important migration movement, such as paying fees to recruiters.⁶⁴

⁶²*Ibid* 157.

⁶³*Ibid* 156.

⁶⁴*Ibid* 158.

3.2.3 Fair Recruitment Practices

3.2.3.1 Control recruitment fees

One of the most complicated missions in regulating recruitment process is to control recruitment fees, since workers desperately looking for overseas' employment are eager to pay supplementary amounts. Fees are inclined to be higher if they are settled on market needs especially there is a huge wage gap between home and destination countries. The fees are also inclined to be higher for low-skilled workers. Those whose skills are in large demand, like nurses and IT workers, may not be charged any fees, even if the wage differential is huge.⁶⁵ In most cases, governments put restriction on the fees. For example, in Malaysia fees may not exceed 25 per cent of the first month's wages, while in Japan they may not exceed 10.5 per cent.⁶⁶ However, most home countries sending migrants to the Middle East have their legal cap of recruitment fees, for example, 50\$ by Sri Lankan Bureau of Foreign Employment (SLBFE) but weak regulation of recruitment agencies in home countries makes these legal caps meaningless. Thus, there must be strong enforcement to regulate recruitment fees.

3.2.3.2 Establish model employment contracts

While only a few countries are regulating their nationals working abroad through public employment agencies, as a minimum they have power to review and approve employment contracts, accuse violators of recruitment regulations, and arbitrate in disputes between migrant workers and foreign employers or recruitment agents. Most of these authorities also have the power to enter into agreements with foreign employers or to recruit nationals for employment abroad. An alternative is to provide standard contracts that can minimize conflicts and problems, particularly if the contracts are realistic and approved by the authorities in the destination country. The authorities in origin countries can use such contracts to ensure that migrants fully comprehend their rights and obligations before they sign them, and can require all contracts are approved by a competent authority.⁶⁷ According to ILO's perspective, standard contracts should be "skills-specific and country specific, based on a proper understanding and in-depth knowledge of the working and living conditions of migrant workers, as well as the culture, traditions and legislation of the destination country".⁶⁸ For example, the Ministry of Labour and Social Affairs (MOLSA) in Ethiopia designed a model contract for all migrant workers to be used by employment agencies in an attempt to assist prospective migrant workers. The model contract is in Amharic and clearly sets out

⁶⁵The ILO, *Private employment agencies, temporary agency workers and their contribution* 13-14.

⁶⁶*Ibid.*

⁶⁷The ILO, *Guide to Private Employment Agencies 'Regulation, Monitoring and Enforcement'* 26.

⁶⁸ The ILO, *Rights Based Approach to International Labour Migration* 159.

working hours, payment of salary, food, housing, and so on. MOLSA also attempts to raise awareness among the private employment agencies about trafficking.⁶⁹

3.2.3.3 Licensing system

One of the most essential recruitment policies is to set up licensing system that obliges every recruitment agency to acquire a license from the competent authority. Throughout strict stipulations for acquiring a license, the authorities can restrict employment to agencies that have the appropriate resources and required information to find good employment opportunities. They can also suspend or cancel licenses for non-compliance of stipulated provisions. However, licensing system will only be enforced effectively if the authorities can eliminate the operation of unlicensed recruiters. This entails the involvement of all levels of government, from the authority at the central government to the small village bureaucrat at the country-side. They should also know how to rely on the assistance of many other institutions, from the police to church groups. Besides, the public need to be provided with up-to-date information on which are the authorized or licensed agents, and what services they should expect from them.⁷⁰

3.2.3.4 Joint liabilities

With reference to this policy, a significant improvement has been made by the Philippines' legislation. According to this legislation, both the agencies and the foreign employers may have joint liabilities in the case of misconduct in enrolment process. Nevertheless, this is complicated to enforce in destination country. Consequently, there must be collaboration that destination countries should observe their duty by promulgating legislation to impose suitable sanction on employers and agencies. If such a policy is effectively implemented in both home and destination countries, each person who engaged in the recruitment process can be subject to legal responsibility wherever they operate.⁷¹

In the Philippines, agencies are obliged to set up large 'performance bonds' as well. This provides insurance for prospective migrant workers who already have paid fees but find that no jobs exist or whose employers fail to pay wages. Such machinery put burden on recruiter to take deeper consideration when choosing foreign employers and have made it much easier for the Philippine Overseas Employment Administration to reconcile workers' financial claims. For example, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA) are two key

⁶⁹Anti slavery international, *Trafficking in women, forced labour and domestic work in the context of the Middle East and Gulf region* 38.

⁷⁰ The ILO, *Rights Based Approach to International Labour Migration* 160.

⁷¹ The ILO, *Rights Based Approach to International Labour Migration* 161.

agencies responsible for labour policy and migration and both have tripartite advisory boards. The POEA has gained its credential with many innovations, including the policy private recruitment agencies jointly liable with foreign employers for any employment violations, while also conferring awards and incentives for good performance. Consequently, Philippine workers experience less disadvantages and receive higher remunerations than their counterparts from other countries (See annex 1).⁷².

3.2.7 Consular Service

To maximize above mentioned policies, the governments of home countries should build up measures to prevent their nationals from being subjected to abuse in countries that do not comply international standards. Therefore, a number of countries have set up consular services in countries where a large number of their nationals work. The consular and embassy staff can conduct outreach tasks to certain groups of migrant workers who are more vulnerable to ill-treatment such as women or those who are working in secluded places, especially domestic workers. Consular services can provide emergency support, particularly when their citizens have nowhere else to turn. They can also facilitate the system distribution of information regarding abusive employers and industries to administrators at home, who can then take measures to prevent more of their citizens migrating to work for them.⁷³

With this respect, Filipino government is a good example. The Philippine's government operates embassy officials with the Department of Foreign Affairs and labor attachés and welfare officers under the Philippines Overseas Labor Office to act on behalf of workers when disputes are filed in destination countries. Moreover, the Filipino government has established a system to facilitate refuges and repatriation of their domestic workers in 2006. Since its establishment, a thousand of Filipino domestic workers have found refuges at their Embassy and had gone back home.⁷⁴ Equally, weak origin country policies can increase workers' vulnerabilities. For example, 'in February 2008, 200 Vietnamese men and women working in apparel factories in Jordan went on strike to protest fraudulent recruitment, debt bondage, passport withholding, confinement and contract substitution. Rather than offer support in the dispute resolution process, there were instead reports that Vietnamese government officials and the

⁷²International Labour Conference, 92nd Session, 2004 *Towards a fair deal for migrant workers in the global economy* 112-113.

⁷³Anti slavery international, *Trafficking in women, forced labour and domestic work in the context of the Middle East and Gulf region* 40.

⁷⁴ITUC, *Migrant Workers in the Middle East* December, 2007, 12.

Vietnamese state-run employment agencies threatened workers with retaliation if they did not suspend the strike and return to work.⁷⁵

3.2.8 Entering Bilateral Agreements

A significant means of providing minimum standards and rights for migrant workers can be ensured by bilateral agreements between origin and destination countries. Origin countries can negotiate for better protected rights that complied to international standards with pledge of observance by the agreements. These agreements can also decrease illegal migration by providing more access to regular migration and the formal labour market. Provisions of these agreements can comprise the mutual management of pre-departure and return policy, social security and pension scheme, dispute settlement procedures, and remedies for violation of rights. The ILO's ILM Survey revealed that a large number of countries have entered into such agreements. It is significant bilateral agreements operate within a multilateral context of international standards and that the bilateral and multilateral levels are mutually supportive. In recent international relations, looser framework agreement, memoranda of understanding (MOUs) is used often.⁷⁶ It has many practical benefits to compare with treaties. Within legal sense, it can be kept confidential when dealing with sensitive issues. Also it can be put effect more rapidly than treaties because it does not require ratification (see annex 2).⁷⁷

In these days, there has been increasing acknowledgment that advantages of labour mobility can be optimized through developing an effective agreement between the governments of sending and receiving countries. Particularly, in order to eliminate the exploitation and abuse of workers by recruitment agents, it is increasingly recognized the necessity of cooperation between home as well as host country. In this respect, Memoranda of Agreement have been signed by the UAE with six Asian countries, including Bangladesh, China, India, Pakistan, Sri Lanka, and the Philippines to protect the rights of workers recruited by agencies. Within this mechanism, migrant workers would be brought in through the public labour agency, to avoid private agents charging exorbitant fees from job seekers.⁷⁸

⁷⁵BSR, 'International Labour Migration: A Responsible Role for Business' 24.

< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

⁷⁶The ILO, *Rights Based Approach to International Labour Migration* 200.

⁷⁷<<http://www.wisegeek.com/what-is-a-memorandum-of-understanding.htm>>

⁷⁸N. Shah, *Management of Irregular Migration and its Consequence for Development* 22-23.

3.3 Protective Action by Working Countries

The governance of migration in destination countries must not only concentrate on those countries' own benefits and demands, but must also consider the protection of migrant workers' dignity and rights. As a result, governments must pay attention to a number of consistent policies in regulating the labour market, ensuring the protection of migrant and national workers equally, and supporting integration. Even though states have the sovereign right to establish their own immigration policies to determine who enters their territory, who stays, who can work and who should leave, this sovereignty must be coherent, effective, and fair with the internationally recognized norms.⁷⁹

There are three fundamental notions that distinguish the protection expanded to migrant workers and members of their families in international norms:⁸⁰

- universal human rights apply to all migrants, regardless of status;
- equality of treatment applies between migrant workers in regular status and native workers in employment and occupation; and
- international labour standards on treatment and conditions at work, such as occupational safety and health, maximum hours of work, minimum wages, non-discrimination, freedom of association and maternity leave, apply to all workers.

Protection is best achieved by equal application of the national labour law to the employment of migrant and own nationals. An essential complement is monitoring and inspection, particularly in areas known to be conducive to mistreatment and discrimination.⁸¹ The following areas are particularly significant for the governance and regulation of migration in host countries:⁸²

- admission policies for the employment of migrants, including better opportunities for legal migration;
- labour market regulation, including with regard to access to employment, mobility of migrant workers, and recognition of their qualifications;
- protection of migrant (and native) workers in the employment context;
- addressing irregular migration, including regularization measures, as appropriate;

⁷⁹*The ILO Multilateral Framework, Principle 4.*

⁸⁰*The ILO, Rights Based Approach to International Labour Migration* 163.

⁸¹ *The ILO and OSCE, Strengthening Migration Governance* 33.

⁸²*The ILO, Rights Based Approach to International Labour Migration* 164.

- facilitating social cohesion, particularly through preventing discrimination and facilitating integration;
- social protection and welfare, including improving access to social security, health care, education and housing; and
- promoting migration–development linkages in support of origin countries.

The paragraphs below discuss issues in governance and regulation particularly relating to these areas in the Middle East.

3.3.1 Free Choice of Employment and Elimination of Sponsor (kafala) System

Providing migrant workers with free access to the labour market when they are met certain conditions if he or she becomes unemployed or wants to move to another employer will be essential to promote the protection of migrant workers rights in the working country. With this respect, the ILO Convention no.143 states that ‘migrant workers who have lost their jobs should be allowed sufficient time to find alternative jobs’. But in practice, unfortunately, national legislation in most countries of the Middle East restricts the free choice of employment by migrant workers. Recently limitations on shifting employments are becoming a typical feature of the temporary labour migration and increasingly popular. Because the primary costs to bring in workers are incurred by employers, it is not likely that they would consent to their workers to leave for another employer.⁸³

Particularly in the Middle East, the elimination of sponsor system and restriction on shifting employers would be critical aspect to prevent abuses and reduce vulnerability of migrant workers. If they are entitled to shift the workplace or employers in practically, this will facilitate them less bound on employers and also do not tolerate to abuse and exploitation.

