

# Recommendations from the Asia-Pacific Regional Civil Society Consultation

in preparation for the  
2nd UNHLD on Migration & Development  
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Organized by:

Migrant Forum in Asia  
Building & Woodworkers International



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# Introduction

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From 27-28 May 2013, **Migrant Forum in Asia** and **Building Woodworkers International** hosted the **Asia-Pacific Regional Civil Society Consultation** in preparation for the second UN High Level Dialogue on Migration and Development (UNHLD), which will take place in October 2013. This consultation—one of seven regional consultations spearheaded by the Global Coalition on Migration taking place globally over the next two months—brought together 60 trade unionists, civil society organizations, and independent activists representing 43 organizations and 17 countries in the Asia Pacific region. Participants deliberated on the following series of concrete policy recommendations that will be put to governments during the Civil Society Interactive Hearings in New York on July 15, 2013, and advanced during the Civil Society Days of the UNHLD.



The following policy recommendations fall under seven themes: Regulating the Recruitment Industry, Stranded Migrants, Labour Rights, Migration and the Post 2015-Development Agenda, Rights for Women / Best Interests of Children, and Redefining International Mechanisms of Migrants' Rights Protection, and promising practices in national legislation for each of the previous six sections. These themes are derived from the **7-point, 5-year Agenda**

of the Civil Society Steering Committee for the UNHLD—endorsed by more than 100 organizations worldwide.

The 7-Point, 5-year Agenda is a result of a number of discussions among civil society groups, including trade unions that are actively engaged on the issue of migration and development. These processes



included the following: GFMD Mauritius (November 20120); the 5<sup>th</sup> World Social Forum on Migration, Manila (November 2012); the GCM meetings in Mauritius, Ghana, and Manila; and the recent meeting of the GCM in New York last January, where the group decided to use this document as a reference for discussions. The 7-point, 5-year Agenda has been submitted to the UN Secretariat, the members of the UN General Assembly's Second Committee, other New York-based UN missions, and, most recently, to the Population Dynamics and Post 2015 Agenda consultation in Geneva.



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# Regulating the Recruitment Industry

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Recruitment agency regulation has been at the top of the agenda for migrant workers and migrants' rights advocacy organizations for many years. While governments have acknowledged the need for enhanced regulatory mechanisms for this industry, efforts to implement effective measures have, thus far, been unable to bring about much-needed reforms to alleviate the gross exploitation of migrant workers. Serious gaps persist in recruitment procedures as proscribed by national laws/policies and the actual experience of migrants as they navigate recruitment processes. Examples of these gaps include contract substitution; multiple contracts; loans tied to employment contracts; false promises; collusion between corrupt government officials, recruitment agencies, and lending agencies; and payments without receipts.

Trade unions and civil society have developed recommendations to governments on how to approach the many challenges of regulating the recruitment industry in a number of national, regional, and international forums. The following policy options are open to states to better regulate this industry.

## Cooperation between origin and destination countries to decrease financial costs of migration

The financial cost of migration is relatively high, and disproportionately higher for low- and semi-skilled migrant workers. While regulated in many country contexts, recruitment fees are often much higher than officially recorded, as sub-agents charge illegal fees and extort money from prospective migrants. Many families borrow money from unscrupulous lenders at high interest rates or

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## Promising Practices at the National Level

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### Sri Lanka

Sri Lanka Bureau of Foreign Employment (SLBFE) Act, No. 21 of 198, National Labour Migration Policy for Sri Lanka (2008)

- Manages and monitors the labour recruitment industry through an accreditation process to obtain and renew recruiter licenses.
- Promotes best practices of employment agencies through an award system. The number of accredited employment agencies in Sri Lanka has increased five-fold from 1985 to 2008.

### Philippines

Republic Act No. 8042  
Migrant Workers and  
Overseas Filipinos Act  
1995

- Section 5 ensures a cap of 8% interest on loans to migrant workers for placement fees
- Section 7 stipulates penalties for illegal recruiters
- Recruiters caught engaging in illegal or exploitative activities, such as overcharging migrant



acquire debt directly from their recruiters to fund their migrations. Moreover, some governments have policies whereby migrant workers must borrow money from banks at high interest rates to pay their placement fees upfront. These loans are paid back through salary deductions. Effectively living and working under conditions of debt bondage, migrant workers often agree to long hours and unacceptable working conditions for fear of losing their jobs, or with the objective of earning money quickly to alleviate this added financial burden. In addition, in sending money home migrants are charged high fees by banks or wire services for every transaction, adding further to the financial cost of their migrations. Thus,

- To alleviate these unnecessary financial burdens, origin and destination country governments should cooperate and work together on solutions to alleviate the high financial costs that amplify migrant workers' risk of human rights violations. This includes strengthening enforcement of regulations on the charging of illegal recruitment fees.
- All governments should ratify ILO C181, Private Employment Agencies Convention (1997).
- Governments should exercise their regulatory functions to guard against exploitative practices of financial institutions engaged in remittance transfers.
- Governments should increase transparency in remittance procedures by listing the charges for remittances through official channels from country of destination to country of origin.
- Governments should facilitate access of migrant workers and their families to safe channels for remittances.

### Establish codes for ethical recruitment by agencies

- As a means of working towards the eradication of industry corruption, codes of ethical recruitment, such as the WHO Code of Action on the International Recruitment of Health Personnel and the Commonwealth Code of Practice for the International

workers, have their licenses cancelled and their names are published on a blacklist.

### Pre-employment Orientation Seminar

- Designed for prospective migrants who have not yet decided to go abroad; informs potential migrants of the risks and rewards of migration and legal procedures for securing employment to enable people to make informed decisions on whether to migrate.

### Pre-departure Orientation Seminar

- A compulsory orientation for prospective migrants, providing information on rights and obligations defined by their employment contract, travel procedures, health precautions, and remittance facilities.
- The Philippines also has orientation programs designed specifically for top destination countries, which cover language training and provisions in bilateral agreements.

## India

### E-Governance in Migration (E-Migrate – proposed)

- Online system proposed by the Ministry of Overseas Indian Affairs that would be responsible for registering, de-registering, suspending, and monitoring recruitment agencies.

Recruitment of Health Workers, should be implemented at the national, regional, and international levels. Such codes should be developed in collaboration with recruiters, employers, government agencies, trade unions, civil society, and migrant workers, and should be signed onto by recruiters and/or professional associations of recruiters, and can draw on recommendations from various forums.

- Governments should explore and implement government-to-government recruiting programs to alleviate reliance on private recruitment agencies.
- Recruitment agencies should not charge fees from migrant workers.
- While awaiting deployment, migrants are sometimes made to work without pay by their recruiters, and are subject to migration-related detention prior to departure. Governments should monitor these trainings and ensure that these practices are stopped.
- The ILO should develop a convention on ethical recruitment to establish international standards for recruitment.
- The UN Migrant Workers Committee should adopt a General Comment on recruitment.

