

Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers

An Information Guide

Booklet 3

Recruitment and the journey for employment abroad

**Gender Promotion Programme
International Labour Office Geneva**

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3.1. Aims and structure of the Guide

This Information Guide is intended:

- **To enhance knowledge and understanding of the vulnerability of migrant workers, especially women, to discrimination, exploitation and abuse throughout all stages of the international labour migration process, including being trafficked;**
- **To promote and improve legislation, policies and action to prevent such discrimination, exploitation and abuse and to better protect those women migrant workers who are vulnerable; and**
- **To emphasize and explain why and how the prevention of discrimination, exploitation and abuse, including trafficking, of migrant workers should be addressed within a framework aimed at promoting regulated and orderly labour migration and as a matter of:**
 - ☑ **Upholding basic human rights, including labour rights and migrant rights;**
 - ☑ **Promoting gender equality and ending all forms of discrimination, racism and xenophobia;**
 - ☑ **Promoting decent and productive work for all workers, women and men, in conditions of freedom, equity, security and human dignity; and**
 - ☑ **Eradicating poverty and social exclusion.**

Box 3.1. Focus on women from a rights-based, gender perspective

Although the focus is on women (and girls), the Information Guide is not women-exclusive. It adopts a rights-based, gender-sensitive perspective that:

- Recognizes the similarities and differences in the migration experiences of different categories of women *and* men in relation to vulnerabilities, violations and consequences;
- Relates these differences in migration experiences to gender -- by distinguishing the biological ("sex") from the socially determined ("gender") differences between women and men. Links differences in migration experiences to the different roles, attributes and behaviour that society deems socially appropriate for women and men, and to the division of labour, access to and control over resources and decision-making and constraints, opportunities and needs facing women and men;
- Addresses the differential and often discriminatory impacts of legislation, policies and programmes on different groups of women and men;
- Considers the interaction between gender and other social categories, such as national origin, class, ethnicity and age;
- Gives particular attention to the especially vulnerable groups of women or men;
- Approaches the issues of women migrant workers not merely from the perspective of moving, working and living in foreign countries but also from the perspective of their generally less valued socio-economic roles and disadvantaged position vis-à-vis men;
- Emphasizes the need for policies that not only address the supply of and demand for migrant workers but also address gender discrimination and inequalities;
- Holds that the elimination of gender inequality and discrimination is a human right and core to efforts to address the problems of women migrant workers;
- Aims to empower, not just to protect, women (and, where appropriate, men), so that they can claim their rights and make informed decisions about their lives.

The Guide shows that changing labour markets with globalization have increased both opportunities and pressures for women to migrate.

For many women, as for men, migration represents a positive experience and can have important emancipating and empowering impacts. But the focus of the Guide is on those women migrant workers who are especially vulnerable to discrimination, exploitation and abuse, including trafficking.

Women are migrating for employment on almost the same scale as men, accounting for about half of the total migrants worldwide. For many women, as for men, migration is a positive experience, leading to a better life and improvement of their economic and social position. The labour migration process can enhance their earning opportunities, autonomy and empowerment and, thereby, change gender roles and responsibilities and contribute to gender equality. Women migrants are able to achieve their goals and may gain comparatively more than male migrants, not so much in terms of income, but in status and position back home. Although they may earn less than male migrants and they usually work in non-regulated sectors of the labour market, they are often able to improve the economic position of their family and their own status, independence and decision-making power within the family. They may also be able to have a better chance in the local labour market upon return and to earn money to start their own business.

But migration for employment can also expose women to serious violation of their human

The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase.

rights, including their labour rights. Whether in the recruitment stage, the journey across national borders, transit or living and working in another country, women migrant workers, especially those in irregular situations, are vulnerable. They are exposed to harassment, intimidation or threats to themselves and their families, economic and sexual exploitation, racial discrimination and xenophobia, poor working conditions, increased health risks and other forms of abuse, including trafficking into forced labour, debt bondage, involuntary servitude and situations of captivity. The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase – because of hardened attitudes towards migrants in general ¹ and because gender-based attitudes and perceptions continue to be slow in changing. Gender inequalities persist and labour markets remain highly segmented and segregated in both origin and destination countries.

Women migrant workers, whether documented or undocumented,

Gender-based discrimination intersects with discrimination based on other forms of “otherness”.

are much more vulnerable to discrimination, exploitation and abuse – relative not only to male migrants but also to native-born women. Women and girls are also more at risk than men and boys to trafficking. Gender-based discrimination intersects with discrimination based on other forms of “otherness” – such as non-national/foreigner status, race, ethnicity, religion, economic status – placing women

in situations of double, triple or even fourfold discrimination, disadvantage, marginalization and/or vulnerability.

Although the focus is on women migrant workers, many of the concerns and issues raised, analysis and guidelines provided cut across gender and, sometimes, age. Therefore, this Information Guide could be relevant for all individual migrants, women and men, so that they can better understand the risks involved in labour migration, know their rights and are better able to protect themselves. The Guide also shows why among children, girls are often more vulnerable than boys to exploitation and abuse. However, the greater vulnerability of children to exploitation and abuse and the particular physical, psychological and psychosocial harm suffered by trafficked children require that they be dealt with separately. This Guide does not deal with children-specific solutions, which should also be specific for girls and for boys.²

The Guide comprises six booklets which are inter-related but which can be used separately. Booklet 1 provides a general introduction of the dynamics of female labour migration. Booklets 2 to 5 cover the different stages of the migration process and the corresponding activities, policies and practices of other actors – the government, business, the private sector, civil society groups and families -- that affect the mobility and employment of women and men within and outside their countries of origin. Booklet 6 focuses on the trafficking of human beings, particularly women and girls.

Booklet 1 *Introduction: Why the focus on women international migrant workers*

Highlights the vulnerability of women migrant workers to discrimination, exploitation and abuse in the different stages of the migration process. The labour market situations women migrant workers go into put them at greater risk to human rights violations, compared to male migrants and local women. To protect women migrant workers, the Booklet introduces a multidisciplinary and comprehensive framework – addressing both demand and supply factors, and incorporating the promotion of human rights, gender equality, decent work and poverty reduction; and involving a wide range of social actors in legal and policy instruments and practical action at international, regional, national and community levels.

Booklet 2 *Decision-making and preparing for employment abroad*

Describes the process of decision-making and preparation for moving to and working in a foreign country. It highlights the kinds of accurate and realistic information and assistance services that potential migrants should have to properly decide on employment abroad. It also identifies other actors in the decision-making process, in particular the families of the women, and emphasizes the need to reach out to and sensitize these other actors. For those who make the decision to become labour migrants, the Booklet describes the information that would help steer them safely through the recruitment and journey

process, including information on their legal rights and obligations and how to claim their rights and what to do in crisis situations. It also stresses the importance of measures to ensure that migrant workers have access to social protection.

Booklet 3 *Recruitment and the journey for employment abroad*

Distinguishes the different modes of recruitment and emphasizes that fraudulent and exploitative practices are very common in the recruitment stage. It defines illegal recruitment and draws attention to the various dangers and risks women can face in the recruitment process. Trafficking is one form of illegal recruitment. It describes what governments, the social actors and migrants themselves can do to prevent these malpractices.

Booklet 4 *Working and living abroad*

Raises awareness of the working and living conditions of women migrants in the destination countries, and provides guidelines on how to improve their situation and especially to prevent and redress cases of violation of their basic rights and to also ease their adjustment and integration. It shows that where women migrant workers are organized and have networks of information and social support, exploitation is much less likely to occur. The focus is on migrant domestic workers who are among the most vulnerable to exploitation and abuse and because domestic work is the single largest employment category for women migrants.

Booklet 5 *Back home: return and reintegration*

Illustrates the specific problems faced by women migrants returning to their home countries and families. It identifies the kinds of supports – logistical, legal, socio-psychological, employment, skills related and financial -- they need to enable them to achieve successful reintegration and avoid re-migration or being re-trafficked. It emphasizes opportunities for remunerative employment as key to successful reintegration.

Booklet 6 *Trafficking of women and girls*

Focuses on a global problem of growing concern: trafficking in persons, especially women and girls. It identifies the supply-side and demand-side causes, describes the mechanics of trafficking and explains why women and girls are more vulnerable to becoming victims. It points out that trafficking in human beings is, first and foremost, a violation of human rights; it should not be dealt with merely from the perspective of fighting illegal migration nor protecting national interests. A wide range of actors need to tackle the entire cycle of trafficking through policy, action and cooperation at different levels for the prevention of trafficking, support for and protection of victims and prosecution of traffickers.