3.3.2 Labour Inspection and Enforcement

To ensure adequate protection for migrant workers, there must be effective and substantial labour inspection and enforcement. This monitoring is decisive in sectors such as agriculture, construction, domestic work and informal employment where most of migrant workers hired in the Middle East. It is no surprise that in workplaces a lack of labour inspection and with a lot of migrant workers is associated with higher incidences of violation. The ILO Conventions No.81 and 129 provide the basic normative guidance for national law and policy regarding labour inspections. They specify that labour inspection should more focus on the sectors and workplaces where migrant workers are intense, including in the

⁸³ The ILO, *Rights Based Approach to International Labour Migration* 171.

informal economy. Government officials conducting inspections should be thoughtful to significant issues such as language differences and communication difficulties.⁸⁴ Effective labour inspection and enforcement helps prevent unfair competition between employers who obey the rules and those who do not. It also cuts the incentive to hire and exploit migrant workers in irregular status who are afraid to claim their rights. It is also essential to keep labour inspection and enforcement separate from immigration inspection and enforcement. According to the ILO, 'the primary duty of labour inspectors is to protect workers and not to enforce immigration law'. Unfortunately, some countries insist labour inspection services to control immigration issues. Linking of the two sectors at same time undermines the effectiveness of both, particularly labour law enforcement. Illegal migrant workers generally try to evade involvement in labour inspection for fear of detection and possible deportation. This is one of the main reasons they are easily exposed to abuse and exploitation by their employers.⁸⁵

To optimize labour inspection, there must be a service centre to receive complaints from migrant workers. With this regard, Jordan National Worker Hotline may be an example of good practice response to migrant workers' requests. 'In response to the publicity in 2006 of widespread migrant worker maltreatment by the National Labor Committee, the Jordanian government undertook a number of measures to improve protection of foreign workers in the QIZs, including the introduction of a national hotline for all workers. Problems existed initially as the hotline was only in Arabic and was costly to access. Reforms to the hotline resulted in low-cost access and operators speaking multiple languages to offer assistance. It uses technological innovation to address migrant worker abuses taking into account common constraints, including isolation, risk of losing passport and visa if they leave their workplace, and lack of transportation.'

3.3.3 The Right to Join Trade Unions

One of the most useful approaches to avoid the abuse of migrant workers and protect their rights is by giving them the right to organize and join a trade union and bargain collectively. According to international standards, this right must be equally applied to migrant workers and native workers. Representation by trade unions and a collective bargaining at workplace would extensively support migrant workers to ensure their rights and improving their working conditions. This assistance can be granted not only for those migrant workers who are going to stay in the country on a long-term basis but also to temporary migrant workers and migrant workers in irregular status. When migrant workers have

⁸⁴The ILO, *Rights Based Approach to International Labour Migration* 173.

⁸⁵ The ILO, *Rights Based Approach to International Labour Migration* 173-174.

the right to associate and join trade unions to assert their rights, this diminishes unfair competition between employers who respect the compliance of labour and employment laws and those who do not – that is, those who are only searching for a cheap and pliable workforce.⁸⁶

3.3.4 Addressing Irregular Migration

Since irregular migration is an extensive phenomenon influencing most destination countries, it has become a major policy issue. Generally, migrants in irregular status are easily exposed to the worst forms of abuse and exploitation, this should be considered as a particularly important policy issue for countries of both origin and destination. In the Middle East countries, there are serious gaps, in both policy and practice, in the protection of the rights of migrants in irregular status. The tightening of border controls and visa policies has proved ineffective way of regulating irregular migration, which has revealed the smuggling and trafficking more lucrative without necessarily doing much to reduce irregular migration. Fundamental rights of migrant workers in irregular status are protected by a number of international instruments, including international human rights instruments and other international measures, ILO Conventions and Recommendations covering all workers, and provisions contained in specific Conventions and Recommendations on migrant workers. The ILO Multilateral Framework on Labour Migration emphasizes that ‘a comprehensive approach to irregular migration requires a combination of measures, including expanded opportunities for and access to legal migration, enhanced law enforcement, strengthened labour inspection to reduce incentives for irregular employment, and the establishment of a legal and administrative environment that is conducive to legal migration.’⁸⁷

Followings can be regarded as the cornerstone of strategies and policies to address irregular migration that learned from good practices, based on international norms and experience in a number of countries:⁸⁸

- Approach irregular migration in a comprehensive manner, looking at root causes, the needs of workers for protection, and the accountability of all actors involved; adopt a broad range of policies covering preventive and control policies and employer sanctions based on cooperation among all stakeholders ,including countries of origin and destination.
- Base policy on internationally accepted norms and instruments, promoting a rights-based approach as elaborated in the ILO Multilateral Framework on Labour Migration.
- Ensure respect for basic human rights and all labour rights in the workplace for migrant workers in irregular status.

⁸⁶ The ILO, *Rights Based Approach to International Labour Migration* 174.

⁸⁷ The ILO, *International labour migration: A rights-based approach* 175-176.

⁸⁸ Ibid 176-177.

- Treat irregular migration as a labour market and decent work conditions issue, rather than only a legal/security issue.
- Expand legal migration opportunities and options for low-skilled workers inline with labour market needs.
- Address root causes of irregular migration by promoting decent work in countries of origin to reduce migration pressures.
- Regulate and monitor recruitment processes across origin and destination countries.
- Address irregular employment and undeclared work in destination countries, which act as magnets for migrants in irregular status.
- Adopt a broad-based consultative process among all stakeholders in finding solutions to the issue of irregular migration by promoting industry–government cooperation and consultation with unions, NGOs and other civil society actors.
- Disseminate information and education to employers regarding hiring workers in irregular status, and to potential migrants on the risks and dangers of irregular migration.
- Strengthen labour market institutions, such as labour inspection systems and labour administrations, to bring employers into compliance with labour law.
- Promote bilateral and regional cooperation, as recommended in ILO Convention No. 143 and the 1990 International Convention, to reduce irregular migration and make migration a driver for development.

3.3.5 Facilitating Social Integration

Social integration in destination countries is facilitated effectively when efforts are made to abolish discrimination against migrant workers and their families. The integration of migrants should be a two-way process, involving both strengthened attempts from destination countries and attempts by migrants themselves. This implies, on the one side, that it is the duty of the host society to ensure that migrants have the opportunity to participate in economic, social, cultural and civil life, such as access to job opportunities, health care services and social benefits. It also implies, on the other side, that migrants will respect the fundamental norms and values of the destination society and participate actively in the integration process, although without having to surrender their own identity.

The ILO Multilateral Framework states that “Governments and social partners, in consultation, should promote social integration and inclusion, while respecting cultural diversity, preventing discrimination against migrant workers and taking measures to combat racism and xenophobia”

Discrimination, racism and xenophobia create significant problems for migrant workers and restrain their successful integration. Several measures are essential to improve this situation, ‘including promoting and implementing anti-discrimination legislation and policies; establishing or strengthening specialized bodies on equality and non-discrimination for migrant workers; conducting periodic gender-sensitive data

collection and analysis on these issues; and implementing policies and programmes to prevent and combat racism and xenophobia'.⁸⁹

3.4 Sub-Conclusion

This chapter has shown that a number of effective approaches and good practices for the governance of migration have been developed worldwide in origin and destination countries. Furthermore, international instruments and materials developed by organizations including the ILO provide practical and useful guidance for States and relevant stakeholders. It is well advised that all States should base their migration policies and practice on international norms, learn from past mistakes and the good practices of other States, engage in social dialogue and adopt a cooperative approach to the governance of migration.

Unfortunately, the implementation of policies to protect migrant workers has lagged far behind in the Middle East and there are still many barriers that inhibiting effective governance to protect rights and dignity of migrant workers. Governing migration is consisted of complex and multilayered issues. Consequently, international collaboration and dialogue are key aspect for expanding a systematic and well organized approach to labour migration. Giving an attempt to achieve this goal, countries should promote international, regional and bilateral cooperation through formal and informal means. Since a number of transnational movements arise within regional areas, there is particular value in strengthening and implementing regional migration agreements for controlling migration and protecting workers within those areas.

Chapter 4

Trade Union Action

⁸⁹The ILO, *International labour migration: A rights-based approach* 178-179.

4.1 Introduction

Historically, unions might have an immense power. Unions' action may raise awareness in public and put the certain issue of worker's rights in the front agenda. The international labour standards are drafted by the international communities such as the ILO but these international communities have weak enforcement power or self-executing mechanism in general and governments are the key actors to enforce the international labour standards. Consequently, trade unions should have a crucial function with this respect. Apparently, trade unions might have political power to lobby for standards and collective action to implement and enforce properly in national law and policy.⁹⁰

With regard to migrant workers, trade unions might have a key task both in home and working countries to promote the observance of national laws and practices with international standards, address issues regarding migrant workers and protect their dignity and rights. Furthermore, trade unions can provide legal advice, support and assistance in seeking redress when their rights are violated.⁹¹ Not only in a national aspect but also in an international aspect, trade unions may have a key role to promote international cooperation labour migration. They can organize international forums or coordinate collaboration between states to support well-managed labour migration and ensure fair treatment for migrant workers. Particularly, the major international and regional trade union confederations have established consultative processes to facilitate common policy stances and practical inter-union cooperation.

4.2 The role of the ITUC

4.2.1 Structure and Activities

The new International Trade Union Confederation (ITUC), which was established in 2006, united the member federations of the International Confederation of Free Trade Unions and the World Confederation of Labour into a single international unity that represents most of the world's organized workers. The International Trade Union Confederation (ITUC) is the major international trade union organization, representing the interests of workers globally.⁹²

The ITUC has 31204 affiliated member organizations in 153 countries and territories, with a total membership of 168 million workers. However, apart from leaders and activists regulated to international

⁹⁰J. Atlesone, *International Labor Law 'Cross Border Labor Organizing'* 671.

⁹¹The ILO, *Rights Based Approach to International Labour Migration* 157.

⁹²<<http://www.ituc-csi.org/about-us.html>>.

affairs, most of those members are not familiar with the work of the ITUC. Generally, the ITUC knows about the necessity of ‘consciousness-raising’ regarding its activities and programs and it places effort to extend to members throughout their affiliated federations and unions.⁹³The ITUC’s regional affiliates are the Asia-Pacific Regional Organization (ITUC-AP), the African Regional Organization (ITUC-AF) and the American Regional Organization (TUCA). The ITUC also collaborates closely with the European Trade Union Confederation and the Pan-European Regional Council, which was established on March 2007. Since its inauguration, the ITUC has cooperated closely with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC), working together through the Global Unions Council. The ITUC also collaborates closely with the ILO and has close contacts with several other UN Specialized Agencies.⁹⁴

The ITUC’s primary mission is the representation and organization. Representational work includes ‘the use of public forums, reports, statements and other similar means’. Through these means, the ITUC protests on a wide-range of issues, from restrictions on freedom of association to the plight of migrant workers. The ITUC brings a voice of international labour, promotes campaigns against abuses and exploitations conducted by governments or employers. It also brings petition to the international community put forth moral persuasion and political and economic pressure on behalf of a particular principle, policy, cause, organization or individual. In order to scope this representational work, the affiliates of ITUC lobby governments to pursue international standards that are recognized and developed by the adequate UN or other international agency.⁹⁵ It leads labour delegations to United Nations gatherings and to meetings of the G-7 and G-8 powers. The ITUC’s annual report on violations of trade union rights around the world has become an important resource for international labour advocates.⁹⁶

The major task of the organizational work of the ITUC is to promote and strength trade unionism in areas where unions are weak and vulnerable. Main support is provided in the form of training manuals for union officials. Normally, direct financial aids are not given although occasional gifts of equipment are given. However, this main activity of the ITUC is limited to available resources and consequently, it must be coordinated with parallel activities conducted by its counterparts, including the American AFL-CIO, the German DGB, the Swedish LO, the Dutch FNV and CNV, the Belgian CSC and several others.⁹⁷

4.2.2 ITUC and Migrant Workers in the Middle East

Advocacy and services regarding migrant workers are one of the ITUC’s five main thematic priorities.

⁹³J.P. Windmuller, *The International Trade Union Movement*, 77.

⁹⁴< <http://www.ituc-csi.org/about-us.html>>.

⁹⁵J.P. Windmuller, *The International Trade Union Movement*, 76.

⁹⁶J. Atlesone, *International Labor Law ‘Cross Border Labor Organizing’* 677.

⁹⁷J.P. Windmuller, *The International Trade Union Movement* 76.