## Create transparent licensing systems for recruiters

Attempts to register and license recruitment agencies in origin and destination countries have largely been ineffective. In many cases, once blacklisted, recruiters are able to reestablish their operations under different names or in different cities. Thus, more effective and transparent licensing systems are required. Such systems should include:

- Stringent standards for the accreditation of recruitment agencies set by governments
- Comprehensive laws and effective complaints mechanisms to regulate and monitor recruitment

- Would involve:
  - Independent audits of agency operations by a panel of auditors
  - Monitoring of overseas job advertisements to identify and prevent illegal recruitment
  - Mandatory training for recruitment officials on emigration rules and procedures
  - Financial penalties, de-registration, de-accreditation, or suspensions in the case of proven mistreatment of workers

## Nepal

Foreign Employment Act (2007), Foreign Employment Regulations, 2064 (2008)

- Penalties (fines and imprisonment from three to seven years) incurred by agencies for offenses including sending minors abroad, operating without a license, disobeying employment contacts, and sending workers to countries not approved by the government
- Monitoring of overseas job advertisements to identify and prevent

agencies

- A government body that focuses on licensing and regulation of recruitment agencies and validates authenticity of documents
- Clear and immediate sanctions against recruiters in violation of licensing requirements
- License cancellations for errant recruitment agencies
- Compulsory periodical assessments of the practices of recruitment agencies

## Simplify recruitment procedures

Among the many, multifaceted reasons that migrant workers are rendered vulnerable is that recruitment systems are complex and can be difficult to navigate, particularly for migrant workers with low levels of literacy or knowledge about how the system works. Some prospective migrants choose irregular migration paths or trust illegal recruiters on the advice of family, friends, or acquaintances to avoid engaging with complex, bureaucratic systems. To avoid such pitfalls,

- States should re-examine existing recruitment procedures and implement simplified systems and establish a one-stop processing centre to progressively eliminate brokers and intermediaries involved in the process, with a view to reducing instances of illegal recruitment.
- States should establish accessible workers' assistance centres to assist migrants and prospective migrants in the recruitment process

## Effectively disseminate pre-decision and pre-departure information

- Governments must ensure that migrant workers are adequately informed of their rights, realities of migration, ethical recruitment practices, social costs of migration, redress mechanisms and access to

illegal recruitment

## Hong Kong

- Filipino domestic workers do not pay placement fees; employers pay all recruitment fees directly.
- This practice only applies to Filipino domestic workers and should be extended to all migrant workers regardless of nationality

## Indonesia

Indonesia and the IOM have collaborated to disperse information on safe migration through the development of a Safe Migration Pocket Guide and by holding safe migration sessions through cooperation with schools, communities, and the police.

## Thailand

Employers wanting to hire Thai workers must first register with the Thai Overseas Employment Administration and show their business registration permit, a model or standard employment contract, and visa forms for workers.

## Taiwan

Direct Hiring Service Center

- Direct hiring of migrant workers from Indonesia, Philippines, Thailand, and Vietnam
- Workers apply to the Council of Labour Affairs, not recruitment agencies

justice, how to access assistance in the case of emergencies, culture in destination countries during both the pre-decision and pre-departure phases.

- Governments should provide adequate country-specific, sector-specific, rights-based, and gender responsive pre-departure orientations to migrant workers

## Implement mechanisms to promote good recruitment practices and expose bad practices

Governments should work on specific initiatives to identify, in a comprehensive way, the good and bad practices, and to put systems in place to promote the good practices and expose/eradicate the bad practices. Trade unions and civil society have made some recommendations to achieve that end:

- Establish Agency-Employer Watch or a Multi-stakeholder Monitoring Committee that includes trade unions and civil society
- Governments should exercise due diligence in the conduct of their work to improve the implementation of existing mechanisms to deter agencies from circumventing the law, taking actions including:
  - Imposing penalties for offenses including but not limited to sending minors abroad, operating without a license, disobeying employment contracts, and sending workers to countries not approved by the government.
  - Prosecuting errant recruitment agencies
  - Forbidding agencies from withholding workers' travel and employment documents
  - Maintaining publicly available and widely shared blacklists of errant recruiters and disclosing the names of unscrupulous recruitment agencies and persons involved (e.g., Governments should post and continually update agency blacklists (employers and recruitment agencies) on official government websites, and share these lists among countries through foreign missions.)
  - Give recognition to recruitment agencies with good practices
- Address corruption related to recruitment and penalize government officials engaging in malpractices
- Governments should create multi-sectoral networks including trade unions and civil society that would ensure ethical recruitment practices are implemented (e.g., knowledge-sharing, material development and dissemination, lobbying)



## Develop mechanisms to match education/training programs with labour market needs (at home and abroad)

- To address problems of mismatches between labour supply and demand, and the resultant deskilling and/or unemployment of migrant workers in their countries of origin and destination, governments should work towards policies of skills and credential recognition, and provide opportunities for skills and credential upgrading.
- Providing opportunities for skills and credential upgrading should be accompanied by the creation of public employment agencies to assist in the placement of migrant workers (in particular, for migrant domestic workers).
- Governments should undertake labour market analyses on the short- and long-term needs for foreign employees and the skills required, in both origin and destination countries. Governments must allocate adequate resources in order to regulate the recruitment industry.

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# Stranded Migrants

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Migrants stranded in emergency situations have garnered considerable attention at the international level in light of the 2011 crisis in Libya, in which migrant workers fled to border areas to await evacuation due to the outbreak of hostilities. These migrants were, effectively, stranded, as they were unable to leave their country of destination without assistance. Much of the thinking on this concept has, thus far, been undertaken through a humanitarian lens; strandings are seen as infrequent, anomalous phenomena to be dealt with through international aid and assistance. However, migrant worker communities understand this as a human rights issue, arguing that migrants can become stranded in many ways (due to undocumented status or statelessness, lack of financial resources, inability/unwillingness to move, strict border controls—in addition to emergency situations).

Governments must not see the label of stranded migrants as outside the existing human rights legal frameworks, but as complementary to existing human rights frameworks including:

- The Refugee Convention (1951)
- The International Convention on the Rights of All Migrant Workers and Members of their Families (1990)
- The Convention on the Reduction of Statelessness (1961)

Governments should account for the various ways in which migrants can be considered “stranded”

Migrants become stranded in many different ways—with

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## Promising Practices at the National Level

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### India

#### Indian Community Welfare Fund (ICWF)

- The Ministry of Overseas Indian Affairs has established the ICWF in the Indian missions of 43 countries that have a significant overseas Indian population.
- Provides boarding and lodging for distressed overseas Indian workers in the domestic work sector and ‘low-skilled’ workers
- Extends emergency medical care to the overseas Indians in distress
- Provides air passage to stranded migrants
- Provides initial legal assistance to the overseas Indians in deserving cases
- Covers expenditures on incidentals and for airlifting the mortal remains to India or local cremation of the deceased overseas Indians in such cases where a sponsor is unable or unwilling to do so and the family is unable to meet the cost.

emergency situations being one among many scenarios that can render migrants stranded. These scenarios have a range of implications for their legal status and personal safety, security, and well-being. These situations include:

- Migrants stranded due to civil unrest
- Migrants stranded due to natural disasters
- Migrants stranded due to climate change
- Migrants stranded due to epidemics
- Migrants stranded due to gender-based violence
- Migrants stranded due to immigration controls
- Migrants stranded due to lack of documentation and statelessness
- Migrants stranded due to a lack of financial resources
- Migrants stranded due to an unwillingness to return
- Migrants stranded due to imprisonment
- Migrants stranded in safe houses/shelters
- Migrants stranded due to conduct of employers
- Migrants stranded due to dependency status
- Migrants abandoned by smugglers en-route

In relation to migrant workers stranded due to states of emergency (conflict, environmental catastrophe, etc.), states should consider the following policy options:

### Collaborate on the development of comprehensive contingency plans that are gender-responsive and rights-based

Rather than coordinating emergency responses on an ad hoc basis, a coordinated, migrant-centred, gender-responsive, and rights-based approach would facilitate the efficient evacuation of stranded migrants, regardless of nationality, legal status, or gender-identity, from centres of crisis. To that end,

- Governments should never criminalize or detain migrants in emergency situations. Governments should collaborate with civil society organizations to provide appropriate quality services including access

## Philippines

Repatriation Program of Overseas Workers Welfare Office (OWWA) under the Department of Labour (DOLE)

This program organizes repatriations of distressed migrant workers in the event of political unrest, war, epidemics, and natural and human-made disasters.

- Republic Act No. 8042 Migrant Workers and Overseas Filipinos Act of 1995 Section 15 – Repatriation of Workers; Emergency Repatriation Fund
- This section of the act stipulates that all costs for emergency repatriation shall be financed by the concerned recruitment agency.