3.2. How to use the Guide

The booklets of the Guide are intended as an **information/reference source for a wide and varied audience:**

- The main target audience are advocates and activists, policy makers and implementers concerned with migration issues and women workers' rights in origin, transit and destination countries. They include government officials responsible for the administration of justice, the judiciary and service providers -- such as migration officers, embassy personnel, labour attachés, labour inspection officials, police and law enforcement personnel, judges, prosecutors, equality officers, social and public health workers and officials from women's bureaus and ministries of labour, justice and immigration/emigration;
- The Guide is also more broadly addressed to workers' and employers' organizations, associations of migrant workers (including associations of domestic workers), public and private recruitment and employment agencies, as well as non-governmental organizations (NGOs), community-based organizations (CBOs) and other civil society groups concerned with human rights;
- The information in the Guide is clearly very useful for individual migrants, both women and men. However, the Guide is written for the use of actors who directly address individual migrants; for example trade unions, government agencies or NGOs to raise awareness among potential migrants or to conduct pre-departure orientation for migrants. As such, they may need to adapt the materials or simplify the language and presentation style to suit the migrant audience.



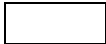







Individual and institutional users will have to select one or more particular booklets and utilize, adjust and adapt the materials according to their specific national and socio-cultural contexts, needs and purposes. To assist users, the information is structured in as "user-friendly" a format as possible. Different symbols, fonts and colours depict different types of information. At the end of each booklet, notes, a bibliography and useful websites are provided for readers interested in more detailed or additional explanations and reference materials.³ A Power Point presentation highlights/ summarizes the main points covered in the booklet. Cross-references are provided where there are areas of overlap in the different booklets or where issues are dealt with in more than one section or booklet. Important information is repeated, so that each booklet is as complete as possible.

The examples given of both "good" and "bad" practices are not intended to single out individual countries. They reflect the availability of information (which also helps to explain why there appears to be more examples from the Asia Pacific region). Although the countries from which the examples are drawn are indicated, the "good" or "bad" practices are not necessarily specific only to these countries.

The Information Guide can flexibly be used for:

- **Awareness raising or sensitisation:** To improve knowledge and understanding of the vulnerabilities faced by migrant workers to discrimination, exploitation and abuse, including trafficking, and the challenges confronting government, workers' and employers' organizations, NGOs and other civil society actors in addressing these vulnerabilities, protecting human rights and promoting decent work for migrant workers, in particular for women migrant workers. Access to such information may empower the women to increase their self-esteem and build confidence to defend their rights as women, as migrants and as workers.
- **Advocacy and publicity:** The Guide intends to place the discrimination, exploitation and abuse that women migrant workers experience on the "radar screen" of the international human rights, development and donor communities. Government agencies, NGOs and other social actors may also use the Guide for media campaigns, community mobilization and outreach to inform or educate the general public and other concerned actors, including migrant women and men themselves, about the role they can play and the possible measures they can take to protect vulnerable women migrant workers and to improve the situation of migrants of both sexes in general.
- **Tool for action:** The Guide indicates the normative framework that could be used for addressing discrimination, exploitation and abuse of women migrant workers. Law and policy makers can refer to relevant international and regional standards and some national examples to adopt a rights-based approach and to formulate or review legislation. The Guide also presents guidelines, checklists and practical examples for action. Users can learn from the experiences of actors in countries of origin, transit and destination and may be better aware of what might be possible or effective for assisting vulnerable women in the migration process. However, since the circumstances vary from one country to another, the information is not intended to represent "best" or "good" practices that should be adopted in all situations or be used in any definite manner.
- **Training and educational purposes:** The information in the booklets may serve as background material in training seminars (such as for migration officers, labour attachés, law enforcement officers and employment agents), topics to include in school curricula or general education programmes targeting potential female migrants, and, importantly, in preparation courses for migrants before they go abroad.
- **Networking tool:** The Guide offers ideas for improving networking and collaboration between and amongst government and social actors, trade unions, NGOs and employment agencies; for generating discussion and stimulating action amongst various stakeholders; and building alliances between various organizations and individual migrant women within and between countries of origin, transit and destination.

To assist users of the Guide, the information is organized in different ways:

-  Aims of the different booklets and sections of the Information Guide
-  *Text box in coloured italics, main themes and highlights of different sections of the Information Guide*
-  *Text box in bold italics, international instruments*
-  Coloured text box, important explanations or examples of policies or action
-  **Key points to bear in mind**
-  *Elaboration/details of key points, checklists or guidelines*
-  *Good practices*
-  *Bad practices*
-  *Lessons learned*
-  Refer to, cross-references

3.3. The modes of recruitment and journey for employment abroad

As defined in the *ILO Convention on Migration for Employment (Revised), 1949 (No.97)*, “recruitment” covers not only direct engagement by the employer or his or her representative, but also operations conducted by the intermediary, including public and private recruitment bodies. The definition refers to both situations where the prospective migrant is offered a definite job and where a recruiter undertakes to find a job for the migrant. The definition also covers operations accompanying the recruitment procedure, in particular selection operations: ⁴

Migration for Employment Convention (Revised), 1949 (No.97)
Article 2, Annex 1

- (a) The term “recruitment” means
- (i) the engagement of a person in one territory on behalf of an employer in another territory, or
 - (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;
- (b) The term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and
- (c) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.



There are various modes and channels of recruitment:

- ☑ *Through government-regulated/managed arrangements;*
- ☑ *Through private recruitment agents/agencies;*
- ☑ *Through informal networks/kin/family;*
- ☑ *Directly by the employer.*

☑ **Recruitment through government-regulated/managed arrangements:**

The role of the State in the recruitment process can differ greatly, depending on the type of emigration policy or foreign employment policy that a country of origin adopts [👁️ **Box 1.7 in Booklet 1**]: ⁵

- **Laissez-faire:** A country of origin can leave it completely up to the market to decide how and where labour is to be employed and on what conditions and not intervene at all in the recruitment process. It does not impose any standards and the terms of the employment contracts are the concern only of the worker and the foreign employer;⁶
- **Regulated system:** The State of origin adopts laws and regulations governing the recruitment of nationals for employment abroad. The State

in effect allows private recruitment agents to be the main players within its domain, but sets laws and regulations to cover proscribed recruitment practices, with penalties imposed on violators;⁷

- **State-managed system:** The State does not simply regulate foreign employment but also sets up state organizations to recruit and place workers abroad. The State has an active foreign employment policy that covers the entire migration process and that may include interventions to influence demand (such as opening up new and better destinations for migrant workers) and supply (such as improving the skills of migrant workers or imposing barriers to exit of scarce skills); interventions to regulate recruitment (including being directly involved in recruitment, introduction and placement of migrant workers) and interventions to protect workers;⁸
- **State-monopoly:** The State assumes full and sole responsibility for organizing labour migration. Under such a policy regime, there is no room for the operation of private intermediaries in the recruitment of nationals and their deployment in foreign countries.⁹

In general, it could be expected that where the State directly organizes recruitment of its nationals

Where the State directly organizes recruitment of its nationals for employment abroad, there would be little risk of fraud or abuses – as compared to recruitment through private intermediaries.

for employment abroad, there would be little risk of fraud or abuses – as compared to recruitment through private intermediaries (although, of course, there is still the danger of corrupt officials taking advantage of innocent migrant women anxious to obtain jobs abroad). The State can be directly involved in recruitment through its **foreign employment offices** or via **public employment offices** that undertake recruitment, introduction and placement activities. The State should, of course, work closely with employers' and workers' organizations to ensure an efficient and transparent migration system

The State can also, by means of subsidies, encourage domestic corporations to export labour services or to engage in foreign contracting, such as the Republic of Korea did with its construction companies. Such **corporate export of manpower services** has, however, mainly involved male rather than female migrant workers.

Where a country has a foreign employment office (such as the Philippine Overseas Employment Administration or the Sri Lankan Bureau of Foreign Employment), the office may develop an in-house capacity to service foreign clients and perform the functions normally undertaken by recruitment agents. These functions include conducting interviews and testing qualifications of potential migrant workers, arranging for medical tests, getting tickets and travel documents, obtaining visas and facilitating workers' departure. A sending country can also use existing public employment exchanges to recruit workers for employment abroad. Such public employment services for migrant workers are supposed to be rendered free of charge.¹⁰

However, the trend suggests that while the role of private recruitment agencies has increased, far fewer migrants are being recruited through government channels. Unfortunately, government placement services frequently are not successful in attracting foreign employers to hire prospective migrant workers through them because:

- They often do not match the efficiency and price of private firms;
- They do not actively engage in market promotion and development;
- They are generally not available in rural areas where potential migrants live.