The key objective of ITUC policy on migrant workers is to ensure workers can live and work in conditions of equality, dignity and justice. The ITUC vigorously supports the ILO Multilateral Framework on labour migration and campaigns for ratification of the ILO Conventions 97 and 143. It frequently motivates its affiliates to campaign for migrant workers' rights and promote ratification of the Conventions in their relevant countries. The central point of the ITUC policy on labour migration is striving to promote freedom of association and the right to collective bargaining for all workers and non-discrimination of workers who are subject to abuses and exploitations. ITUC also has its goals to promote respect for diversity at work and in society and to implement effective measures to fight racism and xenophobia, in the workplace and in the labour market. Campaigns introduced by the ITUC aims to combat the discrimination and the unfair and often abusive working and living conditions that migrant workers and members of their families face throughout the world.⁹⁸

In addition, in 2006, the ITUC drafted a Plan of Action to promote the rights of migrant workers. This Plan contains attempts to support and integrate migrant workers into the mainstream activities of trade unions world-wide and supports national trade union centres is promoting the ratification of ILO migrant workers conventions in the respective countries and to influence their government's migration policies in line with the ILO Multilateral Framework on Labour Migration.

Furthermore, the ITUC has launched the practice of bilateral trade union cooperation agreement between trade unions from countries of origin and destination of migrant workers. A range of existing agreements have brought to elaboration by the ILO Bureau for Workers' Activities a model of trade union agreements which has already been used in various parts of the world. The ITUC was closely connected in the drafting of the model agreement and is now also referring to it in its work.⁹⁹

With regard to migrant workers in the Middle East, the ITUC is actively involved in to protect their rights and dignity. The ITUC promoted campaigns of a wide range of issues concerning migrant workers, such as abuses and exploitations from governments and employers, harsh living and working conditions and the denial of freedom of association through reports, statements and other similar means. The ITUC and its affiliates bring petitions to the international community to put moral persuasion and political economical pressure on behalf of migrant workers and lobby governments to pursue international standards. For example, the ITUC insisted on the Qatar to do more to protect workers' rights under international standards as it begins a building boom for the 2022 World Cup. In a report issued in May entitled "Hidden Faces of the Gulf Miracle," the ITUC, along with the Building and Wood Workers'

⁹⁸<<http://www.ituc-csi.org/human-and-trade-union-rights.html>>

⁹⁹<<http://www.ituc-csi.org/human-and-trade-union-rights.html>>

International (BWI), state the harsh living and working conditions of thousands of migrant workers, mostly from Asia, work in construction across the Middle East states.¹⁰⁰

Furthermore, in collaboration with the International Textile, Garment and Leather Workers' Federation (ITGLWF), the ITUC is also carrying out research to identify the brands produced in the textiles factories, in order to draw codes of conduct. The ITGLWF has project to use the codes of conduct drawn up by certain major international brands, such as Wal-Mart, Jones, Haggar and K-Mart as leverage. For example, the Rainbow factory in Jordan's export processing zones provides the codes of conduct of several US companies translated into the workers' different languages. Since most of the products in this zone are exported to MNEs in other countries, the project also provides unions with the power to remind major international brands of the impact their just-in-time production system has on the workers producing their goods, who are forced to work like slaves.¹⁰¹ According to the OECD Guidelines for MNEs, element of a Code of Conduct and independent monitoring systems must guarantee that member company products are made under decent and humane working conditions. The Code of Conduct would require member company contractors, inter alia, to prohibit child labour and worker discrimination; recognize the right to freedom of association and collective bargaining and adopt a minimum or prevailing industry wage and a cap on a mandatory overtime. With this respect, the ITUC may vigorously involve the MNEs to observe products from their contractors in this Middle East region that are made under decent and humane conditions since the ITUC has close cooperation with the OECD.¹⁰²

Regarding the ITUC's regional affiliates in the Middle East, there is the International Confederation of Arab Trade Unions (ICATU). Traditionally, trade unions in this region were under supervision of government authorities and not allowed to join international confederations. At present a number of the affiliates of ICATU are also members of the ITUC. In recent times, ICATU has initiated extensive trade union education activities, mostly conducted through its Arab Institute for Labour Studies. Other activities, such as strengthening solidarity among local trade unions and the organization of new trade unions have been conducted with Solidarity Support Organizations. It has also strengthened collaboration with several civil society organizations which assist trade union development and has enhanced a close working relationship with the ITUC.¹⁰³

The ICATU has revealed a growing concern to develop collaboration on labour migration and migrant workers in the Arab world. One of its fundamental objectives is to "guarantee the rights of Arab migrant

¹⁰⁰<http://www.ituc-csi.org/union-warns-workers-rights-at-risk.html>.

¹⁰¹ITUC, Migrant Workers in the Middle East December, 2007, 10.

¹⁰²<http://www.ituc-csi.org/human-and-trade-union-rights.html>

¹⁰³J.P. Windmuller, *The International Trade Union Movement* 76

workers in foreign countries and foreign workers in the Arab countries”. It has also given great attention to domestic migrant workers. On November 11-12 2010, the ICATU, the ITUC, domestic workers, human rights NGOs, women’s rights groups and other national trade unions have been gathered in Beirut, Lebanon to discuss the International Labour Organization’s Third Report on Decent Work for Domestic Workers. The main objective of this forum was ‘the inclusion of domestic workers under national labour laws or the adoption of legislation specific to them by enabling Arab trade unions to contribute to the setting of international labour standards and to formulate a regional position in support of a landmark international treaty on decent work for domestic workers’.¹⁰⁴

In this forum, delegates have discussed a proposed Convention and supplementary Recommendation and this result was considered at the 100th session of the International Labour Conference in June 2011 when the ILO adopted the new Convention on Domestic Workers. With this regard, the ITUC and ICATU played the most significant role. The ITUC give strong support to endorsing the adoption of an international Convention and Recommendation on domestic work and insisting governments, workers and employers to participate in the drafting process.¹⁰⁵

4.3 Action by Local Trade Unions

Trade unions are an outstanding resource for making collaborations between origin and destination countries and providing trainings and informational materials to workers in both origin and destination countries (see annex 3). For example, ‘the National Labor Committee distributed flyers to Bengali and Chinese workers in Jordan explaining their rights under Jordanian law in their language. South-South trade union relationships are still nascent, but trade unions are highly invested in growing these relationships and companies could participate and benefit from this process.’¹⁰⁶

4.3.1 Home Countries

Trade unions in home countries may have a significant role to protect their national migrant workers’ dignity and fundamental labour rights. They may put pressure on their governments to take adequate

¹⁰⁴ Landmark Arab trade union meeting on formalizing domestic work
<http://www.ilo.org/sapfl/News/lang--en/WCMS_146785/index.htm>

¹⁰⁵ *Ibid.*

¹⁰⁶ BSR, ‘International Labour Migration: A Responsible Role for Business’ 24.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

action, such as implementing adequate law and policy and establishing model employment contract, providing better information and education, concluding bilateral agreement or MOU with working countries and providing a comprehensive consular service.

With this regard, unions in the Indian state of Kerala would be a good example. As part of an ITUC-sponsored project, the Indian National Union Congress (INTUC) has been planning to organize trade unions to inform and organize migrant workers. Kerala is the top Indian state sending its workers abroad. The majority of them go to work in the countries of the Middle East, as well as the Far East, the United States and Europe. The main goals of this project are to provide trade unions with an important instrument to carry out a more thorough study of issues regarding labour migration nationally and internationally and to organize migrant workers' trade unions and to develop collaboration between unions in home and working countries. The INTUC is prepared to play an important role in terms of the pre-departure stage, to ensure that workers are fully informed about the rules and services in the working countries.

In practice, the sponsor programme will be based on the setting up of a department in charge of migrant workers and effectively directing the situation in working countries. District level committees will be arranged and provided with the relevant capacities to step up the union recruitment of migrant workers. The INTUC is also lobbying the different levels of the Indian government to set up rehabilitation programmes for returning migrants, including an adapted pension scheme, as well as to conduct more in-depth research into the realities of undocumented migrants.

Followed by the INTUC's efforts, the Indian governments has established a ministry in charge of these issues, facilitating dialogue between countries to deal with complaints and better living and working conditions for migrant workers. The government has also signed a number of bilateral agreements on minimum wages and health and safety issues.¹⁰⁷

Another example is the Bangladesh Women Migrant Workers Association (BOMSA), an association of returnee women migrants, which takes a community-based approach. BOMSA conducts two operations during the pre-departure stage. First, it provides sufficient information before prospective migrants make decisions to go work abroad. Second, it provides education in order to ensure safe migration for those who decided to migrate.¹⁰⁸

4.3.2 Working Countries

¹⁰⁷ITUC, From Bahrain to Malaysia December 2010, 11.

¹⁰⁸IOM, *'Labour Migration in Asia Protection of Migrant Workers, 'Support Services and Enhancing Development Benefits'* 107.

Although the power and density of trade union is enormously fragile and low in this region, trade unions in working countries may also have a crucial role to promote plight of migrant workers and protect them from abuse and exploitation. They may insist that their governments to implement appropriate legislation to guarantee minimum labour standards and eradicate all the unfair policies and lobby ratified relevant international convention.

With this respect, the General Federation of Bahrain Trade Unions (GFBTU) will be an exemplary example. The GFBTU was founded in 2004, following the Royal Decree of 2002 establishing freedom of association. It has around 60 affiliated organizations. Bahrain was the first country in this region to grant migrant workers the right to freedom of association, regardless of their nationality although there are many obstacles. In the GFBTU, migrant workers have equal rights and it has an active policy to recruit them. The GFBTU is doing several activities to promote the plight of migrant workers. In 2006, in spite of the government's opposition, it held an international seminar on migrant workers' rights with the support of the former ICFTU, Solidarity Center, the ILO, and Building and Woodworkers' International (BWI), the sector that employs the most migrants in Bahrain. In order to overcome the government's refusal and difficulties, the GFBTU invited various trade unionists from countries such as Sri Lanka, the Philippines, etc. It influenced other neighboring countries and now Kuwait has also held a seminar of this kind.¹⁰⁹

However, managing to join migrants into trade unions, helping them to overcome their fears and the tactics used by employers to discourage them, is a difficult task. Sometimes the recruitment agency they told them not to join a union and so have the employers. Another method used by employers is to spread the origin of the foreign workers, to avoid them from becoming too powerful as a group.¹¹⁰

Not only the threat from the agencies and employers but also cultural and language barriers make it more difficult to organize migrant workers. In order to overcome cultural and language barriers, the GFBTU is trying to bridge the information gap among migrant workers. In general, migrant workers have little knowledge of trade unions, which they often confuse with the Labour Ministry. They are also unaware of the labour legislation. Given the number of different nationalities, cultures and languages, communication is not easy and all the more so given that many of the migrant workers are illiterate.

In order to overcome these barriers, the GFBTU has produced a brochure in five languages explaining the migrant workers' rights and presenting the union. The GFBTU now has ten trade unions in the construction sector, with an overwhelming majority of migrants. These unions have joined together in a

¹⁰⁹ITUC, From Bahrain to Malaysia December 2010, 4.

¹¹⁰Ibid.

committee to set up a sectoral union, even though only unions at company level are authorized by law. It is a major step forward in the GFBTU's fight to defend and unionize more migrants.¹¹¹

In February 2010, the ITUC and the GFBTU concluded a collaboration agreement for the implementation of the "Trade Union Outreach to Migrant Workers" project. The goal of this project is to improve migrants' rights and diminish poverty among workers as a whole in Bahrain. In concrete terms, the project is based on providing information and services to migrant workers, to organize them in unions and promote their involvement in trade unions (see annex 2).¹¹²

The GFBTU also combats to achieve better living condition, wage, health, safety and accommodation for migrant workers. For example, in construction site where 10 unions organized by the GFBTU, the situation has been changed, particularly the way the workers are treated. Accidents at work have fallen by 70%. The living conditions are improved. Wages have been raised from BD 70 to 100 (\$265) for migrants. Furthermore, the GFBTU is also helping migrant workers after the financial crisis in 2008 in which the construction sector was the first to be influenced, and a number of migrant workers were sent back to their countries when construction projects were cancelled or placed on hold. The GFBTU put enormous efforts to affect the situations under which workers were made redundant, supporting them to secure their rights in so far as possible before departure.¹¹³

Followings are the summary of activities by Jordanian trade unions:¹¹⁴

- **Advocacy** – Trade unions have advocated the Ministry of Labor for labor law reform and a fixed, equal minimum wage for national and foreign workers.
- **Legal Assistance** – Unions help negotiate agreements with employers to avoid trials – for example, regarding payment of migrant workers' medical expenses. Unions also help workers file formal complaints when appropriate, assisting with the writing and Arabic translation of complaints.
- **Information Distribution and Community Engagement** – Unions engage in information sharing with migrant workers, both through lectures and brochures in workers' languages. Local unions also support community health clinics in QIZs, and organize recreational activities and community events.