## Sri Lanka

SLBFE Act No. 21 of 198, National Labour Migration Policy for Sri Lanka (2008)

- This act includes the provision of psychological support, medical support, and repatriations for distressed migrant workers.

to safe shelters, psychosocial support, and assistance to stranded migrants and assuring that such services are provided in languages understandable to migrants.

- Governments (origin, transit, and destination) should develop partnerships with local and international agencies (OHCHR, OCHA, UNHCR, ICRC and local affiliates, ILO, IOM, Office of the UN Secretary General, UN Women, International Coordinating Committee of National Human Rights Institutions), humanitarian organizations, host communities, and migrant communities to develop emergency response plans well in advance for 'at-risk' areas, to be enacted immediately in times of crisis.
- Countries of origin should develop multi-stakeholder taskforces to coordinate with host country officials, neighbouring governments, and migrant communities to ensure swift and appropriate responses to prevent migrants from becoming stranded in the first place.
- Countries of origin should include information about emergency contingency plans during pre-departure orientation sessions. Sessions should include discussions of particular types of emergencies and plans in place to support them.
- Governments should ensure provision of adequate emergency medical services, including for sexual and reproductive health, as well other basic essential services to such as food, water, sanitation, and safe shelter.
- Plans for stranded migrants should be included in MOUs between countries of origin and destination, and include guarantees of protection for countries of origin and destination
- Governments should put in place mechanisms for migrants and members of their families to safely seek assistance in the event of being stranded without fear of forced-removal or criminalization in respect of their human rights.
- Governments should call on (and assist) the UN Special Rapporteur on the Human Rights of Migrants to conceptualize a coordinated protection framework for migrants in dire humanitarian situations, including guiding principles.
- States should make migrants in crisis a priority on the agendas of Regional Consultative Processes, and ensure that all stakeholders are involved in these processes.

## Provide essential identification/travel documents to allow migrants to freely move to safe areas that are consistent with human rights

In countries where exit permits are required in addition to entry/work visas, standard and immediately-available emergency exit permits that do not require the consent of the employer should be issued in cases of natural disaster, armed conflict, wars, insurgencies, etc. to allow for the evacuation of migrant workers who wish to leave, or the usual exit requirements should be waived. Emergency exit permits should include provisions such that the migrant is able to return to the country of destination when the situation has been resolved. Origin country embassies should collaborate with host country governments in ensuring that such permits are issued. This will alleviate cases in which migrants have become stranded simply because they lack access to the necessary documents to depart.

## Consider and provide alternatives to repatriation

In emergency situations, some stranded migrants may choose to stay in unsafe areas. This response can be for a variety of reasons—the migrant may fear that s/he will be unable to return once the emergency has subsided, if the migrant is undocumented s/he may fear detention or other repercussions, or there should be other personal reasons that s/he does not want to return home. In the interests of creating migrant-sensitive response mechanisms, states should offer options other than repatriation. Possible migrant-responsive alternatives include:

- Implementing safe zones in countries of destination or in third countries, which include support from the community to ensure that these zones are responsive to migrant needs
- Facilitating temporary evacuations to third countries
- Providing information on and support for re-migration following repatriation through safe migration channels
- Reviewing migrant-responsive options and consulting migrants on their evacuation and/or repatriation options when proactive contingency plans are formulated, with a view to implementing migrant-responsive mechanisms.
- Governments and embassies should utilize available technologies to map the current locations of migrant workers.
- Governments should enable migrants to make informed choices (whether to evacuate or remain) in cases of emergency without fear of criminalization and/or forced



repatriation.

## Create comprehensive plans to assist all migrant evacuees with reintegration

- Migrant sending states should create plans for those forced to return home due to emergency situations. To do so, they should make plans to assist returnees in accessing good employment or up-skilling opportunities. Such plans should be designed with large influxes of returnee migrants in mind, and appropriate resources should be allocated for such contingencies.
- Governments should allocate sufficient resources to provide relief and rehabilitation for migrant evacuees, and provide necessary psychosocial support.
- Governments should ensure that mandatory insurance schemes cover emergency situations. Any insurance schemes should be provided at no cost to the workers
- Origin country governments should work with recruitment agencies to prioritize migrant evacuees in redeployment

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# Migration & the Post-2015 Development Agenda

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The Millennium Development Goals (MDGs) are slated for review as the current goals are set to expire as of 2015. Migration was not included in the original MDGs, despite the links so often made between migration and development. Migration is relevant to a number of the existing goals, and discussion/analysis is being undertaken to determine how migration should fit into the Post-2015 Development Agenda.

States tend to favour the ‘migration for development’ discourse, which positions migrants as remitters and agents of development, rather than as human beings whose human and labour rights are the central concern. To avoid this pitfall in deliberations over the place of migration in the post-2015 development agenda, it may be useful to consider the numerous policy recommendations trade unions and civil society have made in relation to migration and development over the years. States should consider the following practical recommendations and policy options:

## Prioritize a Rights-Based Approach to Migration & Development

When considering the place of migration in the post-2015 agenda, governments must prioritize a rights-based framework that takes into account the UN Declaration on the Right to Development, which states that the “right to development is a basic and inalienable human right.” Likewise, migration policies should be rights-based—they should not be discriminatory and exploitative, but should

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## Promising Practices at the National Level

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### Philippines

#### Education for Development Scholarship Program (EDSP) under OWWA

- Scholarships are granted for qualified dependents of migrant workers at a maximum of PHP 60,000 per school year for 4- to 5-year programs at any college university.

#### OFW (Overseas Filipino Worker) Dependents Scholarship Program (OFWDSP)

- This program was implemented to assist the children of migrant workers in financing their education, consisting of a maximum of PHP 20,000 assistance per school year leading to a bachelor's or associate's degree at any state or college university. Parents must have a monthly salary of no more than USD 400.

protect migrants' human rights and should deconstruct gender, class, and other systemic social structures that cause abuse. Rights-based approaches will help to maximize the developmental benefits of migration. States should implement the following recommendations:

- States should integrate a rights-based approach to migration into each of the goals for the post-2015 development agenda.
- Development should be understood as a process that creates an enabling social, cultural, and legal environment for everyone, including all migrant workers and their families. This process should ensure migrants access to quality public services such as health, education and social services, access to justice, social protection without discrimination of any kind
- Governments must prioritize creation of decent work and living conditions instead of relying on temporary/circular migration programmes that have been designed to strip workers of their human and labour rights and exacerbate brain drain in developing countries. Temporary migrant workers are often excluded from the full protection of labour laws, access to social security, support services for integration in host societies and the right to family reunification and citizenship.
- All migrants should have the opportunity to be part of policy-making processes, including multi-stakeholder processes.
- Governments should ensure migrants' rights, including freedoms of association, expression, assembly, movement and their rights to collective bargaining.
- Governments should consider adopting a policy of universal citizenship, as has been adopted by

## Education and Livelihood Assistance Program (ELAP)

This program provides scholarships for the dependents of deceased migrant workers, at PHP 5,000 for elementary students, PHP 8,000 for high school students, and PHP 10,000 for college students, and a livelihood assistance fund of PHP 15,000 for the surviving spouse.

## Reintegration Program – On-site Reintegration Preparedness

This program includes training on financial literacy, entrepreneurial development, and technological skills.

## In-Country Reintegration

This program consists of local and overseas job referrals, business counseling, community organizing, financial literacy, networking with support institutions, and social preparation programs.

## Pinoy Worldwide Initiative for Investment Savings and Entrepreneurship (WISE)

- PINOY WISE is a financial literacy campaign initiative by a consortium of government agencies, local government units, CSOs, cooperatives, microfinance institutions, and other private sector actors. It enables migrants to save and invest their money earned while working abroad, and raises

Ecuador, with the guiding principle of free and unconditional movement.