☑ **Recruitment through private agents/agencies:**

Recruitment through private agents/agencies

has become lucrative business in many countries due to the effect of commercialising recruitment for foreign employment [👁️ **Box 3.2**]. In fact, in some parts of the world, it is the growth of a “migration industry” – comprising private recruitment agents, overseas employment promoters, human resource suppliers and a host of other legal and illegal intermediaries – that has greatly facilitated female labour migration.

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Box 3.2. The role of private recruitment agencies

In Sri Lanka, private recruitment agencies play a key role in securing employment opportunities abroad for women migrants; in 1999, some 68 per cent of the placements were arranged by these agents and government statistics revealed that approximately 570 licensed agents operated in the country. An important reason why an increasing number of Sri Lankan women have gone abroad is because the recruitment agencies charge a lower fee for women than for men: Rs.65, 000 for men and Rs.15, 000 for women. The agencies have spread their operations outside Colombo increasing opportunities for employment seekers in rural areas. “Many of the licensed agents that operate in all parts of the island depend on sub-agents to attend to ‘leg-work’ ranging from filling passport application forms to accompanying the prospective migrant to the airport. Though often labelled as ‘villains’ or ‘sharks’, private recruitment agents remain the most sought-after persons for securing employment abroad”.

All private recruitment agents are supposed to operate on a license issued by the Sri Lanka Bureau for Foreign Employment, pay a license fee, enter a bond of Rs.100, 000 and furnish a bank guarantee for the same value. “Despite these mandatory provisions and the existence of a registered Federation of Licensed Foreign Employment Agencies, registered under the Companies Act of Sri Lanka, and despite fines and convictions and even the blacklisting of agencies, a large number of unlicensed employment agencies and agents operate in the country. In addition to operating without proper licenses and authority, a serious issue is the charging of exorbitant fees and commissions by employment agencies”.

Source: M. Dias and R. Jayasundere, *Sri Lanka: Good Practices to prevent women migrant workers from going into exploitative forms of labour* (Geneva, ILO GENPROM, 2002), pp.14-15; and Asian Migrant Centre Ltd. and Migrant Forum in Asia, *Asian Migrant Yearbook 2000* ((Hong Kong, Asian Migrant Centre Ltd), p.244.

There has been a proliferation of illegal or unlicensed recruiters, which can be attributed to the often very restrictive, complicated, time-consuming or very costly procedures involved in legal migration. Unlicensed or illegal recruiters are the ones most likely to exploit and traffic unsuspecting women looking for employment opportunities abroad. The range of unlicensed or illegal recruiters can include:

- The individual recruiter or agent at the local/community level, such as the village headman or local woman (who may himself/herself be a returned migrant). He/she identifies potential migrants, in particular vulnerable women and girls, and directly approaches them or their families and gains acquiescence through deception or an agreed payment;
 - Small-time agents working under the guise of employment/travel/tour/entertainment/modelling/marriage agencies;
 - Large well-organized syndicates with elaborate networks and structures and often with criminal connections stretching over a number of countries
- [👁️ **Booklet 6** on the trafficking networks].

Recruitment by private agencies is authorized under Article 3 of Annex I and Article 3 of Annex II to the *ILO Convention on Migration for Employment (Revised), 1949 (No. 97)*. However, given the wide scope for abuse of prospective migrants by intermediaries during the recruitment procedure, these provisions require that the right to engage in recruitment shall be subject to the approval and supervision of the competent authority:

Migration for Employment Convention (Revised), 1949 (No.97)
Article 3, Annex 1

- 3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by***
- (a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;***
 - (b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by***
 - (iii) the laws and regulations of that territory, or***
 - (ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.***

The more recent *ILO Convention on Private Employment Agencies, 1997 (No.181)* has provisions relating to the recruitment and placement of migrant workers by private employment agencies. Unless there are authorized exceptions, private employment agencies shall not charge any fees or costs to workers. The Convention also stipulates that there should be no discrimination in recruitment:

Private Employment Agencies Convention, 1997 (No.181)

Article 5

1. *In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private recruitment agencies treat workers without discrimination on the basis of race, colour, 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.*

Article 7


1. *Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.*
2. *In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.*
3. *A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.*

Article 8

1. *A member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private recruitment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.*
2. *Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.*

☑ **Recruitment through informal networks/kin/family:**

The role of social networks has been

identified as a major contributor to the increase in the number of female migrant workers. Social networks involve not only members of a family but also persons related by other affiliation ties that involve reciprocal obligations, including kinship and friendship ties among persons sharing a common community of origin, culture or religion [ **Box 2.2 and Section 2.3 in Booklet 2**].

Women, especially young women, are more likely than men to move as part of chain migration, following their sisters or other relatives who are already working overseas. They also rely more than men on informal social networks.

“An important reason for the self-sustaining and cumulative nature of Asian female migration flows has been the operation of social networks. Asians are well known for maintaining strong social relationships and networks of obligations, and it is through these that information is transmitted, contacts established, employment opportunities for new migrants created and grasped, social supports provided and settling into the host community eased. Especially with expanding communities of Filipino, Indonesian, Thai women in the host countries, it has become easier for other women to follow. Women, especially young women, are more likely than men to

move as part of chain migration, following their sisters or other relatives who are already working overseas. They also rely more than men on informal social networks. For example, a tracer study of Filipino domestic helpers abroad found that friends and family represented the most extensive source of information regarding openings for domestic work in Hong Kong. Prospective employers preferred to ask for referral from trusted domestic workers already in Hong Kong rather than go through costly as well as sometimes unreliable agencies".¹¹ Another study¹² found that although most Sri Lankan female migrants are placed abroad by private recruitment agencies, some 32 per cent used informal channels, as compared to 16.5 per cent of male workers.¹³

☑ **Recruitment directly by the employer:**

Female migrant workers can also be directly recruited by a foreign employer. In such a recruitment process, the employer may directly approach and select a worker and agree on the terms and conditions of employment, including making the necessary arrangements for the visa and travel of the worker. Where the worker comes from a sending country that regulates or manages the foreign employment of its nationals, the employer would have to submit a signed contract to the emigration authorities. The emigration authorities could then ask its diplomatic mission in the destination country to verify the job offer, check the terms and conditions of the employment contract, check whether the worker understands the contract provisions and then approve or refuse an exit clearance for the worker to go abroad to take up the job.¹⁴

Employers who illegally directly recruit or engage in trafficking of migrant workers can include brothel owners, factory or sweatshop owners and employers of domestic maids – they do so to circumvent restrictive, complicated, time consuming or very costly procedures involved in legal recruitment and/or because the illegally recruited women migrant workers are cheaper, easier to control and prepared to take “3D” (dirty, dangerous and degrading) jobs.



The journey for employment abroad is how migrants are transported across international borders. According to Article 4 of the Migration for Employment Convention (Revised), 1949 (No.97):

Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

☑ **The journey:**

The journey may be direct to the country of destination or may involve complex and circuitous routes through transit countries, and the time between departure from the country of origin and arrival in the final destination may take several months or even years. Particularly if the migrants have been illegally recruited or are trafficked, the transport providers and operators may use complicated routes and methods to transport them to the destination, sometimes along routes used for the smuggling of arms, drugs or other illicit contrabands.

☑ ***The means of transport:***

The means of transport may vary at different stages of the journey: by air, train, truck, containers, small buses, small vessels, speedboats, on foot.