4.4 Cross-Border Collective Action

Globalization has created more 'international' workers where workers in a country are sharing common interests with workers in other countries. In accordance with principle of international labour solidarity,

¹¹¹ITUC, From Bahrain to Malaysia December 2010, 5.

¹¹²Ibid.

¹¹³ITUC, From Bahrain to Malaysia December 2010, 7.

¹¹⁴BSR, 'International Labour Migration: A Responsible Role for Business' 28.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

trade unions in other countries may pursue secondary action or sympathy strikes, for example, a refusal to work on 'hot cargo' (product made under abusive conditions). Furthermore, workers' organizations may attempt to protest or strike so as to protect rights and dignity of workers in other countries.¹¹⁵ According to experience of international labour law, giving an attempt to organize transnational collective action to support workers in other countries is as valuable an action as striking to improve wages. It was mentioned that; 'Global forces are making it more rational for workers to engage in cross-border sympathetic action. The transnational aspect of capital, including the cross-border mergers that are occurring, will mean that labour disputes in one country will be of concern to workers in other country even if they are not employed by the same firm. If worker solidarity is important to advance shared goals within one country, the increasingly global nature of worker and mobility of capital suggests that it is essential that worker solidarity exist across national boundaries.'¹¹⁶

Furthermore, employers are increasingly concerned with the transnational effect of collective action on international production chains even where the action is confined to a single national territory. Trade unions are concerned to expand their trade power to include transnational industrial action extending beyond the national territory in order to confront multinational enterprises.¹¹⁷

Concerning migrant workers in the Middle East, the cross-border collective action may have a great impact. Trade unions in third countries might pressure their own MNEs to ensure their subsidiaries or sub-contractors in the Middle East are conforming with the international labour standards and persuade their governments to conduct some actions, for example, ensuring that imports from this region are not made under harsh and inhumane working conditions. They may also provide substantial assistance, such as financial support, legal advocacy, information and technical assistance to migrant workers to local trade unions in this region.

4.4.1 Legality and Barriers of Cross-border Collective action

The cross-border action can be defined as (i) collective action involving or affecting workers in two different states, or (ii) collective action in one state aimed at affecting the employment situation of workers in another state.¹¹⁸

However, the theory is simple but putting it into practice is not an easy task. There are a number of hurdles to be cleared. Trade unions cannot apply the same organizational discipline across borders. At membership level, workers' membership is in the local union, the local workplace and the local

¹¹⁵J. Atlesone, *International Labor Law 'Cross Border Labor Organizing'* 671-672.

¹¹⁶Atlesone, *International Labor Law 'Cross Border Labor Organizing'* 671.

¹¹⁷Dorssement, *Cross-Border Collective Actions in Europe*, 2007 50-55.

¹¹⁸Ibid

community level not even national, let alone international. International labour solidarity has to be formed via inter-union negotiations, alliances and compromises.

The possible ‘internationalization’ of unions will also face impediments of domestic labour law, such as restrictions on sympathy strikes and secondary action. It is usually recognized that primary collective actions are allowed since they are directed against employers and concern collective bargaining issues. If those actions meet certain procedural requirements they are legitimate in principle even if not without restrictions. The restrictions imposed on exercising the right to take collective action vary from country to country. Unanimity also does not exist on the international stage concerning the scope of the restrictions that according to international and European strike law could be imposed.¹¹⁹

The legality of secondary actions is even more disputed because this is not only based on nationally, but also internationally. It is part of the discussion on all kinds of collective action other than the usual strike. The integration of all these different kinds of collective action is confusing.

It is said that ‘solidarity as well as sympathy collective actions, although from a conceptual point of view they are not the same, have to be assessed or are usually assessed in accordance with their objective. Since they are mostly linked to conflicts concerning the economic or social interests of fellow workers with whom the strikers are sympathizing or whom they are supporting in their industrial dispute, these types of collective actions concerning employment conditions’.¹²⁰

From the opinions of the ILO supervisory committee (CEACR) as well as of the European Committee of Social Charter (ECSR), ‘it can be derived that they tend to assess these secondary actions if they concern actions if they concern issues which are the subject of collective bargaining in a similar way as primary actions. The ECSR and the CEACR have on more than one occasion criticized countries that limit or even prohibit secondary actions’. The CEACR points to the need to start secondary actions “because of the move towards the concentration of enterprises, the globalization of the economy and the delocalization of work centres”. The committee considers “that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful.” If states restrict these kinds of actions, these restrictions could only be justified if the action ceases to be peaceful, as its sister committee (CFA) states.”¹²¹

Except for the legal obstacles, differences of culture, language and history give serious obstacles to cooperation, joined with differences in labour law and the extent development.¹²² There is also critique regarding effectiveness of cross-border sympathetic collective action. Particularly, the Middle East as a region of the world where union rights are the least protected and most of the countries which have not

¹¹⁹ Ibid

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Atlesone, *International Labor Law ‘Cross Border Labor Organizing’* 699-670.

ratified the ILO Conventions on freedom of association and collective bargaining yet may seem cross-border sympathetic collective action useless.

4.4.2 Significance of Cross-border Collective Action

Despite of these barriers and critiques, cross-border sympathetic collective action may be a significant tool for promoting migrant workers' rights because it may attempt to establish strong transnational links, place international efforts and raising public awareness on issues concerning migrant workers. Particularly, the raising public awareness should be a significant aspect. If more people in the world are aware of the critical situation of migrant workers in the Middle East, this would create great moral and economical pressure (such as banning campaigns to buy products from this region) on governments of the Middle East Countries. In addition, once it has raised extensive public awareness, it might be placed on the fore agenda of the international communities, such as the ILO, EU, and UN to gain priorities on receiving financial subsidies and technical assistance.

Giving an attempt to elaborate how raising extensive public awareness through cross-border sympathetic collective action regarding situations of migrant workers in the Middle East, International Justice Day may be a good example.

International Justice Day (Uni Global Union) is a global campaign that started to combat for the rights of cleaners and caretakers. Every year June 15th, cleaners, security officers and other property services workers around the globe commemorate International Justice Day. This day was first commemorated in 1990 in the U.S. as 'Justice for Cleaners' Day.' Justice for Cleaners' Day was established after workers who cleaned office buildings in Los Angeles were beaten by police during a peaceful demonstration against a multinational cleaning company, ISS. To remember that day, cleaners and security workers take action every June 15th in cities around the world.¹²³

Such a social movement campaign might be an effective mechanism to raise wide-range public awareness around the world and eventually this might lead to enhanced protection of fundamental labour rights, reduce exploitation and abuse and gain more concerns on issues regarding migrant workers in the Middle East. Moreover, such public awareness will represent urgency and seriousness of their situation more thoroughly which will bring a greater impact on authorities of both migrant sending and receiving states and international communities to realize necessity of more effective, adaptable and realistic policy and standards to promote their rights and dignity. For example, Nike and HYTEX Factory in Malaysia:¹²⁴

¹²³Cross-Border Collective Actions in Europe, FilipDorssement 2007 Intersentia 78-79

¹²⁴BSR, 'International Labour Migration: A Responsible Role for Business' 7-8.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

In August 2008, Australian TV Channel 7 exposed conditions of poor housing, withheld passports and monthly wage deductions among 1,150 workers from Burma, Bangladesh and Vietnam, in a Hytex Group factory north of Kuala Lumpur, Malaysia.

Nike is one of several brands that sources T-shirts from the factory. In response to the publicized violations, Nike announced it would begin working with all its Malaysian contractor partners to implement the following policy changes:

1. Reimbursement by Hytex to migrant workers for all employment fees, including recruiting and worker permit fees;
2. Going forward, any and all fees associated with employment will be paid by the factory;
3. Workers wishing to return home would be provided with return airfare by the supplier;
4. All workers transitioned into Nike-inspected and approved housing;
5. Workers to have immediate and free access to their passports; and,
6. Workers to have access to a 24-hour Nike hotline should they be denied access to their passports by factory management.

In addition, Nike has begun to engage with a local NGO, Tenaganita, which has a long history of protecting migrant workers' rights in Malaysia. Nike and Tenaganita will work together to implement management training programs in

Nike supplier factories, targeting improved treatment of migrant workers.

In the wake of the Nike action, there has been much discussion around the feasibility of this approach on a global scale. However, the action was decisive and sends a clear signal of the importance of the issue to the company.

In order to coordinating such global campaign actions, achieving optimal outcomes and clearing the hurdles, the role of the international trade unions, particularly the ITUC will be crucial. They can provide information and research services, training and education programs, supporting their regional and national affiliates during industrial disputes, and liaising with international communities such as the ILO. They can also facilitate in the campaign by supporting the effort through aiding them establishing contacts with other national unions and coordinators by providing the parties with information.¹²⁵

Recently, the ITUC, TUC (UK) and the LO-TCD (Sweden) launched a pilot project to support migrant workers in Bahrain. Under this project, 'migrant workers will be encouraged to join unions and trade unions will benefit from training and capacity building , to equip them to better address migrant workers'.¹²⁶

4.4.3 Solidarity action Between Origin and Destination Countries

Recently in this region, the new MOU agreed between the unions aims to improve conditions for migrant workers. In Kuwait, there are 40,000 Nepalese workers. More than half of them are women domestic

¹²⁵Snyder, *Globalizing Solidarity*, 82-85.

¹²⁶ITUC, *Migrant Workers in the Middle East* December, 2007, 15.

workers, while the majority of men work in the construction industry. The international solidarity action has been at the front of supporting efforts to link up workers with union representatives. Two MOUs have been signed between the Nepalese trade union GEFONT and those in Kuwait (KTUF) and Bahrain (GFBTU). It is said that “The MOU seals the solidarity between workers in both countries. Working together the unions will create better conditions for migrant workers”.¹²⁷

In Kuwait, the MOU will deal with issues of worker intimidation and trade union rights among Nepali workers. The KTUF has committed to working with GEFONT to address issues associated with migration, such as problems faced by workers, through the establishment of a system to protect and improve workers’ needs.¹²⁸

Campaigns for legislative reform will also be pursued in both countries to abolish the restrictive sponsorship system for workers in Kuwait, and to improve recruitment agencies in Nepal through increased monitoring. General Secretary of the KTUF said that “Migrant workers pay huge sums to unscrupulous recruiters, sometimes leading to situations of debt bondage, whereas often fees have already been paid by Kuwaiti employers. In the absence of a solid legal framework and rigid monitoring, recruitment agencies and all sorts of middlemen get away with organised slave trading”.¹²⁹

The two unions will also play a part in developing better orientation for workers in the two countries. The KTUF has already taken steps to produce brochures for new migrants to educate them on their rights.¹³⁰

4.5 Role of Employers’ Organizations

Not only trade unions but also employers’ organizations may play a significant role to protect rights and dignity of migrant workers. Because most of the migration today is driven by market forces. The fact is that the volume of international migration flows are employer-driven with employment for migrant workers provided mainly by the private sector employers in destination countries, whether they are multinational companies, large corporations, small and medium enterprises or informal sector enterprises. Consequently, it is crucial that employers play an active role in the migration debate. The resolution and

¹²⁷2nd ITUC - Asia Pacific Regional Conference, 2nd ITUC - Asia Pacific Regional Conference 69.

¹²⁸Ibid

¹²⁹Ibid

¹³⁰Ibid

conclusions of the 92nd Session of the International Labour Conference, 2004, summed up the employer challenges and roles in relation to migration as follows:

‘Employers confront numerous policy and practical challenges in employment of foreign workers, including: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic workplaces and assuring proper training and workplace protection in multilingual contexts (Para 14).’

The principle of Corporate Social Responsibility also requires that:¹³¹

‘Employers follow good practices in protecting migrant workers. Equal treatment and non-discrimination in the workplace are important. A recent study by Business for Social Responsibility shows how employers can help migrant workers caught up in supply chains of products in outsourcing of production operations under globalization forces. It concluded that proactive supply chain management with better attention paid to issues unique to migrant workers, and enhanced engagement with key stakeholders, would enhance migrant workers’ rights while creating business benefits.’