- The focus on counter-terrorism and national security has deprioritised and undermined the human rights of migrants. Migration and development issues and national security issues are separate, and should be treated as such. To that end,
  - Governments should separate migration policies from their national, regional and international security agendas and consider migration issues under a framework of human rights.
  - Governments should promote human security
  - Immigration infringements should be treated as civil and administrative matters rather than criminal or security offences

## Make migration a choice, NOT a necessity

Despite the many and well-documented root causes of migration, host and sending country governments have been slow to pursue policies directly aimed at alleviating these issues. The high demand for cheap and expendable labour coupled with restrictive immigration and temporary work permit regimes create adverse conditions for labour migration and put migrants in vulnerable and exploitable situations. Perspectives on migration and development must take into account the historic forces of unequal development that contemporarily embedded in migration. In the interests of recognizing their responsibility for ensuring sustainable human development governments should strive *to make migration a choice, rather than a necessity*. To that end,

- Migration policies should take into account of the many patterns of forced migration (i.e., due to climate change, lack of decent work, discriminatory developmental practices, and political repression).

awareness of the importance of saving to successfully reintegrate.

## Arts and Culture Exchange (ACE)

- ACE facilitates the exchange of artistic and cultural products between Filipinos abroad and those living in the country and forges cross-cultural communities to promote a general understanding of the arts and Filipino culture

## OWWA's Workers Welfare Assistance Program

- This program fields requests for assistance on migrant workers' whereabouts, psychosocial counseling, conciliation, hospital/prison/work camp visitations and legal assistance to migrant workers who wish to pursue labour/welfare cases within the host country.

## Pakistan

### Workers Welfare Fund

- This fund now includes housing construction programs and scholarships for migrants' children.

## Republic of Korea

### Happy Return Programme

- Provides training and consulting for those who plan to open a business when they return home
- Pre-return recruitment services (assistance in applying for jobs with Korean companies within the country of origin)
- Administrative support

Governments should provide technical and financial resources to support development in countries of the Global South as agreed in intergovernmental processes such as WSSD, Rio, IPCD.

- Governments of origin countries should implement strategies to improve essential public services and ensure decent work opportunities to make the “right to remain” possible.

### Enhance transparency and interdependence in all regional and international intergovernmental processes

Regional and international intergovernmental processes generally lack transparency and are confined to discussions among governments. With a view to moving towards a more transparent and interdependent framework,

- Regional and international processes should actively involve multiple stakeholders, including migrants and civil society organisations throughout the process—including preparatory meetings, negotiations, decision-making, and implementation.
- Bilateral agreements on labour migration should be pursued, and should involve all stakeholders to move beyond economic models and to embrace a human rights framework.

### Recognize the contributions of migrants to development and work with diaspora communities to enhance these contributions and mitigate the negative impacts of migration

While migration can bring multiple benefits, it can also come with complex costs. States tend to look to migrant workers as economic tools rather than as rights-holders and human beings. To maximize the benefits and minimize

## Japan

### Residency Management & Basic Resident Registration System (2012)

- Improves basic public services for foreign nationals, avoids duplicating procedures
- Foreign residence, previously registered under the Alien Registration Act, is incorporated into the Basic Resident Registration System, which also registers Japanese nationals.
- Foreigners receive a residence card and are accredited to enter the national healthcare system.



the costs of migration, states should consider the following policy options:

- Governments must recognize that relying on remittances is not sustainable for long-term development. Governments should implement policies, mechanisms, and national programmes for social development, and reintegration. Development policy should address the problems of gender inequality, poverty, job security, holistic and sustainable livelihoods of the people. To that end,
  - Governments should implement policies to ensure the low cost of accessible remittance or money transfer channels. Any profits on remittances made by the state or companies such as Western Union from the fees charged or by governments from the currency exchange should be used in part or in full to support social and community needs and services, as well as to mitigate the social impacts/costs of migration.
  - Governments should cooperate with trade unions and civil society to help professionals in diaspora communities engage in expertise and knowledge sharing with their counterparts in origin countries in order to facilitate human and economic development.
- Governments must recognize the socioeconomic, political, technological and cultural contributions of migrants in destination countries. To better enable migrants to make such contributions states should implement the following recommendations:
  - Recognise migrant skills and qualifications and provide opportunities to upgrade migrants' skills
  - Government should take the lead in moving towards an inclusive understanding of the crucial and many positive impacts migrants have on the societies of destination countries. Governments should correct prevailing misconceptions of migrants such as the term "illegal immigrants."
  - States should NOT criminalize migrants.
  - Foster positive relationships between migrants and nationals, for example by providing information on the issues surrounding migration and the cultures of migrant communities.
  - Develop trainings for law enforcement officers, teachers, nurses, and government officials to develop their skills to work in the multicultural or multilingual settings.

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# Labour Rights

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In many destination countries migrant workers, particularly migrant domestic workers and migrant workers of irregular status, fall outside labour laws. In some countries, both local and migrant workers such as seafarers, seasonal workers, and agricultural workers fall outside the protections of national labour laws, particularly the right to association and collective bargaining. Where labour laws cover migrant workers, enforcement and access to redress mechanisms are often found to be problematic—migrant workers may feel intimidated by their employers and fear reprisals for complaints, language barriers may hinder access, migrants may prefer to remain silent to avoid losing their jobs, migrants may lack access to support groups, etc. To ensure that migrant workers are recognized as workers, that labour laws cover migrant workers and that governments enforce labour standards, and that migrants have access to redress mechanisms, governments should consider the following policy options:

## Ensure that national labour laws are in line with international standards including the protection of migrant workers

As members of the international community, governments are obligated to bring their labour laws and enforcement mechanisms in line with international labour standards set by the ILO and international law. They must ensure that the design and implementation of state migration and labour policies do not violate human rights, criminalize irregular migrants, deny migrant workers access to decent work, and generally fail to prevent the exploitation of migrant workers. To that end,

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## Promising Practices at the National Level

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### Thailand

#### National Master Plan for HIV/AIDS Prevention, Care and Support for Migrants and Mobile Populations (2007)

- Plan Includes measures for prevention, care, and support for migrants and mobile populations.
- Migrants diagnosed with HIV are given treatment
- Migrant health strategy includes the provision of health care security, promotion of migrant self-care and participation, and strengthening of management and information systems

### Cambodia

#### Labour Code (March 13, 1997)

- Section 2 Non-Discrimination, Article 12 stipulates that employers shall not discriminate on the basis of: Race, Colour, Sex, Creed, Religion, Political Opinion, Birth, Social Origin, Membership of workers' union or the exercise of union activities.

- Governments should ratify and implement the following international conventions:
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
  - International Convention on the Elimination of all forms of Discrimination Against Women (1979)
  - The 1951 Refugee Convention and 1967 Protocol
  - ILO Convention No. 181: Private Employment Agencies
  - ILO Convention No. 189: Domestic Workers
  - ILO Convention No. 143: Migrant Workers (Supplementary Provisions)
  - ILO Convention No. 97: Migration for Employment
  - ILO Convention No. 19: Right to Compensation
  - ILO Convention No. 118: Equality of Treatment (Social Security) Convention (1962)
  - The International Convention on the Elimination of All Forms of Discrimination
  - The ILO's Eight Core Conventions:
    - C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
    - C98 Right to Organise and Collective Bargaining Convention (1949)
    - C29 Forced Labour Convention (1930)
    - C105 Abolition of Forced Labour Convention (1957)
    - C111 Discrimination (Employment and Occupation) Convention (1958)
    - C138 Minimum Age Convention (1973)
    - C182 Worst Forms of Child Labour

The protections of the labour code are extended to foreign workers within Cambodia.