☑ ***En route:***

Migrants may require accommodation, sometimes for considerable periods, in a transit country before embarking on the next stage of their journey. “Tougher rules and regulations in a steadily increasing number of host countries have considerably inflated the financial cost of migration to migrants. Repeated attempts must be made to get through, and routes are becoming longer. Migrants must therefore often make stopovers in different transit countries before managing to settle in a country which is not always the one originally envisaged”.¹⁵

☑ ***Border crossing:***

For those who are legally recruited and have valid travel documents, the border crossing may be simple (although they may still be subject to exploitation or abuse by border guards). But for those who are illegally recruited or trafficked, the crossing may be highly dangerous since the migrants have to avoid the authorities. “Since the mid-1990s, Morocco has increasingly become a transit country for migrants from Sub-Saharan Africa (including Malians, Burkinabés or Ghanaians) en route to Europe. Hundreds of people die every year braving the dangerous crossings of the Strait of Gibraltar to Spain’s mainland or the Atlantic Ocean to reach the Canary Islands, in unseaworthy vessels. These deaths in pateras (small boats) are a subject of concern to Moroccan authorities and are receiving more and more attention in Moroccan and European media.”¹⁶

3.4. Dangers and risks related to recruitment and the journey for employment abroad

“The need for state intervention to protect migrant workers arises not only when they encounter problems in countries of employment. In many countries it already exists at the recruitment stage, where fraudulent practices are very common. Jobseekers often fall victim to swindlers, who may offer in exchange for considerable sums of money non-existent jobs abroad, false job contracts that would not otherwise be accepted, or fake travel documents and visas. There are various unscrupulous schemes for obtaining money from jobseekers, such as requiring all applicants to make advance deposits or overcharging them for air tickets, medical tests and the like”.¹⁷

“Private employment agencies have proven very quick to spot shortages of certain categories of labour on the labour market, find workers to fill the gap and propose flexible solutions that are appropriate given the growing complexity of economies, even managing to overcome the information gaps and institutional barriers that isolate national labour markets from one another. The commercialization of placement has negative aspects, however: (a) advertising, distributing various forms of misleading propaganda, soliciting applications and demanding exorbitant fees (well above the maximum allowed by regulations or the actual cost of recruitment) for non-existent job offers; (b) withholding information or giving false information on the nature of jobs and conditions of employment; and (c) selecting applicants not on the basis of job qualifications but according to the amount they are willing to pay to get the job. Unskilled workers without any particular technical qualifications are particularly vulnerable to malpractices by certain private placement agents organizing international labour migration”.¹⁸



The recruitment process can involve a number of dangers and risks for migrants, especially for women who lack access to reliable and timely information [👁 Section 2.4 in Booklet 2]. The dangers and risks they face include:

- ☑ *Overcharging of fees;*
- ☑ *Debt bondage;*
- ☑ *Falsification of documents;*
- ☑ *Deception with regard to the nature and conditions of employment, including contract substitution and the mail-order bride trade;*
- ☑ *Exploitation and abuse while waiting for the job to materialize or to be sent abroad;*
- ☑ *Lack of preparation for employment abroad, including lack of pre-departure training;*
- ☑ *Forced/coerced recruitment, including being kidnapped or sold to illegal recruiters or traffickers;*
- ☑ *Hazardous journey to the country of destination.*



These dangers and risks are especially great when:

- The women fall victim to illegal recruiters or traffickers;
- The recruitment agents target women who live in relatively isolated or impoverished areas where they have few means of assessing the truth or significance of the information they are given;
- Specific types of occupations are involved, such as domestic work or work in the entertainment sector;
- The recruitment process is linked to indebtedness;
- The recruitment process occurs without a contract or with a contract that effectively has no validity.



Illegal recruitment refers to any form of canvassing, procuring, promising, contracting or transporting of workers for employment abroad by an unlicensed agency/agent or directly by an employer that is not in conformity with national laws and regulations. Illegally recruited migrants are especially vulnerable to the risks and dangers of exploitation or victimization by clandestine organizations and/or by unscrupulous employers. Illegal recruitment is linked to various forms of unauthorized entry, stay or employment in the destination country.



Trafficking is one form of illegal recruitment. Trafficking refers to “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receipt of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000) [👁️ Booklet 6].



Women tend to be more likely than men to make use of illegal recruitment and migration channels because of:

- Their limited access to accurate and reliable information;
- Their lack of time to search for legal channels;
- Very restrictive, complicated, time-consuming or very costly procedures involved in legal migration. Some countries may attempt to “protect” women and girls by banning or restricting their employment abroad. However, restrictive migration policies often have the consequence of pushing women and girls into seeking illegal recruitment channels and making them more vulnerable to entrapment by traffickers;
- Their lack of financial resources to pay the legal recruitment fees;
- The nature of the work and the forms of migration open to women often force them to rely on fraudulent and dubious recruiters and agents;
- Illegal, unscrupulous recruiters may also actively seek out women as being more gullible than men.

Box 3.3. Exploitation through the recruitment process

The exploitation of migrants through the recruitment process has become a serious concern in Indonesia. The number of deception cases by private agents and scalpers has been increasing significantly over the last few years. Various newspapers have reported that the number of prospective migrant workers who had been cheated by middlemen or brokers reached 2,213 in the first six months of 1999.

Typically, prospective migrants are charged high recruitment fees and made to wait for many months before their departure. Some prospective migrants who have already paid the recruitment and embarkation fees find the promise of jobs cancelled by their agents without any refunds.

In April 1999, the Labour and Manpower Department announced new regulations:

- The recruitment fee for migrant workers would be standardized. Agencies that violate the tariff would have their licences revoked;
- Migrant workers should have original working contracts written in two languages: Indonesian and the language of the destination country;
- All official documents are to be kept by the workers unless there is a problem with the departure. The recruitment agency would then be summoned for investigation;
- Recruitment agencies have to recruit migrant workers directly from the labour market, in a process that would be monitored by the Department.

Source: Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2000 Migration Facts, Analysis and Issues in 1999* (Hong Kong, Asian Migrant Centre Ltd), p.156.

☑ **Overcharging of fees:**

Under the *Migration for Employment Convention (Revised), 1949 (No.97)*, public recruitment services should be provided free of charge. Under the *Private Employment Agencies Convention, 1997 (No.181)*, private employment agencies should also not charge directly or indirectly, in whole or in part, any fees or costs to workers. However, the reality is that most women migrant workers are recruited through private employment channels, which usually require fees for their services and they tend to face great risks to be overcharged [👁️ **Box 3.3**]:

The payments involved in migration for employment include:

- Obtaining the passport and visa;
- Buying the ticket for travel;
- Paying for medical examinations required by some countries;
- Obtaining a work permit in the destination country;
- Paying the agency for its recruitment services.

Many origin and destination countries have established fixed rates for these different services [👁️ **Box 3.4**]. However, women migrants are often charged far in excess of these rates by private recruitment agents/agencies that take advantage of the fact that the women do not have access to accurate information or they are desperate to obtain foreign jobs. Their employers may also exploit them. Levies that are to be paid to the destination country for the permit to work should be borne by the employer. However, many employers deduct this amount from the salaries of their migrant employees who are unaware of their rights.

Box 3.4. Government-set recruitment fees for Indonesian domestic workers and nurses to work in Hong Kong

Component cost	Total cost (rupiahs)
Domestic workers:	
Promotion, marketing and transportation cost	2,500,000
Recruitment fee	2,450,000
Training fee	6,795,000
Departure process	1,250,000
Indonesian Agency fee	4,850,000
TOTAL	17,845,000
Nurses:	
Recruitment	675,000
Visa	450,000
Training	5,000,000
Passport	125,000
Medical test	400,000
Operational	2,500,000
Agency fee (Indonesia)	750,000
TOTAL	9,900,000

Source: Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2000 Migration Facts, Analysis and Issues in 1999* (Hong Kong, Asian Migrant Centre Ltd, 2000), p.158.

Debt bondage:

To pay the various fees and expenses incurred

Because she is indebted to the recruiter or employer, she may be in virtual servitude, subject to further exploitation and abuse.

in securing employment abroad, many women get into serious debt, often to the recruiters, their employers or unscrupulous moneylenders. They take advances from the recruitment agent or employer on the understanding that they will pay off the loan or advance when they start working. It may take a migrant at least four to twelve months or even longer to pay off the debt, during which time she may not receive any wages. Often, she finds that the debt is much larger than expected, because extra charges and interest have been added. And because she is indebted to the recruiter or employer, she may be in virtual servitude, subject to further exploitation and abuse. She is not able to change employers.

Women migrants are often more likely than men to be in the position of needing to borrow money in order to cover the recruitment and other initial migration-related expenses because they have lower levels of control over productive resources or financial assets or they have less decision-making power in relation to the way that family resources are spent or invested. And when it comes to borrowing money, women are often at a disadvantage as they lack collateral. Lending procedures are also burdensome and at times intimidating for women. Lacking other options, the women resort to moneylenders, who may be operating for themselves or be associated with trafficking rings that take advantage of the female migrant workers' status of dependency – due to indebtedness – to exploit their

labour. If the debt bondage involves connections between procurers, brokers, agents, recruiters and others, the exploitation can be very serious.

There are also situations where women and girls are “sold” or surrendered to traffickers because their families are in debt to them. The families may have borrowed money for other purposes - because their crops failed, someone in the family fell seriously ill, to pay dowry, etc. – and, being unable to repay the loan, offer the labour of a female member of the family. The “debt” could be not only a financial but also a social one. For example, in Hong Kong, it was found that “many employers report ‘troublesome’ maids to their families/relatives (who are normally indebted, financially or otherwise, to the employer) to pressure the maid not to raise or pursue any complaints”.¹⁹

A **bonded labourer** is a worker who renders service under conditions of bondage arising from economic considerations, notably indebtedness through a loan or advance. Where debt is the root cause of the bondage, the implication is that the worker is tied to a particular creditor for a specified or unspecified period until the loan is repaid.²⁰

☑ **Falsification of documents:**

The women may not even be aware that their documents – for which they have been charged and often overcharged – are forged.