With this regard, the IOE may have a key role. Indeed, the IOE fully welcomed the principle of Corporate Social Responsibility. In order to maximize their role to ensure well-being of migrant workers, Business for Social Responsibility provides following steps:¹³²

‘The first step is to identify the presence of migrant workers in your supply chains, then to investigate the degree to which these workers’ human rights are being protected. Even in cases where basic rights protections are in place, migrant workers often face additional struggles of isolation or lacking information on how to protect themselves. These vulnerabilities present additional supply chain risks in the form of worker relations, compliance and productivity issues. In order to maximize their roles

Once companies have a thorough understanding of the use of migrant labour in their supply chains, the most immediate step is to begin to make changes in their direct sphere of influence. For engagement with suppliers, BSR recommends a Beyond Monitoring approach – a partnership with companies and suppliers jointly addressing concerns and working through issues. Include specific language in codes of conduct that address migrant workers. While equal protection is implicit in many codes, explicit inclusion of migrant labor will strengthen efforts both internally and with suppliers.

- Develop policies and handbooks that clearly indicate company requirements around employment and treatment of migrant workers.
- Communicate your policies and expectations directly to suppliers.

¹³¹ < <http://www.ioe-emp.org/en/policy-areas/business-and-human-rights/index.html>>

¹³² BSR, ‘International Labour Migration: A Responsible Role for Business’ 7-8.
< http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf>

- Discuss the business implications in order to identify solutions that are feasible and sustainable.
- Develop training for suppliers and/or the migrant workers they employ.
- Include migrant worker issues in your auditing protocol.

After addressing immediate risks in their supply chains, companies can begin to engage at national, regional and international levels with key stakeholders to work toward systemic change. Through collaboration, businesses can start to impact the fundamental issues that drive the continued exploitation of migrant workers. Broader engagement will move companies away from a risk-based approach to one that centers on protection of workers' rights at all stages in the migration process. This will also bolster companies' long-term interest of having well-prepared, well-protected workers making their products.

Efforts to expand influence beyond individual supply chains will achieve more significant and sustainable impact if coordinated with industry partners and other peer companies. A strong and unified company voice can drive significant change and allow business to be more active in the global dialogue on migration.'

4.5 Sub conclusion

In this chapter has shown that trade unions may be a key actor to protect rights and dignity of migrant workers in the Middle East. Although the principle of freedom of association and right to collective bargain is not guaranteed under most of the constitutions of states in this region and power of trade union is enormously weak, yet trade unions are the most adequate actor to support migrant workers because they are able to get easily close to migrant workers and conduct without prejudice. Especially, the ITUC may have a great power to promote rights of migrant workers and eliminate unfair migration policies and practices with a great number of affiliates and members around the world. Up to now, the ITUC has been involving actively to protect rights of migrant workers. It has been raising public awareness, providing information, lobby governments to comply international standards and promoting freedom of association and other rights of migrant workers.

With regard to trade unions in local level, there is a timid progress. Particularly in Bahrain, a number of trade unions are increasing slowly and more migrant workers are involving with trade unions movements. The improved working and living conditions in unionized industry reveals the success of trade union movements. However, yet a large number of migrant workers are experiencing abuse and exploitation and their rights are discriminated.

Thus, there is still much need to be done to protect their fundamental rights and minimize the harmful consequences. Giving an attempt to improve role of trade union, in my opinion, trade unions should more focus on international labour solidarity to strengthen collaboration between trade unions. Furthermore, in order to maximize the power of trade unions, there must be close collaboration with the ILO because the ILO has a unique tripartite mechanism that is able to facilitate various actors collaborate together for maximum effect.

Chapter 5

Role of the ILO

5.1 Introduction

International migration should not only rely on market forces, but must be subject to governance and regulated at international level. International standards provide a framework for how to collaborate between states at any level of migration and to establish national policy, practice and legislation. These standards cover important principles and guidelines for the governance of migration, protect migrant

workers and safeguards State's interests.¹³³ With regard to labour migration, the ILO played a leading role in its development. Since its establishment in 1919, disputes between a state's right to protect its own domestic labour market's interests, and fundamental human rights of migrant workers have been a core issue of the ILO. The ILO is composed to pursue its objectives via three main bodies. Each of these bodies has a unique tripartite structure with representatives of government, employers and workers.¹³⁴

It is well-known that labour migration should be based on comprehensive and multifaceted international standards and rule of law in order to protect fundamental rights of migrant workers.¹³⁵ With this aim, the ILO has made an effort to create a balance between conflicting interests in countries of origin and countries of destination through the adoption of international labour standards, research and promoting effective and fair policies. It has developed a number of complementary legal machinery covering a variety of fields within labour migration.¹³⁶ Moreover, the ILO is the only UN agency with a constitutional mandate to protect migrant workers. Certainly the Preamble of its Constitution states that one of the ILO goals is to protect 'the interests of workers when employed in countries other than their own'. While some Conventions explicitly state that it must not exclude any workers, other Conventions embrace migrant workers by virtue of the fact that they do not specifically exclude them from any provision. Since ILO Conventions are inspired by humanitarian concerns and by the notion of social justice which embraces all workers.¹³⁷

Furthermore, with regard to domestic workers, it is without a doubt that the ILO has played the most significant role to protect fundamental labour rights of domestic workers. The adoption of the first international Convention on Domestic workers reveals its great concern on human rights of women migrant domestic workers.

5.2 The ILO Conventions

5.2.1 The Conventions on Freedom of Association and Right to Collective Bargain

¹³³ The ILO, *International labour migration: A rights-based approach* 117.

¹³⁴ Tilburg University, *Exemplary paper for the course Governance of International Organization* 19.

¹³⁵ The ILO, *International labour migration: A rights-based approach* 117.

¹³⁶ Esim and Smith, *Gender and Migration in Arab States: The Case of Domestic Workers* 7.

¹³⁷ Wickramasekara, *Protection of Migrant Workers in an Era of Globalization* 266.

The major international human rights instruments ensure the freedom of association and right to collective bargain. In General, international instruments that are directed towards the protection of fundamental human rights contain the provision of freedom of association. Sometimes they direct this right in the context of a general right to associate for social, political, religious, commercial or industrial purposes. In other cases, they provide particular reference to freedom of association for ‘trade union’ purposes in the sense of the right of occupational interests.¹³⁸ Most of these instruments emphasize that these rights must be equally applied to everyone which means substantiation of these rights must be equally applied for own nationals and migrant workers irrespective of their legal status.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are the two core Conventions providing freedom of association and right to bargain collectively. According to these Conventions, the right to associate and to organize trade unions is a universally accepted fundamental right in the world of work and must be equally applied to everyone. This is the individual right that all workers have right to associate and join trade unions for the support and enhancement of their occupational interests.¹³⁹

According to these Conventions, it is important to note that this right must be applied equally to everyone and entitlement of this right must not be restricted or hampered without necessary, proportional and justified reason. Moreover, they said that states are obliged to take ‘necessary and proportional measures’ to promote this principle. Thus, whatsoever own nationals or not and formal or informal sector, government authorities must ensure this principle is promoted and entitled to everyone.¹⁴⁰

5.2.2 Convention on Private Employment Agencies

The Private Employment Agencies Convention, 1997 (No. 181), is specifically significant to migrant workers, since private recruitment agencies have key role in the transfer of workers between countries. The Convention pursues that States’ authorities must implement a system of authorized licensing or certification of agencies. It also prohibits the charging of fees to workers, directly or indirectly.¹⁴¹

In the Convention, the ILO highlighted the important role of private employment agencies in a successful monitoring of labour market. On other side, the ILO realized the inevitability of adequate protection for

¹³⁸ Creighton, *Freedom of Association*, 285.

¹³⁹ Creighton, *Freedom of Association*, 325.

¹⁴⁰ *Ibid*

¹⁴¹ The ILO, *Rights Based Approach to International Labour Migration* 127.

workers against abuses. The ILO also recognized the importance of ensuring the right to freedom of association and collective bargaining and promoting social dialogue.¹⁴²

This Convention contains the general standards for the regulation, placement and employment of workers by these agencies, and it provides guidelines and assistance for member States to establish clear policies, legislation and instruments for the effective registration and licensing of private employment agencies. Certainly, in accordance with article 3 of the Convention, the national law and practices in the member state should determine the legal status of the private recruitment agencies after consulting with the most representative organizations of employers and workers. It also states that member states must adopt a system of licensing or certification of private recruitment agencies, if it is not already regulated by national law or practices.¹⁴³

Concerning migrant workers, the following conditions are of particular importance. Firstly article 2(4) (a) of the Convention states that governments may refuse private employment agencies from operating with certain categories of workers or parts of economic activity, after having consulted the most representative organizations of employers and workers. Such refusal may be adequate in certain situations where exploitation by private agencies has been revealed frequently and governments observe that workers are better protected by public employment services.¹⁴⁴

Secondly Article 4 explicitly highlights that member states should ensure that workers recruited by private recruitment agencies must be fully entitled to the right of freedom of association and the right to bargain collectively. In order to promote equality and non-discrimination in working place; article 5 states that member states should ensure private recruitment agencies treat workers without discrimination on the basis of race, color, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice, such as age or disability.¹⁴⁵

Finally article 8 of this convention states that States must ensure to prevent violations against and adequate protection for migrant workers hired by private recruitment agencies in their territory. This Convention also promotes States to conclude bilateral agreements to avoid abuses and malpractices against migrant workers recruited by private recruitment agencies and must establish institutions and procedures to examine complaints by workers.¹⁴⁶

¹⁴² Choi, Human Rights of Women Migrant Domestic Workers, 36.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid* 8.

¹⁴⁶ *Ibid* 9.

But it has a very poor record of ratification. It has been ratified by only 21 countries and none of the countries in the Middle East and major migrants sending countries in Asia and Africa have ratified this Convention.¹⁴⁷ Therefore, pursue of its objective is not an easy task.

5.2.3 Convention on Domestic Workers

At the 100th annual Conference of the ILO on 16 June 2011, the ILO made important progress to protect domestic workers' fundamental labour rights. In this session, the government, worker and employer delegates adopted the Convention on Domestic Workers (No. 189) and accompanying Recommendation (No. 201). The preamble of this new ILO Convention states that 'Domestic workers around the world who care for families and households, must have the same basic labour rights as those available to other workers: reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining.'¹⁴⁸

The objective of this Convention is to establish 'effective and legally binding standards to provide decent work for domestic workers, a clear framework to guide governments, employers and workers', recognize them as workers, neither servants nor 'members of the family and 'no longer be considered second-class workers', respect their rights and dignity, and bring them into 'the mainstream and responding to serious human rights concerns'.¹⁴⁹

With regard to migrant workers, the Convention has a great concern on rights and dignity of migrant workers. Indeed, in its front page, the Convention states that "Domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and are particularly vulnerable to discrimination in respect of conditions of employment and work, and to other abuses of human rights."¹⁵⁰

This Convention has also great concern on women migrant domestic workers in the Middle East. As stated before, the main motivation to adopting this Convention was 'the inclusion of domestic workers under national labour laws or the adoption of legislation specific to them by enabling Arab trade unions to

¹⁴⁷ The ILO, *Guide to Private Employment Agencies 'Regulation, Monitoring and Enforcement'* footnote 2.

¹⁴⁸ 100th ILO annual Conference

<http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm>

¹⁴⁹ 100th ILO annual Conference

<http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm>

¹⁵⁰ Choi, *Human Rights of Women Migrant Domestic Workers*, 87.

contribute to the setting of international labour standards and to formulate a regional position in support of a landmark international treaty on decent work for domestic workers'.¹⁵¹

So far, it has been ratified by only one country (Uruguay). In the Middle East, Bahrain was in favour of the Convention and the Recommendation at the beginning. But due to the agreement between the Countries in the Gulf Cooperation Council making a commitment to speak with one voice to the ILO, the other neighbouring countries persuaded to change the Bahrain government's decision in favour of only adopting a Recommendation. Therefore, it still needs a systematic and well-managed campaign of ratification promotion.

5.2.4 Convention on Migrant Workers

There are two ILO Conventions specifically concerning migrant workers. These are the Migration for Employment Convention (Revised), 1949 (No. 97), and its accompanying Recommendation, the Migration for Employment Recommendation (Revised), 1949 (No. 86); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and its accompanying Recommendation, the Migrant Workers Recommendation, 1975 (No. 151).