## Philippines

Republic Act No. 8042

Migrant Workers and Overseas Filipinos Act of 1995

- Section 10 stipulates that migrant workers are entitled to full reimbursement of their placement fees with interest plus salaries of the remaining portion of the contract or for three months of the remaining contract, whichever is less.
- Section 13 stipulates that migrant workers are entitled to free legal assistance.
- Section 14 empowers embassies and consular services to disseminate information on labour and employment conditions to increase the ability of migrants to make informed decisions on migration.

## Pakistan

Emigration Ordinance 1969, National Migration Policy (2010)

- Raises the minimum wage for migrant workers by 16% and includes an obligation to pay these wages through cheque/bank transfer.
- Establishes a social insurance scheme including health and pensions for Pakistani migrant workers.

## Convention (1999)

- Additional guidance on rights-based approaches to migration should be considered from the following:
  - ILO's Multilateral Framework on the Protection of Migrant Workers
  - UN Declaration on the Right to Development
  - World Conference Against Racism Program of Action
  - Cairo Conference on Population & Development Program of Action
  - 4<sup>th</sup> World Conference on Women, Beijing Platform of Action
  - Recommendations from the Universal Periodic Review
  - Recommendations from relevant treaty bodies and special procedures
- Governments should review their existing labour and migration policies to ensure that they abide by the core UN and ILO conventions that protect the rights of migrant workers. Where discrepancies exist, governments must put processes in place to harmonize existing laws and policies with labour and human rights standards. Governments should refer to the ILO Multilateral Framework on Labour Migration for guidance in bringing laws and policies in line with international law.
- Governments should promote a rights-based approach, ensuring the right to association, equal pay, access to social security, compensation for work-related accidents and injuries, employment opportunities, and promoting equal treatment and non-discrimination.
- Governments should recognize domestic workers as workers and incorporate domestic workers rights in national labour law and relevant policies in line with ILO Convention 189.
- Governments should work to eliminate discriminatory

## India

### Overseas Workers Resource Centre (OWRC)

- Information dissemination on matters related to emigration
- Registering, responding to and monitoring complaints received from emigrant workers or prospective emigrants.
- Grievance redress and follow-up with the stakeholders.
- Walk in Counseling Centre
- 24/7 helpline in 11 Indian Languages

### Mahatma Ghandi Pravasi Suraksha Yojana (MGPSY)

- Pension and life insurance scheme for Indian migrant workers with 'Emigration Check Required' passports. Enables overseas workers to:
  - Save for their return and resettlement
  - Save for retirement
  - Obtain life insurance against natural death during the period of coverage

## Bahrain

### Decree 79 (2009)

- Allows migrants to change jobs without the consent of their employers.
- An authority reviews the legality of the request to change employers
- Legal disagreements between employers and employees are settled in the high courts

laws and practices against migrant sex workers.

- Governments, in consultation with migrants, trade unions, and diverse civil society organizations, should draft and implement mechanisms utilizing available technology to ensure timely, regular, and full payment of wages as well as overtime, bonuses, social security, and all other benefits stipulated in the employment contract
- Governments should sign and implement transparent and accessible bilateral agreements that build on international standards for the protection of the rights of all migrant workers, with strict monitoring and implementation mechanisms of the same. Such bilateral agreements should include provisions for the portability of pensions and the full range of social protection mechanisms.
- Governments should cooperate with employers, labour unions, migrant worker communities and other civil society organizations to promote rights-based approaches to migration and development policies that will ensure family (re)unification and protection and promote the right to information and freedom of association for all migrant workers, irrespective of legal status.
- Migration policies should be designed / modified to include mechanisms through which temporary migrants can access permanent residency and citizenship.
- Governments should ensure that migration schemes mutually recognize the skills and qualifications of migrants, towards decent work, equal treatment, and non-discrimination.
- Governments of countries of destination should end tied-visa systems and work permits that bind workers to a single employer, as this increases workers' vulnerability considerably and is contrary to international labour and human rights conventions. Work permit and/or visa systems must be created such that workers have flexibility in choice of work

## Republic of Korea

### Complaint mechanisms and support services

- Sending countries send employment officers to Korea to monitor the well-being of their national workers

## United Arab Emirates

### Wage Protection System

- An electronic salary transfer system that allows employers to pay workers' wages through banks, exchange bureaus, and other financial institutions accredited by the Central Bank.
- The Central Bank issues a regularly updated list showing names of approved and authorized agents.
- Covers all employers registered through the MOL and employers who refuse to use the system will be refused business licenses.
- Reduces the time and effort needed to pay workers wages
- Improves job security and safeguards the rights of all parties involved
- Entrenches transparency;
- Allows the Ministry of Labour to record the wages paid to workers through the creation and utilization of a database
- Reduces labour disputes pertaining to wages
- Ensures that employers



and are not bound to their employer.

- Governments should extend multiple entry visas to migrant workers that enable them to return home to visit their families or to leave the country of destination in emergency situations, without losing their legal status.
- Governments should implement policies that in the event a migrant worker loses their job or chooses to leave, they have the right to stay and find new employment. Where unemployment benefits are available for local workers, these benefits must also be available for migrant workers.
- Governments should reform work visa and permit systems to ensure that “low- skilled” workers have the same rights to with respect to the portability of work permits, family reunification, and possibilities of permanent settlement as “high-skilled” workers.
- Governments should engage in evidence-based discussions on migration, and should undertake a mapping of promising practices on the protection of migrants and progress towards the adoption and implementation of these practices.

## Ensure the right to social protection, including the right to health and to safe and healthy workplaces

- Governments should ensure that migrants have access to the highest attainable standards of physical and mental health services, including for sexual and reproductive health. Governments should recognize, respect and affirm migrants’ rights to health. This should include the implementation of safe working conditions and regular inspections of work places, including the elimination of fire hazards. Governments must lift any discriminatory policies based on health status, including HIV status and contagious diseases such as TB that may affect the rights of migrants.

fulfill their salary obligations

## Taiwan

### Trade Union Act (Amended in 2010)

- Article 4 stipulates that all workers are allowed to form and join trade unions, thus extending that right to migrant workers.

### Legal Aid Act (2004)

- Article 4 stipulates that the state is responsible for promoting legal aid and providing necessary funds for access to such aid.

### Labour Standards Act (2002)

- Migrant workers are entitled to the following protections:
  - Maximum of 48 hours per week
  - One rest day/week
  - Maximum daily overtime of two hours
  - Mandatory overtime payment
  - Daily breaks
  - Annual leave and holidays

### Labour Insurance Act (Amended 8 May 2013)

- Includes migrant workers. Workers pay a 7.5- 13.5 premium of their monthly salary.

## Ensure that migrants, irrespective of legal status, have access to redress mechanisms when their rights have been violated

- Legal proceedings for cases involving migrant workers are often administered in the language of the host country without the aid of an official, qualified interpreter. Thus, qualified and independent interpreters must be provided by the state in all legal cases involving migrants
- Governments should ensure that effective and expedient complaint and redress mechanisms, specifically for migrants' rights violations, are in place, and that they are open to migrants with the right to keep their identity and legal status confidential. Governments should also ensure protection of migrant workers against legal reprisals of employers.
- Governments should provide free legal support through retainers and access to redress mechanisms for migrant workers and should facilitate access to safe shelter and appropriate services.
- Governments should have funds to support (or in-house staff to provide) pro bono services to migrants in need of legal support. Lists of organizations providing legal services to migrants should be provided by/shared among embassies.
- Countries of destination should allow migrant workers and survivors of human trafficking the option to stay and seek optional gainful employment in situations where legal proceedings are underway.

## Engage in awareness-raising on the labour and human rights of migrants

- Governments should commit resources to the enforcement of migrants' rights protection regimes, including providing awareness-raising and capacity-building, to government officials to develop their sensitivity on migrants' rights issues and

### Employment Insurance Act (Amended May 2009)

- Unemployment benefit
- Early Reemployment allowance
- Vocational Training Living Allowance
- Parental Leave Allowance

### Occupational Health and Safety Act (2011)

- Covers all documented workers. Includes physical exams and health check-ups.