The documents that a person should have to be a documented migrant worker include:

- Passport;
- Visa;
- Medical reports;
- Work permit;
- Residence permit.

Women, particularly those from rural areas, may rely on the recruitment agent to arrange for the various documents needed. The danger is that some of these documents may be inappropriate, falsified or stolen. For example, the agent may apply for tourist visas, rather than employment visas, for the women. The forging of travel documents is big business in some countries.²¹ The kinds of falsified documents can include forged passports, fake birth certificates, fake certificates of marriage to nationals of the destination country, falsified entry visas, false work contracts:



Some sending and receiving countries have imposed age limits for women either to leave as migrant workers or to be employed in certain occupations. Many unscrupulous agencies try to circumvent this law by faking the birth certificates of the women applicants.

The women may not even be aware that their documents – for which they have been charged and often overcharged – are forged, and when they arrive in the destination country, they are caught by the authorities. And since their documents

are forged, they are deported back to their home countries and may even face jail sentences in the destination or home countries.

☑ ***Deception with regard to the nature and conditions of employment, including contract substitution:***

The women may be enticed by false promises of well-paid jobs. They may be made to sign contracts in languages they do not understand, thereby unknowingly forfeiting their rights. Or upon arrival in the country of employment, they are issued with new contracts specifying poorer conditions of work, lower pay or clauses prejudicial to them.

Recruiters may not provide potential migrant workers with a clear picture of the job they will actually be doing. They paint a rosy picture of good earnings and relatively easy working and living conditions. The women are lured by these job offers. Many are already seeking a chance to migrate when they are enticed with false promises of well-paid jobs in foreign countries as au pairs, models, dancers, waitresses, hotel maids, domestic workers, etc. The recruiters advertise these jobs in the local media or they may approach the women or their families directly with attractive job offers. Sometimes, all the women are told is that they will be going abroad to work, the type of job and the salary they will be earning. They are not given detailed information about:

- The actual duties involved in the job,
- The working hours and rest periods,
- The method of payment and the deductions for various expenses,
- Whether there is bonus and overtime for extra hours of work,
- Medical/accident/life insurance benefits,
- Leave entitlement and paid holidays,
- The procedures for leaving a job,
- The amount of debt to be paid back to the recruiter or employer and the terms of the debt.



The degree of vulnerability of women migrant workers to exploitation and abuse would depend on how much they actually have been told about the kind of employment they will be going into. There are:

- Those women who have been completely duped and coerced. They have no idea where they are going or the nature of the work they will be doing;
- Those women who are told half-truths by their recruiters about their employment and are then forced to do work to which they have not previously agreed and about which they have little or no choice. Both their movement and their power to change their situation may be severely restricted by debt bondage and confiscation of their passport or other travel documents;
- Those women who are informed about the kind of work they will be doing. Although it may be a job they do not want or that is mismatched to their educational qualifications, they see no viable economic alternatives;
- Those women who are fully informed about the work they are going to perform, have no objections to performing it, have their labour rights respected and decent working conditions, are in control of their finances

and have relatively unrestricted movement. It is only in this last category of recruitment that the women do not face discrimination, exploitation or abuse.

The women may not be asked to sign employment contracts before departure. Once they reach their destination, some are made to sign another contract in languages they do not understand, thereby unknowingly forfeiting their rights. They sign the contracts based on what their agent tells them are included, quite often not the real terms of the contract. Some bad recruitment practices regarding contracts are illustrated below [👁️ **Section 4.3.1 in Booklet 4**]:

👉 *“An employment contract that was found in a travel agency that had been conducting labour trafficking from Ethiopia clearly stated that the worker was not allowed to leave the house of employment for the entire duration. The period of employment ranges from two to three years. According to most contracts discovered in the hands of illegal agents, a clause states that if the employee decides to go back to her country before the contract period expires, she will pay US\$3,000 as a penalty. The contract does not indicate whether or not the penalty is required if the reason for termination is attributable to the employer. According to reports from returnees, they were obliged to pay even when they left because of abuse. As most cannot afford to pay (in many cases they do not even receive their salaries every month), they are forced to remain in abusive conditions [...] There are also reports that employees do not necessarily sign a contract of employment upon arrival at the country of destination, but, rather, that the deal is made between the employer and the agent [...] salaries may be negotiated between the agency and the employer without even the signature of the employee. The latter anyway does not have a choice”.*²²

👉 *There can also be **contract substitution**. This is the practice whereby, despite having signed an authorized contract prior to departure, upon arrival in the country of employment, the worker is issued with a new contract specifying lower conditions of work, pay or clauses prejudicial to her.*²³

☑️ **The mail-order bride trade:**

The mail-order bride business refers to the

There are countless cases of women who correspond by mail and the Internet with the men who selected them from the marriage agency catalogues, migrate for “love” and end up as domestic or sex slaves for their “husbands”.

service provided by agents assisting men normally from western countries to meet women from developing and transition countries, with the aim of establishing a marital relationship. Marriage agencies provide catalogues of photographs and profiles of women who are lured by the prospect of marriage and residence in a foreign country. However, the business sometimes camouflages the slavery-like and abusive expectations of consumer-husbands who are looking for a bride in order to dominate and control her. There are even worse cases where the businesses are fronts for sex tourism activities or for involvement in international prostitution rings.

[👁️ **Section 6.5.2 in Booklet 6**].

A woman attempting to migrate through this process will not necessarily achieve her ultimate objective of marriage if the man she is to marry changes his mind, keeps her under threat of not fulfilling his promise or never had the intention of getting married at all, simply wishing instead to exploit her for sexual services or for forced labour. There are countless cases of women who correspond by mail and the Internet with the men who selected them from the marriage agency catalogues, migrate for “love” and end up as domestic or sex slaves for their “husbands”. On the Internet, not only the expression “mail-order bride” but also “pen pal” or other similar expressions are frequently used to camouflage the real intentions of the perpetrators. The proliferation of the mail-order bride business has been attributed to several factors, including the inequality between countries, sexism at the international level, gender inequality, ethnic stereotypes, economic disparities, generational disparities and educational disparities²⁴.

☑ **Exploitation and abuse while waiting for the job to materialize or to be sent abroad:**


Recruiters sometimes require the potential migrant workers to pay part or the whole recruitment or other fees even before they have received a firm job offer or their authorization for travel. The women may be brought from their home communities to “collection” centres to wait to be sent abroad. The waiting period can be several months and during this period, the women are sometimes subject to harsh conditions and abuse – they are not given adequate food, are not allowed contact their families who cannot visit them, are not allowed to leave and are sometimes subject to sexual harassment. Reports such as the ones quoted below tend to be quite common:

👉 *“Indonesian migrant workers must endure harsh living conditions in shelters with cramped arrangements and rotten food while waiting for their jobs. Many are not even assured a job after this. For example, 200 potential migrant workers from West Sumatra,[...] demanded that their company deploy them immediately in July 2000, as they had been waiting for nearly five months. Labour Department officials at times play a role in this deceptive process”*.²⁵


👉 *“In March 1997, more than 400 women were found locked in four separate houses in East Java, some of whom had been held for more than eight months, unable to leave the house or return home because their departure would mean a major financial loss for the recruiter. The women had been promised work as maids and were waiting for the all-clear signal from the receiving country”*.²⁶

☑ **Lack of preparation for employment abroad, including lack of pre-departure training:**

During the time the recruitment agents keep the women in centres before sending them abroad, they are supposed to be providing them training to better prepare them for employment abroad. However, the risk is that the agents do not provide such training or the training is very perfunctory – and instead, the “training” period becomes one in which the women are vulnerable to harassment and abuse. Especially if the agents are illegal and not registered with the relevant authorities, they may also not send the women for the pre-departure orientations organized by

the government [ **Boxes 2.14 and 2.15 in Booklet 2**]. As emphasized in Booklet 2, without access to the necessary information and without being properly prepared, the women migrants may not know their rights, may not be able to perform their jobs properly, may have greater difficulties adjusting to working and living in a different socio-cultural and political environment and will be much more vulnerable to exploitation and abuse.