However, the Convention No.97 is not applicable in this globalized world. This Convention was adopted to facilitate rapidly the flux of surplus labour from Europe to other parts of the world in the consequences of the Second World War. As a result, this Convention is mainly focusing on standards relevant to the recruitment of migrants for employment and their conditions of work and covering only those migrant workers in regular status which could not fully facilitate recent phenomenon of labour migration in globalized world such as irregular migration and trafficking of human beings.¹⁵² By the time the 1975 Convention No. 143 was developed, the ILO and governments had become increasingly concerned about the increasing number of irregular migration. The focus shifted from facilitating the migration of surplus labour to bringing migration flows under control. Convention No. 143 developed from the first multilateral attempt to deal with migrant workers in irregular status and to call for sanctions against traffickers. Convention No. 143 covers all migrant workers, irrespective of their status, with some provisions covering all migrant workers and other provisions ensuring additional rights to those in regular status. In addition, migrants in irregular status are entitled to equal treatment with regard to rights and competences arising out of their past employments concerning remuneration, working conditions, social security and other benefits. In other words, they are entitled to equal treatment for what they actually have

¹⁵¹ Landmark Arab trade union meeting on formalizing domestic work
<http://www.ilo.org/sapfl/News/lang--en/WCMS_146785/index.htm>

¹⁵² Choi, Human Rights of Women Migrant Domestic Workers, 35-36.

performed as workers. Moreover, they have the right to due process in respect of disputes regarding these claims. In the case of expulsion, the cost of expulsion should not be borne by the worker.¹⁵³

5.3 The promotion of ratification

On the first place, the impact of ILO Conventions relies on the number of ratifying countries.¹⁵⁴ A State which ratifies an ILO Convention is obliged to implement in a state's national law and enforced effectively. However, the failure of a number of states to ratify all the key ILO Conventions is another barrier of migrants' full enjoyment of the rights enshrined in those instruments. As stated above, the Conventions on Migrant Workers, Domestic Workers and Private Employment Agencies have a poor record of ratification. However, not only these Conventions but also the Conventions on freedom of association and right to collective bargain have a poor record of ratification in the Middle East. According to a recent ILO survey, the ratification of these core Conventions has the lowest level of ratification among other core Conventions. Ratification of relevant Convention should be powerful mechanism to pursue its objectives. If more countries in the Middle East ratified the Convention on right to freedom of Association and right to collective bargaining, it should significant step to promote realization of this principle. If a country in the Middle East ratifies one of these Conventions, the ILO and other social partners might have legal background to lobby state's authorities to implement these principles in a national legislation, remove barriers on realization of these principles and observe this principle is effectively enforced. Moreover, if more countries in this region ratify one of these Conventions, it might put more moral pressure on other neighbouring countries. However, the promotion has not always followed a consistent means. Once a Convention is signed by the competent authorities of a member state, there is no time specified obligation to reconsider ratification. Therefore, unless a focused promotional campaign is carried out, ratifications may stand still. The improved level of ratifications of the other core Conventions is a revealing demonstration of the effectiveness of targeted, sustained and systematic promotional campaigns.¹⁵⁵

In 1998, remarkably, the ILO adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up (hereafter the Declaration) to promote ratification of its core Conventions. The Declaration has highlighted the importance of fundamental labour rights which apply to all workers, without any

¹⁵³ The ILO, Rights Based Approach to International Labour Migration 129.

¹⁵⁴ Choi, Human Rights of Women Migrant Domestic Workers, 45.

¹⁵⁵ Ibid.

exclusion, including migrant workers in irregular status.¹⁵⁶ While the Conventions are only binding on member states that have ratified them, the Declaration emphasizes that all Member States of the ILO have a duty arising from the very fact of membership to fulfill with these core Conventions, regardless of whether or not they have ratified them. Although the Declaration only has a promotional character which means it does not have any social clause or sanctions, as stated in under article 5 that ‘should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes’ but, cooperation with other organizations, such as WTO, EU and OECD, it is also possible to grant trade preference, such as tariff reduce to the states that promote the Declaration.¹⁵⁷

The Declaration has three pillars of Follow-up measure that is Annual Review, Global Report and Technical cooperation to realize the objective of the Declaration successfully. The main goal of this Follow-up mechanism is to discover the barriers that Member States are facing for ratification of one or more core Conventions, to focus on what efforts have been taken by Member States towards respect, promote and realize rights and principles of the Declaration and to determine what sort of and priorities of providing technical assistance.¹⁵⁸ These Follow-up measures might be a significant and effective machinery to promote ratification in the Middle East. It will elaborate obstacles of ratification, adequate technical assistance and comprehensive situation of countries of the Middle East.

In accordance with the ILO’s experience, the Follow-up machinery can further contribute in three priority areas: ‘(1) ILO’s effective response to outstanding requests for technical assistance; (2) dialogue and sharing of experiences in realizing the fundamental principles and rights at work; and (3) the launch of further country-specific programmes on fundamental principles and rights at work’.¹⁵⁹

5.4 The ILO Multilateral Framework on Labour Migration

The ILO put labour migration and the rights of migrant workers high on its agenda at the 92nd Session of the ILC in 2004. In this session, the delegates of the Conference agreed to draft a resolution on ‘a fair deal

¹⁵⁶ Gomes, *the Effect of ILO’ Declaration on Fundamental Principles and Rights at Work* 32.

¹⁵⁷ *Ibid.*

¹⁵⁸ Choi, *Human Rights of Women Migrant Domestic Workers*, 45-46.

¹⁵⁹ Alston, Philip & Heenan, James, “*Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work?*” (2004) 36 N.Y.U. J. Int’l L. & Pol. 221

for migrant workers in the global economy'. The key plan was the development of a rights-based Multilateral Framework on Labour Migration. The key objective of the Framework is 'to provide practical guidance to its tripartite constituents (governments, employers' and workers' organizations) and other stakeholders (civil society, international and regional agencies) on the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights and promoting linkages between migration and development'. The Framework complements existing ILO and UN migrant workers instruments, and take into deliberation new global challenges and developments, such as the temporary migration programmes, feminization of migration, increasing role of the private sectors, high incidence of irregular migration including human trafficking and smuggling and the growing interest of the international community in migration and development linkage.

This Framework contains the most comprehensive international collection of principles, guidelines and best practices on labour migration policy available today. However, this Framework is 'rights-based, in the sense that it brings together the principles and rights that apply to labour migration and rights that apply to labour migration and treatment of migrant workers already contained in various international instruments.' This is also strictly non-binding and there is no other supervisory or follow-up machinery.¹⁶⁰

5.5 Technical Cooperation and Special Action Programme

Technical cooperation is now a key mechanism of action for achieving the ILO's mission and objectives. Through externally funded projects, the ILO has been able to provide more substantive technical assistance to member States in various aspects of labour migration policy and administration than its own resources would permit. Within technical cooperation, more efficient and organized means of information and practice should be collected, and an analysis of the national situation should be undertaken. This would also yield an important tool for the promotion of ILO instruments and follow-up to their implementation in national law, and would facilitate technical assistance to be adapted to national needs.¹⁶¹ With this regard, technical cooperation would provide substantial and most adequate support to strengthen migrant workers' rights and dignity. However, the ILO technical cooperation machinery is

¹⁶⁰ Ibid.

¹⁶¹ International Labour Conference, 92nd Session, 2004 *Towards a fair deal for migrant workers in the global economy* 101.

basically financed by regular budget supplementary account which based on voluntary contribution. Disappointedly, it could not meet all requirements due to deficiency of resources.¹⁶² Thus, it is important to raise awareness and achieve more attention in the ILO in order to achieve priority.

The ILO has established some of the Special Action Programmes which are particularly significant in addressing the most serious challenges to protection of migrant workers' fundamental rights. These programmes are supporting to expand common understanding, cooperation and effective action across borders, and they magnetize resources and attention that no national or regional effort has reached. For example, the ILO's Special Action Programme to Combat Forced Labour addresses the trafficking of migrant workers, highlighting on the forced labour effects. National researches have been conducted on the characteristics and consequences of the trafficking of migrant workers in a number of Asian and European countries. Also research conducted on discrimination against women migrant workers were conducted under the support of GENPROM in 2001-2002. These researches yielded important approaches into the situation of women migrant workers and on how they can be helped at various stages of the migration process and the good practices documents was issued in 2003 to improve the efforts of government agencies, workers' and employers' organizations and NGOs in all countries to improve protection, reduce exploitation and abuse, and prevent trafficking of female migrants.¹⁶³

The Special Action Programme includes domestic workers under national labour laws or the adoption of legislation specific to them in Arab region with involvement of trade unions of this region. This has led to the great achievement of adopting the Convention on Domestic Workers at the ILO's 100th annual International Labour Conference in June 2011. The Special Action Programme to include domestic workers under national labour laws or the adoption of legislation specific to them in Arab region with involvement of trade unions of this region. This has led the great achievement that adoption of the Convention on Domestic Workers at the ILO's 100th annual International Labour Conference in June 2011. In Indonesia, the ILO launched the Awareness-Raising Activity on the Protection of Indonesian Migrant Workers. 'For this particular program, ILO Combating Forced Labour and Trafficking of Indonesian Migrant Workers and SMART FM select 3 topics for series of discussions on the issue of labour migration. The topics are Policy development, Economic Empowerment of Indonesian Migrant Workers and the Rights of Health: HIV/AIDS related issues on Labour Migration. For each of the series of discussion, ILO will invite about 100 people of its counterparts from Government, trade unions/NGOs and employment organizations representatives. Parts of the series of discussions will be broadcasted by SMART FM Radio in order to get broader coverage of the discussions

¹⁶² The ILO Programme and Budget

<<http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/programme-and-budget/lang--en/index.htm>>

¹⁶³ Choi, Human Rights of Women Migrant Domestic Workers, 83. .

5.6 Promote international cooperation

Dialogue and cooperation among destination and origin countries is essential for providing adequate protection for migrant workers. Apparently, the government of a home country cannot protect its migrant workers' rights and dignity without the active cooperation of the destination countries in which they work.

Moreover, international cooperation is essential to developing well-managed labour migration, curbing malpractice of private recruitment agencies and irregular movement and optimizing the development benefits of international migration. Strengthening cooperation among them through bilateral agreements and multilateral treaties will contribute to more effective labour migration processes and employment promotion, leading to poverty reduction. Unilateral approaches to managing and governing labour migration have proved inappropriate to deal with the increasing mobility of people across borders. The growing number of irregular migrants and victims of human trafficking is evidence of that failure.¹⁶⁴

International collaboration on the governance of migration can take place at the bilateral, regional and global level. Most of these efforts are taking place at the bilateral level, many at the regional level and some at the global level.¹⁶⁵ Promotion of an international cooperation in the area of international labour migration might be a fundamental task. It is necessary for an international regime based on the rule of law that establishes common standards for all, clear lines of accountability, and mechanisms for reporting and monitoring.

The ILO Conventions No. 97 and 143 foresaw the need for such cooperation and provided for 'the reciprocal exchange of information on national policies, laws and regulations; migration for employment; the conditions of work and livelihood of migrant workers; and misleading propaganda'. Moreover, Convention No. 143 provides 'for cooperation between States, with the specific aims of suppressing clandestine movements of migrants for employment; acting against the organizers of the illicit movement of migrant workers and the employers of migrant workers who have entered without authorization; and ensuring that the perpetrators and organizers of labour trafficking can be prosecuted, regardless of the country in which they exercise their activities'.

¹⁶⁴ Choi, Human Rights of Women Migrant Domestic Workers, 60.