## Japan

### Labour Standard Law

- Article 3 states, "an employer shall not engage in discriminatory treatment with respect to wages, working hours or another working conditions by reason of the nationality, creed or social status of any worker."
- Stipulates that migrant workers, including those who are undocumented, will be protected under the law.

### Labour Union Law

- Article 5(2)(iv) states, "no one shall be disqualified from union membership in any case on the basis of race, religion, gender, family origin or status."

### Free/Low Cost Medical

understanding of how to effectively implement corresponding laws and policies.

- Governments should actively cooperate with trade unions, civil society, and media organizations to employ and share promising practices for public information and awareness-raising campaigns.
- Governments, in cooperation with migrants, trade unions, and diverse civil society groups, should ensure that migrants, including those in an irregular status, know and are able to exercise their rights and responsibilities.

### Extend support to irregular migrants in accessing their rights

- Migrant workers regardless of status should have the right to seek medical and legal services without fear of arrest, detention, or deportation; service providers should be exempt from prosecution for providing these services.
- Governments should decriminalize undocumented/irregular status, and only ever treat this as an administrative offence. There should be a presumption against detention for migrants in deportation proceedings, and detention should only be applied in exceptional cases and only ever as a last resort.
- Governments should make available multiple, accessible avenues for regularization. Migrants should never have to rely solely on their employers to ensure that their documents are properly filed and validated.

### Service

- Free/low-cost medical service is available to those who cannot afford medical care. Though system is available to undocumented migrants, its implementation remains limited.

### Nepal

#### Foreign Employment Act (2007), Foreign Employment Regulations, 2064 (2008)

- Provides enhanced protection mechanisms, including mandatory skill orientation training, a welfare fund, health check-ups, shelter and legal assistance; appointment of labour attaches; and the establishment of labour desks at international departure points.
- Nepal maintains a website to disseminate information, such as the laws and culture of destination countries, vacancy lists of employers, and contact information of relevant government agencies.

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# Rights for Women & Best Interests of Children in Migration

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Women experience migration in different ways, as migrant workers, as dependents of migrant workers, as marriage migrants, and as individuals affected by migration. Women in migration, particularly migrant workers, experience increased and specific risks on account of their consistent inability to access labour, legal, and social protection. In some sectors (including domestic work and other sectors dominated by female labour), working and living conditions exacerbate such risks, leaving women migrant workers at risk of sexual and physical violence, immigration detention, poor health, denial of sexual and reproductive health and rights, late payment or non-payment of wages, illegal withholding of travel documents, wrongful termination of contracts, lack of access to justice, etc.

Given the intersectionality of the challenges facing women in migration, states should proactively formulate and enact laws and policies on migration, adhering to international human rights instruments centering the rights of women, such as the ICPD PoA, BPfA, and CEDAW, including its General Recommendation 26. Migration policies of origin, transit and destination countries should make women visible in their migration policies and recognize women as rights holders contributing to the economy and development. To that end, governments should consider the following policy options:

Ensure that migrant women's rights are protected as per the guidelines set out in the CEDAW, other

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## Promising Practices at the National Level

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### Philippines

Republic Act No. 9262 Anti-Violence Against Women and their Children Act (2004)

- Section 6 outlines penalties including imprisonment, fines, and mandatory counseling and psychological treatment for the victimizers.
- Section 13 guarantees legal aid for women or children with claims of violence, exploitation, or abuse.
- Section 40 empowers the Department of Social Welfare and Development and local government units to provide victims of abuse with counseling, psychosocial services and/or, recovery, rehabilitation programs, and livelihood assistance.
- Section 43 states that all women victims of violence are entitled to paid leave

### Singapore

The Singaporean government has implemented a weekly rest day for domestic workers. However, employers can substitute this rest day with an

## international instruments, the work of the human rights treaty bodies and special procedures, and outcomes from the UN Commissions on the Status of Women and on Population and Development

Governments must take into account the long history of gender discrimination and historically unequal power relations between women and men and uphold women's right to decent work, health, education, security, justice, and to be free of discrimination when entering and leaving a country. To that end,

- Governments should develop rights-based, gender-responsive monitoring indicators and disaggregated data on migration and development policies and trends, including indicators to measure progress on the items indicated in International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and other human rights instruments, including the Program of Action of the International Convention on Population and Development, the Beijing Platform for Action, CEDAW General Recommendation 26.
- Governments should refer to CEDAW General Recommendation 26 and the Guideline 9.8 of the ILO Multilateral Framework on Labour Migration, which gives particular attention to domestic workers, trainees, temporary migrant workers, and migrant women, in advancing policies that protect the rights of migrant women to family and mobility.
- Governments should ratify and implement ILO Convention 189, recognising domestic workers as workers, and providing protections for them under national labour laws.
- Governments should also work to ensure that the employment of migrant women is not primarily limited to the informal sector and that rights protections are extended to women in the informal sector including the right to association.

additional wages if the domestic worker agrees. A concern is that the power employers have over domestic workers means that employers can pressure domestic workers into agreeing to give up their rest day. Singapore has also introduced mandatory orientation programs and implemented stronger regulation of employment agencies

## Taiwan

### Human Trafficking Prevention and Control Act (2009)

- Article 3 and Article 5 stipulate that trafficking victims with a valid resident visa or visitor visa that grants permission to work will be issued work permits.
- Article 17 stipulates that labour affairs authorities shall, on their own initiative or cooperate or provide funding to NGOs to provide suspected human trafficking victims with:
  - Protection and personal safety;
  - Shelter;
  - Medical assistance;
  - Interpretation assistance;
  - Legal assistance;
  - Psychological advice and counseling;
  - Accompaniment during questioning / interrogation



- Governments should ratify and implement relevant ILO Conventions:
  - C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
  - C98 Right to Organise and Collective Bargaining Convention (1949)
  - C29 Forced Labour Convention (1930)
  - C105 Abolition of Forced Labour Convention (1957)
  - C111 Discrimination (Employment and Occupation) Convention (1958)
  - C138 Minimum Age Convention (1973)
  - C182 Worst Forms of Child Labour Convention (1999)
- Governments must recognize that women are rights bearers and active agents in claiming their rights and contributing to just and fair development, and should actively prioritize ending all forms of discrimination against women, regardless of legal status or factors including nationality, age, sexual orientation or gender identity, health and pregnancy status, developing an intersectional perspective on gender that establishes protections that recognize and take into account the numerous, specific risks that migrant women face and provide redress, including compensation.
- Governments should ensure that women migrants have access to information and education, including vocational training as well as human rights education, and orientation programs that include language training.
- Governments should ensure that women migrants have access to the highest attainable standard of physical and mental health services. Governments should recognize, respect and affirm women's right to health and their sexual and reproductive health and rights. This should include provision of equitable access to rights-based, comprehensive and

throughout the investigation or trial;

- Financial assistance; and
- Other necessary assistance.
- Article 17 allows for migrant workers who are victims of sexual and/or physical abuse, forced to do work not stated in the original contract, whose company has gone bankrupt, whose ward has died, who have not received their salaries can receive lodging in shelters ran by NGOs while they are waiting to be transferred to a new employer.

### Gender Equality Law (2005)

- Article 11 (2006) stipulates that a woman cannot be deported if she is pregnant
- The decision as to whether a domestic worker is fit to work is up to the employer.