 ***Forced/coerced recruitment, including being kidnapped or sold to illegal recruiters or traffickers:***

Recruiters may deliberately seek out vulnerable women and girls, such as those from ethnic minorities or very poor, uneducated communities. Forced or coerced recruitment – the trafficking of women and girls – can be through kidnapping and illegal transportation to an unfamiliar milieu in another country (or even within the same country). It can also be through the sale of the women or girls by their family members [ **Section 6.4.2 in Booklet 6**].



Especially when the women have been illegally recruited, the actual journey to the country of destination can be very risky and dangerous:

- Firstly, they do not receive pre-departure training offered to legally recruited migrants, or do not have access to the basic information that legal recruiters provide to the migrants before they depart;
- They may be issued with false documents, including forged passports, genuine re-entry permits of others, fake marriage certificates, falsified entry visas, false work contracts, student visas or false documents relating to studies at universities, colleges or language schools, requests for family re-unification or theoretical health visits. They are likely to be caught by the authorities in the country of destination and deported or be subject to jail sentences either in the country of destination or origin;
- There are many cases of women and girls illegally transported, smuggled or trafficked across international borders under appalling conditions – resulting in injury to or even death of the migrants concerned;
- All along the journey they may be subject to sexual or physical violence from transporters, border guards, etc.;
- They end up in the country of destination in situations of illegal entry, stay and employment.

3.5. Protecting migrant workers from discrimination, exploitation and abuse in the recruitment process

3.5.1. What can governments do



“There are a number of different models for the recruitment of foreign labour. Whereas in most of the Asian bilateral employment agreements, the selection and transfer of workers is administered by private recruitment agencies (this is stipulated in the agreements), in other regions the public administration (central and/or regional) controls the process. There is substantial evidence that the engagement of governmental authorities in the administration of the process guarantees a better protection of workers, a lower cost for the beneficiaries and stronger control over the performance of employers. This may make the programs less flexible but they are more closely managed”.²⁷

Cooperation between origin and destination countries, such as through bilateral or multilateral labour agreements, is key to ensuring that migrant workers are recruited under non-abusive and non-exploitative conditions. Sending and receiving country governments can also individually adopt various policy measures and action. Booklet 4 focuses on the destination countries. This Booklet deals with what governments of origin countries can do to protect migrant workers from discrimination, exploitation and abuse in the recruitment process in terms of:

- ☑ *Bilateral labour agreements and cooperation between sending and receiving countries;*
- ☑ *Multilateral or regional approaches;*
- ☑ *Minimum standards for the recruitment of their nationals;*
- ☑ *Exit control measures;*
- ☑ *Public recruitment services;*
- ☑ *National laws and regulations covering private recruitment;*
- ☑ *Licensing, supervision and control of private recruitment;*
- ☑ *Information for migrant workers and their families;*
- ☑ *Support services.*

- ☑ *Bilateral labour agreements and cooperation between sending and receiving countries:*

Such agreements can be an effective means to supervise migration processes, control abuses in recruitment, placement and employment, and undercut illegal recruitment and trafficking.

Sending and receiving countries can conclude bilateral or multilateral labour agreements that formalize each side’s commitment to ensuring that migration takes place in accordance with established rules and pre-agreed terms and conditions. Bilateral agreements are normally designed to ensure the transfer of labour from one country to another. They usually include the aims of the treaty, the definition of the labour concerned, admission criteria, the terms of migration, the status of labour migrants, fair and equitable treatment clauses and annual quotas (if applicable).

The bilateral approach serves the needs of both sending and receiving countries. Bilateral agreements provide a direct opportunity for dialogue and cooperation on specific initiatives to improve migration and employment outcomes for both sending and receiving countries. Such agreements can be an effective means to supervise migration processes, control abuses in recruitment, placement and employment, and undercut illegal recruitment and trafficking. These agreements should aim to ensure the rapid and orderly matching of employers' requests with candidates for employment abroad [👁️ **Box 1.8 in Booklet 1**].

What exactly is specified in labour agreements would depend on the State parties involved. International instruments - the ILO Conventions and Recommendations and United Nations treaties [👁️ **Section 1.4.3 in Booklet 1**] - can serve as guidelines for the drawing up of such agreements. A model agreement is provided in the *Annex to the Migration for Employment Recommendation (Revised), 1949 (No. 86)* [👁️ **also Box 3.5**]. The items ²⁸ dealing with recruitment and the protection of migrant workers that could be specified in a model bilateral labour agreement are (issues/questions with gender implications are in brackets):

- *Competent authority*: Which is the responsible ministry or body in the sending and in the receiving country, and whether there is a need to establish an office in each other's country;
- *Exchange of information*: Whether there should be transmission from the emigration to the immigration country and vice versa of general information on working and living conditions, including information on cultural habits, religion, etc.;
- *Irregular migrants*: Arrangements for the regularization of the status of migrants whose entry, stay or employment in the migrant-receiving country is illegal; return and readmission of illegal migrants;
- *Vacancy notification*: The manner of notification of individual vacancies, or groups of identical or similar vacancies for the emigration country's workers. What kinds of details should be in the notifications by foreign governments, employers or agents - the skills required of applicants, the nature of the work to be performed, general age limits applying to unskilled or highly qualified workers (*details of job vacancies that specify the sex of workers*);
- *List of candidates*: The way emigration countries list jobseekers who are desirous of employment in the other country. What details should such lists contain - their trades, past employment and the kind of work they are looking for. (*Should marital status be specified: this could be prejudicial to married women seeking to work abroad*);
- *Pre-selection*: Whether the competent authority of the sending country (or its private agents) should be responsible for pre-selecting from the list of candidates such persons as are deemed suitable for notified vacancies;
- *Final selection*: Whether the competent authority of the receiving country (or its employers or private agents) should have the final say in who is actually to be permitted to migrate;

Box 3.5. Example of a bilateral labour agreement 

MEMORANDUM OF UNDERSTANDING ON LABOUR AND MANPOWER DEVELOPMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT (hereinafter referred to as the “Parties”)

CONFIRMING the existing fraternal ties between the Governments and peoples of the two Parties;
DESIRING to strengthen the existing bonds of friendship between them and support bilateral cooperative relations based on equality and mutual benefit;

WISHING to support cooperation and enhance coordination in the field of labour and manpower development;

HAVE AGREED AS FOLLOWS:

Article 1

Both Parties shall undertake to strengthen cooperation in labour and manpower development.

Article 2

Both Parties shall provide the necessary and relevant facilities for the fulfilment and promotion of such cooperation within the framework of existing rules and regulations of each country.

Article 3

Both Parties shall undertake to facilitate the mobilisation and development of manpower between the two countries, within the framework of existing and applicable laws, rules, and regulations of each country.

Article 4

Both parties shall exchange visits and undertake consultations to share knowledge and experience on job creation and generation.

Article 5

The basic conditions for the rights, duties, and terms of employment, applicable to both the employer and the employee shall be set out in a mutually agreed individual contract of employment which conforms with the relevant laws, rules, and regulations of both countries.

Article 6

In the settlement of labour disputes arising from employee-employer relationships, the government authorities concerned of both parties, in accordance with their respective laws, rules and regulations, shall work towards amicable settlements through negotiations, conciliation, and arbitration. When efforts to amicably settle the dispute fail, the parties concerned may resort to the courts in accordance with their respective laws, rules and regulations.

Article 7

A Joint Committee shall be formed to carry out the following tasks:

a) To ensure the implementation of this Memorandum; and b) to propose revisions of the Memorandum as necessary and resolve difficulties in its implementation.

The Committee shall meet whenever necessary upon request by either party.

Article 8

This Memorandum shall be valid for four (4) years. It shall enter into force on the date of the later notification by the Parties indicating compliance with their respective internal legal requirements for its entry into force. This Memorandum shall be automatically renewed for the same period unless one Party notifies the other in writing, through diplomatic channels, of its desire to terminate or amend this Memorandum six (6) months prior to its expiration.

Done in Kuwait City this 14th day of September 1997 corresponding to 12 Jamada A1 I 1418Hijra in two originals in the Arabic and English language, both texts being equally authentic. In case of conflict in interpretation, the English text shall prevail.