¹⁶⁵ Ibid 61

Various aspects of regional integration levels facilitate labour migration. These levels are usually motivated by economic factors, for example the free trade agreement between countries in the region with an aim to maximizing the scale and prospect of economic opportunities. Whereas these regional agreements recognize the economic and social benefits of integrating labour markets, they are also providing a normative framework for the management of labour migration, such as a development of machinery for safeguarding their rights, especially where mechanisms for mutual reporting and monitoring can be agreed upon. For this reason, regional agreements on migration may be more effective and have a more immediate impact on treatment of migrants, than international treaties or conventions.¹⁶⁶

With regard to migrant workers in the Middle East, a regional consultative process for the management of overseas employment and contractual labour for Asian countries of origin, known as the Colombo Process, was initiated with the assistance of IOM at Colombo in April 2003. After the Colombo meeting, following meetings were held in Manila, Philippines in 2004 and Bali, Indonesia in 2005. The last meeting under this process was hosted by a receiving Middle East country (UAE) in Abu Dhabi on 21-22 January 2008. This was the first ever meeting where delegates of sending Asian countries and receiving Middle East countries came together. The conference purpose was to focus on the potential of contractual labour migration to benefit overseas workers and origin and destination countries in Asia through the setting up of key action-oriented partnerships. One of the agreed partnerships focused on “preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers, supportive of their well being and preventing their exploitation at origin and destination” (Abu Dhabi declaration, 2008).¹⁶⁷

At a discussion arranged in Abu Dhabi, the delegates agreed the joint liability of countries of origin and destination to enforce observance with national law and regulations by recruitment agencies and other parties engaged in the recruitment process, in order to protect workers. For example, Partnership 3 of the Abu Dhabi Declaration provides that ‘Preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers, supportive of their well being and preventing their exploitation at origin and destination’.¹⁶⁸

Moreover, recent dialogue between the Middle East countries and Asian labour sending countries pointed out that both sides are starting to acknowledge this issue and are trying to make essential improvements.¹⁶⁹ A recent regional conference on labour migration in Asia considered the role of recruitment agencies and came up with the following recommendations:¹⁷⁰ ‘(1) develop a code of conduct

¹⁶⁶ Ibid 62

¹⁶⁷ IOM, *Labour Migration in Asia: Trends, Challenges and policy responses in countries of origin* 86-87.

¹⁶⁸ The ILO, *Rights Based Approach to International Labour Migration* 161.

¹⁶⁹ IOM, *Labour Migration in Asia: Trends, Challenges and policy responses in countries of origin* 87.

¹⁷⁰ Ibid.

for recruitment agencies in South Asian Association for Regional Cooperation countries, taking into account existing practices; (2) simplify the recruitment process by reducing layers of bureaucracy between employers and workers, for example by requiring demand letters directly from employers, instead of intermediaries; (3) provide on-site services and personnel, in particular labour attaches, to verify job offers and monitor the welfare of migrant workers; (4) provide more information necessary for sound decisions on overseas employment; and (5) increase cooperation between origin and destination countries to curb clandestine practices on both sides of the border’.

With this regard, it is obvious that international cooperation may have a significant impact on the rights and dignity of migrant workers. In order to enhance such collaboration, the ILO might play a significant role since the ILO has a unique tripartite structure provides a distinct and stable discussion for international consultation and cooperation on labour migration. Consultative procedures involving delegates of the employers and workers who most affected by labour migration are key actors of the ILO approach to establish rights based international cooperation. According to the ILO’s experience, well-structured social dialogue is essential for representative of employers’ and workers’ organizations, and civil society and migrant groups, to be effectively involved in the formulation and implementation of international cooperation. With this aspect, the ILO may effectively pursue its delegates to conclude adequate and effective regional and bilateral agreements to protect rights and dignity of migrant workers in the Middle East.

Bilateral agreements also have the potential to improve migrant workers’ rights. Such agreements can comprise terms for the management of workers (wages, hours, overtime, and working conditions), and legal recognition of model employment contracts. Agreements can also set out terms of business for recruitment agencies, intermediaries and destination country governments. Finally, bilateral agreements can establish provisions for legal redress in the event of a worker complaint against the employer. For example, the Bangladeshi government recently signed an MOU with the United Arab Emirates to establish better working conditions and rights protections for Bengali workers.

The Colombo Process represents collaboration toward improved government-to-government relations. Companies can engage in and support that process, and tie their purchasing decisions to meaningful involve in bilateral and regional dialogues. Businesses can also advocate with governments to sign bilateral agreements that incorporate provisions for protections of migrant worker rights, and to improve cooperative practices for more responsible recruitment and employment of migrant workers.

5.7 Promotion of Social Dialogue

Social dialogue is essential to develop support for a government's approach to governing migration. The main goal of social dialogue is 'to promote consensus building and cooperation between the government and social partners in order to achieve objectives of common interests and applying the fundamental principles and rights at work'.¹⁷¹ For instance, although abuse and exploitation of employers to migrant workers in the Middle East are wide-spread, but there are also many scrupulous employers who treat migrant workers well. If those scrupulous employers are actively involving in social dialogue, it will generate peer pressure on other employers and self-inspection mechanism and encourage them avoid dealing with unscrupulous recruitment agencies.

Accordingly, if there a wide range of actors are consulted and vigorously involved in the dialogue, design, monitoring and evaluation, it will optimize the promotion of ratification and prevention of abuses and development of fair and sound migration policy to provide decent working conditions for migrant workers.¹⁷²

5.8 Sub-Conclusion

This discussion in this chapter has revealed that the ILO provides a wide range of international standards to ensuring basic rights and dignity of migrant workers. However, the ratification records of the relevant Conventions are significantly low, therefore, there are a number of priorities for future action. One priority is to initiate a promotional campaign of ratification, accompanied with consistent technical cooperation and the implementation of their provisions in national law and practice. Other priority is promotion of the implementation of the principles and guidelines included in the ILO Multilateral Framework on Labour Migration, which is a comprehensive instrument designed to address recent matters in labour migration. However, even though states ratify the Convention, there was debate going on whether the ILO's lack of enforcement power using only the moral persuasion and the naming and shaming might ensure the adequate implementation at national level. Because mere ratification could not undertake substantial implementation at national level and even if the Convention is implemented in national legislation, it could not be applied appropriately without judicial enforcement mechanism.

¹⁷¹ Effect to be given to resolution adopted by the International Labour Conference at its 90th Session (2002) 5-10. <www.ilo.org/public/english/standards/relm/gb/.../gb-7-1.pdf>

¹⁷² Choi, Human Rights of Women Migrant Domestic Workers, 85.

Furthermore, the ILO deals with wide-range of issues regarding workers' fundamental rights and it has huge workload with restricted resources and secretariat assistance.¹⁷³

¹⁷³ Choi, Human Rights of Women Migrant Domestic Workers, 87.

Chapter 6

Conclusion and Recommendations

The objective of this thesis is to help of design adequate means to protect migrant workers' fundamental rights from abuse and exploitation and unfair labour migration policies and practices in the Middle East. However, this is not an easy task. As discussed above, migrant workers in this region often confront several unfair labour migration policies and practices such as denial of freedom of association, sponsor system, limited legal rights, poor supervision and limited access to community help system that force them to the greater vulnerability. Moreover, those people are often unaware of their fundamental rights are infringed and not able to access effective remedies because domestic remedies are more complex, difficult, cost expense and unknown to migrant workers. In such legal actions, defendants are mostly states, corporations or employers and plaintiffs are individual migrant workers who are always in weaker position. In addition, access to court is limited and complicated and to succeed in court proceedings is particularly difficult because legal system in this region normally do not tend to punish own nationals.¹⁷⁴

There are a number of international legal instruments to ensure fundamental rights and dignity of migrant workers. However, the protection issue of migrant workers is more complicated in general because destination states are unwilling to be responsible for consequences of non-nationals. Consequently, it is difficult to rely on public authorities to take adequate action to provide protection and remedies for migrant workers. Thus, the protection issue of migrant workers is more relied on international organizations such as the ILO and ITUC. Recently, the ITUC of Asian Pacific regional office adopted the action plan on Policy and Action on Migrant Labour. Followings are the summary of this action plan:¹⁷⁵

1. **ILO Conventions:** Trade unions should intensify their campaign for ratification and implementation of ILO Conventions, especially Conventions 97 and 143 and UN Convention 1990 on the protection of the rights of all migrant workers and members of their families and their effective implementation and also implementation of the ILO Multilateral Framework on labour migration.

2. **Decent Work:** Governments should integrate decent work agenda in their development plans and social development policies and promote the effective functioning in employment policies in origin, transit and destination countries to increase employment opportunities and access to decent jobs. Decent work for all in both origin and destination countries, including domestic workers, workers in informal economy and in atypical forms of work.

¹⁷⁴ Choi, Human Rights of Women Migrant Domestic Workers, 73.

¹⁷⁵ 2nd ITUC - Asia Pacific Regional Conference, 2nd ITUC - Asia Pacific Regional Conference 169.

3. **Coverage of Labour Laws:** Focus on extension of coverage of labour laws to migrant labour. Campaign for reform and enactment of legislations and policies to regulate the working conditions of migrant labour.

4. **Equal Wages:** Campaign for equal wages for equal work of value.

5. **Workers Rights:** Trade unions' approach to migrant labour issue is right based. There should not be any restrictions on workers rights. Continue campaign for right to organise for migrant labour.

6. **Organising:** Migrant workers should be organised in trade unions. Trade unions in origin countries need to evolve a methodology to enroll migrant workers before departure. There is need to promote portable membership. Unions in destination countries should recruit migrant labour with equal rights.

7. **Training:** Trade unions should actively involve in pre-departure training for migrant labour.

8. **Migrant Labour Centres:** Unions in both origin and destination countries should open migrant labour centres/departments to specifically attend to the migrant workers. These centres should provide a forum for these workers to take up their problems.

9. **Partnership Agreements:** Establish partnership agreements between unions in origin and destination countries.

10. **Regional Programmes:** Frequent regional programmes should be organised to give opportunities to unions from origin and destination countries to exchange information and review the situation.

11. **Migrant Labour Policy:** Trade unions at all levels should evolve policies on migrant labour.

12. **Domestic Workers Convention:** Intensive campaign for adoption of ILO Conventions on domestic workers.

13. **Social Security:** Campaign for inclusion of migrant labour in social security system.

14. **Labour:** Lobby for appointing labour attaches in foreign missions in destination countries.

15. **Racism and Xenophobia:** Unions in destination countries should actively work against racism and xenophobia. Awareness campaigns among workers in the destination countries about the contribution of migrant labour.

16. **Voting Rights:** Campaign for voting rights to migrant labour.

17. **Model Contract:** Campaign for model contract.

To achieve the optimal outcome of this action plan, there must be effective collaboration between various stakeholders but particularly trade unions can play vital role. Under Trade unions, migrant workers may process collective action against discrimination on their fundamental labour rights and reduce their vulnerabilities in workplace.

However, freedom of association and right to collective bargain is not guaranteed under the labour law of the most countries in the Middle East and power of trade union is extremely low in this region. Therefore, in order to overcome all these hurdles and bring a bigger pressure to the authorities of the Middle East Countries, there must be close collaboration between the ILO and other stakeholders such as trade unions, employer's organizations, NGOs and other civil society groups, academics, and the mass media.

Particularly, NGOs may play a significant role owing to powerless of trade unions in this region. NGOs may help migrant workers where no trade unions exist or not able to join trade unions. They can provide a number of services and information to migrant workers and act as watchdog to informing international community actual situation of this region.

With this regard, Migration Forum in Asia (MFA) is a good example. MFA is a regional network of NGOs over 290 organizations, associations and trade unions of migrant workers and individual advocates in Asia to enhance and protect the rights and welfare of migrant workers. Nowadays it is campaigning for the adoption of an ILO Convention on domestic work and development of a standard-setting framework on domestic work in 2010. Furthermore, MFA initiated country consultations among migrant organizations, domestic workers groups, trade unions and government representatives to make a widespread national advocacy plan for the protection and promotion of the rights of migrant domestic workers.¹⁷⁶

As stated before, not only trade unions but also employers' organizations may play a significant role with this regard. They can include monitoring system, code of conduct and policies that ensure fundamental rights and dignity of migrant workers. Respecting the principle of Corporate Social Responsibility may prevent abuse and exploitation in the workplace and establish good practices in protecting migrant workers. Moreover, concluding partnership agreement with other companies may facilitate wide-range of peer view effect between companies to ensure whether a company exploit migrant workers or not.

With this regard, the IOE may play a key role. Indeed, the IOE is actively involving to establish close collaboration between companies and provide education and information to settle good practices in protecting migrant workers and combat against human trafficking.

Another way to protect migrant workers from abuse and exploitation is raising a strong public awareness. A wide-spread public awareness may reveal urgency and harsh of their situation and vulnerable position to the international community and bring moral pressure on to the authorities and employers. As mentioned in example of Nike and HYTEX factory in Malaysia, a wide-spread public awareness may have significant impact on the rights and dignity of migrant workers.

¹⁷⁶ Choi, Human Rights of Women Migrant Domestic Workers, 72.