### Labour Standards Law

- [Migrant] women working in factories and nursing homes have the right to eight weeks paid maternity leave with full pay

## Hong Kong

### Employment Ordinance

- Covers migrant domestic workers, providing the same labour rights as nationals, including the right to form and join trade unions.

integrated sexual and reproductive health information and services, including prevention and treatment of STIs and HIV, choice of full range of contraceptives, maternal and safe abortion services where permitted by law, prevention and early detection and referral for diseases of the reproductive systems, such as breast and cervical cancers, at all stages of the migration cycle. Governments must lift any discriminatory policies based on health status, including HIV status and pregnancy that may affect the rights of women in migration.

- Governments should ensure that policies and regulations reflecting the reality and diversity of women's experiences of migration, recognising and affirming women's autonomy and protecting and fulfilling their rights throughout the migration process, ensuring independent migration status (including marriage migration) that provides the right to work, ensuring access to redress in the destination country (in cases of divorce, sexual violence, widowing), and for women family members who remain in origin communities, with particular attention given to preventing gender-based violence against women.
- Governments should address policy challenges and discuss initiatives by countries of origin and destination, particularly law enforcement, awareness-raising, and effective legal redress mechanisms, to mitigate pervasive abuses against migrant women.
- Governments should foster comprehensive, gender-responsive, and rights-based socioeconomic integration and reintegration of women migrants and returning migrants centred on women's rights.
- Governments of origin and destination countries should implement human rights-based multilateral agreements and treaties that progressively reduce barriers to women's movement.
- Governments should never detain women survivors of trafficking or sexual violence or witnesses to these

## Employment Contract for a Domestic Helper Recruited Abroad

- Standard employment contract for domestic workers
- Provides clear regulations regarding employment of domestic workers and the responsibilities of employers, clear standards for regulation, and inspection and enforcement by government authorities. Ensures:
  - Payment of no less than the HK\$ 3,920 per month
  - Payment no later than 7 days after the end of wage period or termination of contract
  - Provision of a food allowance
  - Free accommodation
  - 24 consecutive hours of rest every 7 days
  - Paid annual leave
  - Free passage to and from the origin country
  - Free medical treatment
  - Sick leave of at least 4 consecutive days
  - Severance payment
  - Long service payment if employed with the same family for at least 5 years

## Japan

Act on the Prevention of Spousal Violence and the Protection of Victims –

crimes, women with children, nursing mothers, pregnant women, or women with mental health issues for migration-related purposes.

- Where women are detained, governments should proactively seek to implement gender-sensitive alternatives to detention, as long as it is not an alternative form of detention.

## Mechanisms to protect the rights and interests of children in migration

‘Children in the context of migration’ includes those children who migrate (unaccompanied or as part of a family unit), children left behind by migrating parents, and undocumented children. Children in migration make up a significant part of the large-scale and complex population movements currently taking place in many parts of the world and the number of children who are on the move is growing dramatically. According to one study, children represent around a quarter of all migrants.

Children are resilient and endowed with fundamental human rights. However, the experience for many children in migration is characterized by the denial of their fundamental human rights. Many children in host countries inherit the undocumented status of their parents. Children also bear the brunt of the social costs of migration, notably the separation of families. Children who migrate using falsified documents are extremely vulnerable to criminalization, abuse at the state level, trafficking, and forced labour. To provide specific and robust protections to children on the move, governments should:

- Acknowledge the application of the Convention on the Rights of the Child in full to children in the context of migration, including the obligation not to discriminate against children regardless of their nationality and migration status. In particular, immigration control mechanisms should never displace the requirement to make the best interests of the child a primary consideration in all actions in their regard. It is never in the best interests of the

## Amendments (2004)

- Article 23 (1) protects women in the context of marriage migration by extending the protection against spousal violence to foreigners.
- Officials charged with the protection of victims of spousal violence, investigations and judicial decisions pertaining to spousal violence shall, in the performance of their duties, take into consideration the psychological and physical conditions of the victims and their environment, etc., respect their human rights regardless of their nationality or disability, etc., and give due consideration to ensuring their safety and protecting their privacy.

child to criminalise child migrants on the basis of their migration status.

- Should acknowledge children as rights holders and involve them in the decision making process of migration policies that affect them.
- Develop explicit policies for children in the context of migration. These should involve: investing in communities in 'sending' areas, lowering the economic and social costs of migration and ensuring that migrant children enjoy the legal protection and the rights recognized to all children by the CRC and other international standards, irrespective of their migration status.
- End the criminalization of children in migration and other violations of children's rights based on migration status. Children should never be detained, deported unaccompanied, or separated from their families, irrespective the migration status of their parents.
- Strengthen access to all children's rights in adherence with the CRC, guiding principles and other international human rights instruments, including compulsory education for elementary and secondary school-aged children, access to healthcare, and other fundamental rights.
- Establish rights-based protection networks for children whose parents or guardians migrate, paying particular attention to schools, communities and other protection networks.
- Ensure that children have access to redress, including compensation, for human rights violations in the course of migration.
- Recognizing that children in the context of migration are first and foremost children, governments should develop policies that ensure that children in the context of migration are free to reside in the community while their status is being resolved.
- Ratify and implement ILO C138 Minimum Age Convention (1973) and ILO C182 Worst Forms of Child Labour Convention (1999), and establish programs to remove children in the context of migration from the worst forms of child labour, prevent those at risk of getting into child labour, and reintegrate them into mainstream society, while ensuring children in the context of migration of employable age enjoy their rights in full, including their entitlement to safe and healthy workplace.

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# Redefinition of the International Mechanisms of Migrants' Rights Protection

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Currently, the global discourse on labour migration (and the place of migrants' rights within that discourse) is dominated by the GFMD, leaving little space for the distinct mandate of the ILO and other specialized agencies in protecting and upholding the rights of migrant workers and their families. Substantial contributions to this discourse can be made by other international agencies, particularly the ILO, as 90% of the world's approximately 214 million migrants are migrant workers.

Reaffirming that a rights-based framework should be the primary framework for intergovernmental discourse on migration, the GFMD should incorporate this framework, acknowledging and working within the many, detailed agreements governments have already made with respect to migration, development, human rights, and labour standards

- Governments should ensure that the GFMD and HLD processes use a rights-based framework rather than discuss labour migration from a purely economic perspective. This includes ratifying and/or implementing the following instruments:
  - The International Bill of Rights: Universal Declaration of Human Rights (1948),

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## Promising Practices at the National Level

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### India

#### Emigration Act Section 22 (3)

- Provides a model with minimum standards of MOUs for the protection of Indian migrant workers, including:
  - Period/place of employment
  - Wages and other conditions of service
  - Free food and food allowance provision
  - Free accommodation
  - Provisions for repatriation of the remains of migrants who die abroad
  - Working hours, overtime allowance, other working conditions, leave and social security benefits as per local labour laws
  - Air passage at the employer's cost
  - Mode of settlement of disputes
  - Medical benefits

International Covenant on Economic, Social and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966)

- International Convention on the Rights of All Migrant Workers and Members of their Families (1990)
  - The ILO's core conventions:
    - C87 Freedom of Association and Protection of the Right to Organise Convention (1949)
    - C98 Right to Organise and Collective Bargaining Convention (1949)
    - C29 Forced Labour Convention (1930)
    - C105 Abolition of Forced Labour Convention (1957)
    - C111 Discrimination (Employment and Occupation) Convention (1958)
    - C138 Minimum Age Convention (1973)
    - C182 Worst Forms of Child Labour Convention (1999)
  - Convention on the Elimination of All Forms of Discrimination Against Women (1979)
  - Convention on the Rights of the Child (1989)
  - Additional guidance on rights-based approaches to migration should be considered from the following:
    - ILO's Multilateral Framework on the Protection of Migrant Workers
    - UN Declaration on the Right to Development
    - World Conference Against Racism Program of Action
    - Cairo Conference on Population & Development Program of Action
    - 4<sup>th</sup> World Conference on Women, Beijing Platform of Action
    - Recommendations from the Universal Periodic
- Travel and transportation expenses
  - Conditions for the termination of employment
  - Provisions in regard to coverage of special risks, including war
  - Provisions in regard to remittances
  - Provisions in regard to renewal of contract.