- *Designation by employers:* Whether employers or the agents of migrant-receiving countries should be permitted to request a nominated person—for example, someone who was previously recruited by them or who is a friend or relative of someone already known to them. (*Women are much more likely than men to make use of social networks*);
- *Medical examination:* Arrangements for medical examinations of candidates, including whether such examinations should be before selection, and who should bear the costs. (*Should there be testing for pregnancy, HIV/AIDS?*);
- *Entry documents:* What identity cards, visas, passports or other documents are required for the move;
- *Residence and work permits:* Whether migrant workers are obliged to obtain permits to stay and work in the receiving country. Who will issue these permits; whether the permits will be granted before entry or whether the worker (employer or agent) should be responsible for obtaining them after arrival in the receiving country; and what are the standard conditions for renewal of the permits;
- *Transport:* The modes of transport and who should be responsible for bearing the cost of transport to the receiving country and upon return (after the expiry of the work contract or prematurely);
- *Employment contract:* Ideally, a general or model employment contract should be appended to the agreement. It should be in several languages, including a language the migrant can understand. The foreign employer and emigrating worker should sign a contract before the move takes place [👁️ **Boxes 3.6 to 3.8** for examples of model employment contracts];
- *Terms and conditions of employment:* Ideally, the agreement should specify that the migrant workers' terms and conditions be the same as those in force for comparable workers who are nationals of the receiving country, for example those deriving from public wage minima or relevant collective agreements, hours of work, overtime, weekly rest, holidays with pay and termination of employment (*Provision for maternity protection and other regulations pertaining to women workers in the receiving country*);
- *Grievances and disputes settlement:* Whether the agreement stipulates that migrant workers, on the same conditions as other workers in the receiving country, have the right to submit any grievance concerning relations between employer and worker or the terms and conditions of employment to an appropriate procedure within the enterprise or to a procedure provided for in collective agreements, conciliation or arbitration by the competent public authorities, and whether they have the right to recourse to a labour court or other judicial authority in the migrant receiving country;
- *Rights to organise and bargain:* Migrant workers, as well as trade unions in both sending and receiving countries, would be able to defend themselves better against unscrupulous employers and agents if the bilateral agreement reiterated the principle that has become part of customary international law, namely that workers without any distinction whatsoever have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation;

- *Social security*: Whether migrant workers are to be affiliated to existing social security schemes in the country of employment, and whether they should contribute to them on terms equal to those of comparable workers there, and accordingly being entitled to benefits on the same terms as nationals of the receiving country. (*Women migrant workers are often in occupations not covered by social security in either sending or receiving countries – can specific arrangements be made for the social protection of such workers*);
- *Remittances*: Specification of the principles and limits of migrants' transfer of their earnings and savings;
- *Accommodation*: Specification of who is responsible for finding accommodation when the worker moves to the receiving country. (*Whether there should be specific provisions for checking the conditions of accommodation in private homes for those going into domestic service*).



Even when formal agreements have not been signed, it is still very important to promote close cooperation between sending and receiving countries to ensure that:²⁹

- Adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of recruitment and placement services, involving, as appropriate representatives of employers and workers;
- Adequate channels and procedures exist to exchange information between countries on the activities of private recruitment or placement agencies, especially with respect to degrading, fraudulent or abusive practices on their part as well as on the part of employers;
- A system of protection, by way of insurance or an equivalent appropriate measure, is established to compensate migrant workers for monetary loss that they have incurred as a result of the failure of a recruitment and placement service to meet its obligations to them; and
- Effective measures are taken to eliminate recruitment malpractices and trafficking, especially those involving deception, abuse and violation of the rights of women migrants and forcing them into prostitution.

☑ **Multilateral or regional approaches:**

“Migration is now a multinational process and can no longer be managed bilaterally or unilaterally. Hence, migrants transiting through countries in Latin America on their way to the United States are a matter of regional concern and no longer exclusively the concern of one or two countries, i.e., the country of origin and country of final destination. Regular and irregular Latin American migrants usually pass through Mexico before reaching the United States. Growing numbers of Sri Lankans, Afghans, Iranians or Iraqis are transiting through the countries of the former Soviet Union (especially the countries in the Southern Caucasus or the Baltic States) on their way to the European Union (EU). More and more migrants from Sub-Saharan Africa are travelling through the Maghreb or the Middle East to reach Europe...For about a decade now, Afghanistan, the Democratic Republic of the Congo, Iran, Iraq, Somalia, Sri Lanka and Turkey have figured regularly amongst the largest suppliers of asylum candidates to have filed an application in an EU

country. Regional cooperation is proving increasingly useful and necessary when dealing with migration originating in other regions.”³⁰

There is growing recognition that in the context of globalization, more broad-based approaches and solutions may be more appropriate and effective. Therefore, bilateral agreements between sending and receiving countries are increasingly being supplemented by multilateral or regional approaches. The multilateral approach has been introduced basically to protect migrant workers’ rights. States go beyond national measures and bilateral negotiations to set up a framework that better serves the interests of sending and receiving countries. Multilateral approaches may also “improve upon the time-consuming, laborious and chaotic process of negotiating separate treaties bilaterally or regionally between countries”.³¹ The multilateral or regional approaches bring states together, either by groups of like-minded states, as in the *Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America and Australia* or in groups with diverse interests but common geography, such as the *Regional Conference on Migration (or Puebla Process) for Central and North America* [ **Box 1.9 in Booklet 1**], the *Intergovernmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants* and the *Migration Dialogue for Southern Africa* ³² and the Summit of the Americas Plan of Action on Migrants [ **Box 1.13 in Booklet 1**]. The European Union is the ultimate regional cooperation example that is working towards making “the European Union an area of freedom, security and justice and a reality for both EU citizens and third country nationals granted access to Member States”.³³ A recent example of the multilateral approach is the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

 **Minimum standards for employment contracts:**

It was emphasized in **Booklet 2** that individual migrant workers are often vulnerable because they lack realistic information about the terms and conditions of employment abroad. It is therefore crucial to have written contracts that clearly spell out the terms and conditions agreed upon by the worker and the employer. Governments of sending countries:

- Should establish minimum standards for employment contracts, so that prospective migrant workers can use them to assess the adequacy of the terms of employment they have been offered by the recruitment agent or employer;
- Can give greater force to these standards by adopting regulations requiring prospective migrant workers to register their employment contracts with the relevant authority before they are allowed to leave the country:



In countries such as Colombia, India, Mauritius and Pakistan, contracts offered to national workers for employment abroad must be certified by an official of the Ministry of Labour. By virtue of legislation, the employer or his or her representative is required to draw up the employment contract in writing and submit it for approval to the competent authority in the sending country prior to the prospective migrant’s departure. Emigration clearance is

*not given to the worker unless the terms of the contract comply with the relevant provisions of the sending country's legislation.*³⁴

- Can simplify the procedures by developing **model employment contracts** [👁️ **Boxes 3.6 to 3.8**] that build in rules and procedures to ensure that each worker who goes abroad for employment has in her/his possession a valid and legally enforceable document showing the terms of employment agreed to with the employer;
- Can make the use of such contracts mandatory. Even when they are not mandatory, workers, agents and employers should be strongly encouraged to use them as a guide for formalizing employment agreements;
- Should ensure that the employment contracts are in the local language, so that the prospective migrant workers fully understand the given terms and conditions of employment;
- Should take measures to guarantee that the contractual arrangements are respected and upheld in the destination country (supervision of contracts appears to be less common in destination than in sending countries). Cooperation between sending and receiving countries is therefore essential;
- Should establish national governmental representatives in the destination countries where there is a substantial presence of one's nationals, or station a labour attaché in such countries – their presence could be helpful for supervising and monitoring the conditions contained in the employment contract:



*In countries where many Sri Lankan women are employed as domestic workers, their contracts must be registered at the Sri Lankan Embassy. The Philippines too has established welfare and monitoring centres in countries where women are known to be employed in situations which may render them more vulnerable to abuse and exploitation.*³⁵



Model employment 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. ILO Conventions and Recommendations provide important guidelines for the standards to be adopted in such employment contracts. The list below includes minimum conditions, which should be included in model employment contracts: [👁️ **Boxes 3.6**]

- Description of the job, site of employment and duration of contract;
- Basic monthly salary, including benefits and allowances, as well as rates of overtime pay;
- Non-cash compensation and benefits, including free food and accommodation;
- Regular working hours, rest days and holidays;
- Maternity leave, particularly when covered by national legislation;
- Transportation to the country /place of employment and return, including

- repatriation;
- Employment injury and sickness compensation, and emergency medical and dental care;
- Social security rights and obligations;
- Valid grounds for termination of contract;
- Dispute settlement.