In the Middle East, there is also a timid progress from a raising public awareness. Under pressure from the international community, stressed at the regular reports published by various human rights organizations, a number of governments in the Middle East have slowly started to react. In Jordan, a minimum standard employment contract for domestic workers has been adopted and has taken a number of measures, to try and improve their situation. Following Jordan's lead, the United Arab Emirates and Kuwait established standard employment contracts for domestic workers in April 2007, along with regulations aimed at doing away with the commission fees imposed on these workers by recruitment agencies, and affording them decent living and working conditions.¹⁷⁷

Beyond above mentioned recommendations, following suggestions from Dr. Philip Martin, Migration Expert, University of California at Davis will be valuable.

- Second ID card – Origin countries can work with destination countries to create a second, low-cost, official ID card for use domestically in the host country, to enable freedom of movement without fear of deportation. The U.S. has successfully deployed a second ID card program with Mexican migrant workers.
- Economic Support/Remittances – Factories can set up direct deposit whereby a portion of the migrant workers' salary is directly deposited into a bank account for withdrawal by the workers' family back home. Banks should be willing to cover the costs of such accounts in order to win new customers.
- Alignment of Rules and Incentives – Use economic incentives to encourage migrant workers to abide by contract length. For example, split levy taxes on migrant worker salaries: use half to help companies/NGOs create support programs for migrants, and reimburse other half to workers when they agree to go home at the end of their contract.
- Tying Development to Migration – Micro-lending programs for returning migrants help fuel origin country development.
- Regulating Recruitment – Competition from government-run agencies could improve recruitment processes by increasing regulation, and incentivizing private agencies to be more transparent and ethical.
- Better Origin/Sending Country Ownership – Some origin country governments make the process of international migration for employment very challenging and complicated, which supports the recruitment industry. Origin countries can simplify the process for migration:
 - » Lower the cost of a passport
 - » Make passport applications available in villages and towns

¹⁷⁷ITUC, Migrant Workers in the Middle East December 2007, 12.

» Make the passport and visa application process more straightforward¹⁷⁸

At this point, we could see that a wide range of actors should be consulted and vigorously involved in the design, monitoring and evaluation of labor migration policies. Certainly, governments have the primary duty for creating the adequate policies of labour migration through the enactment and enforcement of effective laws, policies and programmes, however, the formulation and implementation of migration policies should be more effective when it is found upon extensive collaboration with a various range of actors, particularly the social partners. In order to enhance such collaboration, the ILO's unique tripartite machinery will facilitate a distinct and effective international collaboration and consultation on labour migration and promotion of social dialogue will improve cooperation between all the stakeholder to be effectively involved in the implementation and

¹⁷⁸ BSR, 'International Labour Migration: A Responsible Role for Business' 19.
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Annex 1

PHILIPPINES BEST PRACTICE: GOVERNMENT POLICIES AND MARKETFORCES CAN IMPROVE WORKER RIGHTS' PROTECTION

Government policies establish incentives for ethical recruitment through effective monitoring and record keeping of employment agency practices. Best practice is rewarded, and malpractice is punished. The Philippines Overseas

Employment Administration created a series of incentives, including access to overseas marketing missions and licensing exemptions which are rewarded to “top performing agencies.” These agencies are often the most profitable and sustainable over the long term. Incentives based policies also increase the transparency of the recruitment process, and provide a resource for companies and suppliers seeking to identify potential partners for direct recruitment.

The Philippines government has also streamlined the administrative processes for migration by establishing a one-stop shop for required paperwork, examinations and trainings. A standardized process relieves employment agencies and workers of administrative burdens and improves transparency – standard costs of migration are widely publicized, and standard contract provisions enforced.

In conjunction with these government policies, market forces have contributed additional incentives. Top performing employment agencies build their business on sending quality workers abroad and developing solid reputations with destination country employers for direct worker-job placement. With the emphasis on quality placements and client satisfaction, top agencies don't subcontract to middlemen for assistance in the local recruiting process. Rather, field recruiters are employed directly by the agencies and internal audits are performed to ensure compliance with laws and prevent exploitation. These practices enable agencies to keep placement fees below the legal maximum of one month's pay.

A group of top Philippines agencies have led a campaign to encourage their industry to cease collecting placement fees and has called on the Philippines government to eliminate placement fees entirely. A few agencies have been successful in requiring employers to cover placement fees for workers sent through the agency, thereby shifting traditional costs from the worker to the employer and reducing worker debt. Manpower Asia and six of their peers have pledged to try to adopt this policy with all destination country employers.

The Philippines government has organized policies and regulatory departments to best support OFWs throughout the process of international labor migration. While variations exist between individual experiences, a generic process is worth a brief review to frame how the Philippines system operates within it.

Annex 2

Model Trade Union Agreement on Migrant Workers' Rights

Agreement between:

Organization(s) in the country of origin:

And

Organization(s) in the country of destination:

The (names of the signing organizations):

The following points can be included as a preamble to bilateral trade union agreements:

Aware of the importance of migration for employment between (names of the two countries) and their positive contribution to the economies of both the country of origin of migrant workers and the country of destination [hereafter both parties].

Convinced that the benefits of labour migration for (names of the two countries), their national workers, and the migrant workers themselves, can best be maximized through the effective promotion and respect of workers' rights, including basic human rights, and fundamental principles and rights at work enshrined in UN and ILO Conventions, and through the promotion of decent work for all.

Equally convinced that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equal treatment, equal opportunity, and gender equity.

Reaffirming that freedom of association is a central and non-negotiable principle and that the participation of migrant workers in trade unions contributes to their integration into the society of the countries of destination.

Key principles

Signatories to trade union bilateral agreements may wish to agree on the following key principles in addressing issues related to the rights of migrant workers:

- Provisions of the ILO Constitution and the Philadelphia Declaration which, amongst other things, proclaim that labour is not a commodity.
- Provisions of the ILO Multilateral Framework on Labour Migration which, amongst others, affirm that all ILO Conventions, unless stated otherwise, apply equally to migrant workers, regardless of their status; and provide basic principles and practical guidelines and best practices for a rights-based approach to labour migration.
- Provisions of ILO Conventions No.97 on Migration for Employment, 1949, and No.143 on Migrant Workers (Supplementary Provisions), 1975, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, which together represent a charter for the rights of migrant workers and provide for sound migration policies based on cooperation between countries, social dialogue and the

development of legal migration avenues based on labour market needs, as well as other social and economic factors.

- Provisions of international human rights treaties with particular reference to the right of universal access to healthcare.
- Provisions of national and international laws and jurisprudences to the effect that once an employment relationship has been established, all workers should enjoy the full panoply of labour rights included in internationally-recognized standards, the country's legislation and applicable collective agreements.

Trade Union Campaigns

The signatories to trade union bilateral agreements may wish to agree to carry out joint trade union campaigns:

- To raise awareness about the positive contribution of labour migration to the economies of both the countries of origin and the countries of destination of migrant workers, as well as their contribution to the promotion of cultural diversity and international cooperation; and to raise awareness of migrant workers about their rights and the general situation of the destination countries before departure through making information available in the languages of migrant workers.
- To actively campaign against racism and xenophobia in society and combat discrimination and misleading propaganda in both the countries of origin and countries of destination of migrant workers.
- To actively promote the ratification of International Labour Conventions No. 97 and No. 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) as well as ILO Conventions dealing with public and private employment agencies.
- To fully support the work undertaken by the ILO to develop an international convention to promote decent work for domestic workers.
- To raise the specific concerns of migrant workers in their national tripartite labour committees and encourage affiliated unions to integrate them in collective bargaining with employers; and ensure that labour legislation and collective agreements fully protect all migrant workers, including those involved in temporary labour migration programmes.
- To take specific measures to address occupational health and safety and housing concerns of migrant workers, particularly in sectors known for dangerous working conditions, as well as to promote special protection for particularly vulnerable workers, such as domestic and agricultural workers.

Other actions

The signatories to the bilateral trade union agreements may wish to commit themselves to undertake the following actions:

- To develop regular communication channels and networking at the highest level between organizations party to this agreement, through the holding of regular seminars, pre-departure union training, and orientation programmes on arrival in the destination countries to acquaint themselves with their new environment, as well as organizing conferences on issues related to labour migration and workers' rights, and to exchange information on the labour market situations of their respective countries.

- To set up migrant workers' consultative bodies and special migrant workers' desks, within their organizations, so as to reach out and organize migrant workers and ensure they may join the trade union in the country of destination, may participate in union activities and may obtain trade union protection in case of abuses and violations of their rights.
- To establish information centres for migrant workers as part of their efforts aimed at guaranteeing ways of protecting migrant workers: in countries of origin before they consider migration, in the migration process, and upon arrival in the countries of destination, during their stay and in the process of returning home, with special efforts to provide both potential migrants, and migrants with information material in their native languages.
- To develop joint measures, including legal support, for immediate action to denounce abusive practices and to find solutions to them through legal remedies or other available dispute-resolution mechanisms.
- To encourage affiliated unions in both countries to build up cooperation, particularly in sectors where migrant workers are present.
- To undertake joint trade union activities to mark International Migrant Workers' Day on 18 December.
- To organize regular cross-border meetings and joint evaluation of progress made in the implementation of bilateral agreements in order to propose possible measures for improvements as appropriate.

Other promotional efforts

The signatories to bilateral trade union agreements may wish to commit themselves to jointly promote:

- Cooperation between the governments of the countries of origin of migrant workers and their countries of destination to enhance governance of migration, in the fields of the establishment of legal avenues for labour migration, the strengthening of labour inspection, legal cooperation in the case of trafficking and abusive situations, and issues of maintenance of social security entitlements and the strict supervision and control of activities by recruitment and employment agencies (in conformity with ILO Convention No. 181 on Private Employment Agencies), and subcontractors, as well as the elimination of abuse of sponsorship schemes.
- The establishment of communication and negotiations between their trade union organizations and employers' associations and recruitment and employment agencies in their respective countries so as to secure better conditions for migrant workers and non-migrant workers alike, and combat exploitation and social dumping.
- The development of a model and unified employment contract for migrant workers, based on the provisions of international labour standards and enforced through national legislation and labour inspection.
- Initiatives aimed at securing the involvement of trade unions in the development of bilateral agreements between governments of destination and origin countries, and the setting up of national tripartite consultation mechanisms and bilateral cooperation forums to discuss and formulate rights-based migration policies, taking into account labour market needs and the possible expansion and facilitation of legal channels as a means of eliminating the exploitation and abusive conditions of workers trapped in irregular situations.

- Tripartite consultation and decision-making mechanisms to address situations related to the status of migrant workers, social protection aspects and possibly encourage measures facilitating the regularization of the status of migrant workers trapped in irregular situations.

Annex 3

THE COLOMBO PROCESS AND THE ABU DHABI DIALOGUE 2008

Initiated in Colombo, Sri Lanka, in 2003, the Colombo Process brings together

11 Asian labor origin countries.

In 2005, the process was expanded to include eight destination countries as participatory observers. The principal aims of the Colombo Process are to share experiences, lessons learned and best practices in overseas employment policies and practices. The objectives of the dialogue fall into three themes:

- » **Welfare of overseas workers and support services** – protecting overseas workers from abusive practices
- » **Facilitating the managed movement of labor and optimizing benefits** – including remittances
- » **Institutional capacity building and inter-state cooperation** – includes increasing cooperation with destination countries for protection of workers and access to labor markets

Members and observers include:

- » **Members:** Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam
- » **Destination Country Participants:** Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia, and United Arab Emirates

In January 2008, the Abu Dhabi Dialogue was held to discuss key potential partnerships for development between countries of origin and destination:

- » Enhancing knowledge on labor market trends, temporary workers and remittances
- » Building capacity for effective matching of labor demand and supply
- » Preventing illegal recruitment practices and promoting protection measures for workers
- » Developing framework for a comprehensive approach to managing temporary migration cycle fostering mutual interests

The process has developed several specialized training programs:

- » Overseas employment administrator and labor attaché training programs (Kuwait, 2004; Thailand, 2005; China, 2006)
- » Ethical recruitment workshops for employment agency representatives (Philippines, 2007, 2008)

» Overseas labor market research training for government officials (Pakistan, 2007; Philippines, 2007; Bangladesh, 2008)

Pilot Migrant Resource Centers and information campaigns have been launched in Bangladesh and the Philippines with positive initial results. To date, the international private sector has been only minimally involved in this process.