## Republic of Korea

### Employment Permit System (EPS)

- Government-to-government cooperation: The Korean government signed MOUs with 15 origin countries. Through these MOUs, governments cooperate to reduce the cost of migration and shift the responsibility of recruiting to government agencies, taking private recruiters out of the process.
- Transparency in recruitment and extensive preparation
- Foreign workers receive the following protections under Korean labour law:
  - Working hours
  - Minimum wage
  - Overtime
  - Holidays
  - Occupational accident compensation
  - Counseling to mitigate labour disputes
  - Coverage by compulsory national health insurance
  - Join trade unions



## Review

- Recommendations from relevant treaty bodies and special procedures
- The GFMD should affirm that the primary concern is the urgent need for international governance to protect the rights of migrant workers and their families when specific governments fail to do so
- Governments should deepen engagement with the relevant treaty bodies, the Supervisory and Special Mechanisms and Procedures of the UN Human Rights Council, and the ILO

## Ensure that the GFMD and UNHLD processes are open, transparent, and inclusive

- The HLD must give UN organisations, especially the ILO and OHCHR, key roles in the governance architecture and place migration debates, policies and programs within the UN framework.
- The GFMD should be put under the ambit of the UN so it is more accountable and transparent, and adheres to and builds on the existing human rights frameworks and obligations.
- The Friends of the Forum of the GFMD should commission a continuing independent evaluation of the GFMD process to ensure accountability, transparency, and inclusivity of process and outcomes. This evaluation should include the participation of migrants, trade unions, and diverse civil society groups.
- The HLD and GFMD should be participatory fora of governments, migrants, trade unions, and diverse civil society groups to promote a rights-based approach, including decent work. This forum should address the underlying challenges of migration and development and how these issues can be addressed collectively.
- Credentials for participation in the GFMD and HLD processes for migrants, trade unions, and diverse

- Freedom from forced labour
- Collective bargaining
- Freedom from non-discrimination
- The government increases the minimum wage on an annual basis

## ROC Taiwan & Philippines

MOU between the Manila Economic and Cultural Office in Taipei and the Taipei Economic and Cultural Office in the Philippines regarding the Special Hiring of Workers (2002)

## ROC Taiwan & Indonesia

The MOU empowers employers in Taiwan to bypass the use of recruitment agencies when hiring Filipino workers, thus creating a government-to-government recruitment system in which the exorbitant fees charged by agents within the private recruitment industry are avoided.

## ROC Taiwan & Thailand

Bilateral agreement between the Taipei Economic and Cultural office in Thailand and the Thailand Trade and Economic Office in Taipei on Employment of Thai Workers (2003)

## ROC Taiwan & Vietnam

Bilateral agreement between the Taipei Economic and Cultural Office in Hanoi and the Vietnam Economic and Cultural Office in Taipei (1999)

## Philippines & the UAE

Both countries collaborated on a project to test and identify best practices for managing temporary contractual employment in 2009

civil society groups should be open, irrespective of UN accreditation or previous engagement with the UN, freely and without reprisals for participation.

- Governments should set aside funding for migrants, trade unions and diverse civil society groups to participate in the GFMD and HLD processes.
- The GFMD and HLD should prioritize engagement with migrants, trade unions and diverse civil society groups—the primary stakeholders for ensuring migrants’ rights protections—over banks, remittance companies, and corporations.
- The GFMD should implement a transparent monitoring process to assess the impact of the Civil Society Days on the GFMD.

### Engage in other regional and international processes, putting rights at the centre of all migration and development discussions

- ASEAN governments should prioritize the completion and implementation of the ASEAN Instrument of Protection for migrant workers. Other regional and sub-regional bodies within the Asia-Pacific region should develop a migrant rights instrument to protect and promote the rights of migrants in their regions.
- Governments should develop more inclusive models for participation of migrants, trade unions, and diverse civil society groups and UN agencies in Regional Consultative Processes to leverage the wealth of knowledge and existing promising practices.
- Governments should move away from circular and temporary migration models, because they prevent and restrict the movement of migrant workers and increases their vulnerability to abusive and irregular situations where they can be exploited by recruiters and employers.

facilitated by the Abu Dhabi Declaration. The protect aimed to identify mechanisms to:

- Protect migrant workers from exploitation;
- Guarantee fair and safe working conditions;
- Guarantee the ability of migrant workers to seek redress; and
- Prepare migrant workers for return and reintegration.

### Philippines & the KSA

The two countries have formalized an MOU for the protection of Filipino domestic workers. The MOU includes:

- A mutually acceptable recruitment and deployment system
- Ethical recruitment through licensed recruitment agencies
- Prohibition of making deductions from domestic workers’ salaries
- The right to redress according to national laws and regulations
- Minimum employment standards including:
- Weekly rest days, daily rest periods, paid vacation leave, non-withholding of passports and work permits, free communication, and humane treatment

Responsibilities specific to KSA are to ensure:

- Authenticity of the employment contract
- Opening a bank account for the domestic worker
- A 24-hour mechanism for assistance
- Expedious settlement of

- Countries of destination and origin should establish and/or review existing bilateral and multilateral agreements on labour migration, and make such documents public, including provisions that host countries contribute to the integration and reintegration process and ethical recruitment in recognition of the services rendered by the migrant during his/her employment in the host country.
  - Origin and destination countries should ensure that bilateral migration agreements, complete with implementing protocols, monitoring mechanisms, and dispute/complaint/redress mechanisms, are developed transparently and on the basis of a participatory approach—including migrants, trade unions, diverse civil society groups, employers, governments, and other social actors.
- labour contract violation cases
  - Facilitation of exit-visas for repatriation upon contract completion or during emergency situations.

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# Endorsements

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The following organizations participated in this two-day Asia Pacific Civil Society Consultation and writeshop and contributed to this outcome document:

- Alliance of Progressive Labor-Hong Kong
- Arab Network – UAE
- Asia Pacific Forum on Women, Law and Development – Thailand
- Asian-Pacific Resource and Research Centre for Women – Malaysia
- Building and Wood Workers International – Malaysia
- Center for Human Rights and Development – Sri Lanka
- Center for Indian Migrant Studies – India
- Center for Migrant Advocacy – Philippines
- DanChurch Aid – India
- Federation of Free Workers – Philippines
- GEFONT Malaysia
- Global Alliance Against Traffic in Women –Thailand
- Global Coalition on Migration
- Hsinchu Catholic Diocese – Taiwan
- Human Rights and Development Foundation – Thailand
- International Detention Coalition – Australia
- Kanlungan Centre Foundation – Philippines
- KavLaOved – Israel
- Law & Trust Society
- Legal Support for Children and Women – Cambodia
- MAP Foundation/Mekong Migration Network – Thailand
- Migrant Forum in Asia – Philippines

- Migrant Forum India
- Migrant Worker Rights Network – Myanmar
- National Domestic Workers Movement – India
- Organization for Migration and Family Development – Philippines
- Pakistan Rural Social Welfare Office – Pakistan
- PMLU Migrants Rights Council -- India
- Pourakhi-Nepal
- Pravasi Nepali Coordination Committee – Nepal
- Public Services International
- Public Services International Asia Pacific Regional Organisation – Philippines
- Public Services Labor Independent Confederation
- Serikat Buruh Migran Indonesia – Indonesia
- Solidarity Center – Sri Lanka
- Solidarity Network with Migrants Japan
- TCWF- India
- Terre des Hommes Netherlands – Philippines
- UNI APRO – Malaysia
- UNI-MLC
- Union Migrant Indonesia (UNIMIG)
- Women’s Rehabilitation Centre – Nepal
- Youth Action Nepal – Nepal