*In the Philippines, the Department of Labour and Employment (DOLE) and the Philippine Overseas Employment Administration (POEA) have set minimum contract requirements, with several basic provisions ³⁶ [👁️ **Box 3.7**]. An application of a recruitment agency to hire workers is rejected if one or more of the basic provisions are not satisfactorily met or if they are found to be below standard*



The Sri Lanka Bureau of Foreign Employment signed a series of Memoranda of Understanding with recruitment agents in the Middle East, Singapore and Hong Kong to make it compulsory for employers wishing to hire Sri Lankan housemaids to sign an employment contract endorsed by the Sri Lankan Embassy before a housemaid may leave Sri Lanka. This contract registration scheme requires verification of the credibility of the prospective employers by missions prior to registration and the foreign sponsor/agent has to sign an agreement, which is authenticated at the embassy concerned. This agreement binds the sponsor/agent to fulfil obligations to domestic workers and helps monitor activities and to hasten grievance settlement. The standard contract contains particulars of the overseas sponsor and the domestic worker, conditions under which the contract is offered, the monthly wage, duties and hours of work, rest days and leave, and details about food, lodging, medical care and transportation to the host country, termination of contract and dispute procedures, insurance cover and provision in the event of the employee's death. ³⁷



In United Arab Emirates (UAE), contracts that foreign female domestic workers obtain from recruitment agencies in sending countries are neither official nor binding in the UAE. These contracts cannot be considered valid either by officials, migration officers or any other official agencies in UAE. Those contracts cannot be valid unless there exists a bilateral agreement, however with regard to foreign female domestic workers, there are no such agreements between the UAE and any sending countries. The UAE is currently in the process of preparing a binding model contract with the official confirmation by the Dubai immigration office in order to protect both employers and employees, and to minimize bad practices by recruitment agencies in UAE. ³⁸

Box 3.6. Guidelines for drawing up written agreements on employment terms and conditions

The Singapore Ministry of Manpower has issued the following guidelines for employers to draw up employment contracts for foreign domestic workers:

(The written agreement should state the names of employers and worker, the commencement/termination dates and the following items)

A. Wages

- Agreed monthly salary reflecting the scope of work and duties assigned
- When salary payable – to specify not later than the last day of either the calendar month or actual monthly salary period
- Mode of payment, e.g. in cash or via bank account
- Agreed increment and other variable payment based on worker performance
- Written acknowledgement of all salary payments

B. Salary deductions

- Purpose, amount per month and total deductions over workers service period to be negotiated, and each salary deduction acknowledged by worker in writing

C. Rest days

- Number of rest days in a month to be negotiated
- Subject to agreement, encashment of rest days possible for worker's rest day

D. Annual leave

- Duration of unpaid leave for home visit to be negotiated
- Subject to agreement, encashment of leave possible if domestic worker foregoes home visit

E. Medical benefits

- Employer to cover worker under a personal accident insurance of not less than \$ 10,000 with worker or next of kin as beneficiary
- Employer to bear medical expenses incurred by domestic worker and ensure that she has adequate rest during her illness
- Employer to pay for medical expenses incurred by domestic worker for all compulsory 6-monthly medical examinations

F. Duties

- Workload and duties to be scheduled by employer
- Employer to ensure worker has adequate rest hours at night and adequate breaks during the day

G. Welfare

- Employer to provide appropriate welfare benefits for domestic worker such as board and lodging.

H. Dispute settlement

- Employer and worker should first try to resolve any dispute themselves, failing which the assistance of the agent of the Ministry of Manpower could be obtained

I. Termination of contract

- Either party to give sufficient notice of a period to be negotiated
- No notice required in cases of misconduct by worker or physical threats by employer

J. Transfer of employment

- Notice to be served by initiating party
- Levy fees to be borne by employer pending the transfer

K. Repatriation

- Employer to bear cost of repatriation
- Subject to agreement, employer could recover cost from worker if contract prematurely terminated by worker

Source: Singapore Ministry of Manpower, *Employing Foreign Domestic Workers A Guide for Employers*. pp.20-21. Website: <http://www.mom.gov.sg>

Box 3.7. Model Employment Contract

This employment contract is executed and entered into by and between:

A. Employer:

Address and telephone:

B. Represented by:

Name of agent/company:

Address:

C. Employee:

Civil status:

Passport Number:

Address:

Place and date of issue:

Voluntarily binding themselves to the following terms and conditions:

1. **Site of employment**
2. **Contract duration** _____ commencing from employee's departure from the point of origin to the site of employment
3. **Employee's position**
4. **Basic monthly salary**
5. **Regular working hours:** maximum of 8 hours per day, six days per week
6. **Overtime pay**
 - (a) Work over regular working hours
 - (b) Work on designated rest days and holidays
7. **Leave with full pay**
 - (a) Vacation leave
 - (b) Sick leave
8. **Free transportation** to site of employment and, in the following cases, free return transportation to the point of origin:
9. **Free food or compensatory allowance** of US\$ _____, free suitable housing
10. **Free emergency medical and dental services** and facilities including medicine
11. **Personal life and accident insurance** in accordance with host government and/or _____ government laws without cost to the worker. In addition, for areas declared by the _____ government as war risk areas, a war risk insurance of not less than _____ shall be provided by the employer at no cost to the worker
12. In the **event of death** of the employee during the terms of this agreement, his remains and the personal belongings shall be repatriated to the _____ at the expense of the employer. In case the repatriation of the remains is not possible, the same may be disposed of upon prior approval of the employee's next of kin and/or by the _____ Embassy/Consulate nearest to the job site
13. The employer shall assist the employee in remitting a percentage of his/her salary through the proper banking channel or other means authorized by law
14. **Termination:**
 - a. **Termination by employer:** the employer may terminate this contract on the following just causes: serious misconduct, wilful disobedience of employer's lawful orders, habitual neglect of duties, absenteeism, insubordination, revealing secrets of the establishment, when employee violates customs, traditions and laws of _____ and/or terms of this Agreement. The employee shall shoulder the repatriation expenses;
 - b. **Termination by the employee:** The employee may terminate this Contract without serving any notice to the employer for any of the following just causes: serious insult by the employer or his representative, inhuman and unbearable treatment accorded to the employee by the employer or his representative, commission of a crime/offence by the employer or his representative and violation of the terms and conditions of the employment contract by the employer or his representative. Employer shall pay the repatriation expenses back to _____.
 - b1. The employee may terminate this Contract without just cause by serving one (1) month in advance a written notice to the employer. The employer upon whom no such notice was served may hold the employee liable for damages. In any case, the employee shall shoulder all the expenses relative to his/her repatriation back to his/her point of origin.
 - c. **Termination due to illness:** Either party may terminate the Contract on the ground of illness,

- disease or injury suffered by the employee. The employer shall shoulder the cost of repatriation.
15. **Settlement of disputes:** All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules and regulations. In case the employee contests the decision of the employer, the matter shall be settled amicably with the participation of the Labour Attaché or any other authorized representative of _____ Embassy or Consulate General nearest the site of employment. In case the amicable settlement fails, the matter shall be submitted to the competent or appropriate body in (host country) or _____ if permissible by the host country laws at the option of the complaining party.
 16. The employee shall observe employer's company rules and abide by the pertinent laws of the host country and respect its customs and traditions
 17. **Applicable law:** Other terms and conditions of employment which are consistent with the above provisions shall be governed by the pertinent laws of _____.

Source: Philippine Overseas Employment Administration

Box 3.8. An employment contract for domestic workers

SERVICE AGREEMENT-Domestic Servant

Memorandum of Agreement made this day _____ between _____ Employer hereafter called the first party, P.O. Box No. Sultanate of Oman, and _____ (Employee), a _____ National, bearing passport No. _____ dated _____. Hereinafter called the Second Party.

BOTH THE PARTIES AGREE AS FOLLOWS:

1. The employee (Second Party) agrees to serve the Employer (First Party) or his representative/s as _____.
2. The First Party agrees to pay _____ Monthly Salary to the second party.
3. This agreement shall remain in force for a period of two years from the date of arrival of the Employee in the Sultanate.
4. The First Party is responsible to provide food and accommodation to the Second Party during the period of contract.
5. The First Party is liable to insure the Employee with an approved insurer against any responsibility which might incur as a result of application of Oman Labour Law No. 34/1973 or compensation of occupational injuries or illness, Law No. 40/1977 for the illness or injuries sustained by the Employee due to an accident, in the course of his/her duties.
6. The Employee is entitled to one month paid leave every two years.
7. On termination or completion of contractual period the Employer is liable to pay service benefits to the Employee for the period of service time. However the Employee shall not be entitled to any Service Gratuity if He/She has served less than one year with the Employer.
8. The Employee shall be entitled to free passage to his/her Country and back on earned annual leave and on termination of the contract, unless or otherwise, if the termination of the contract comes from the employee himself/herself.
9. The Employee may break the contract without notice and retain his/her legal rights as per the service contract if the Employer does not fulfil his obligation towards the Employee.
10. The Contract shall be renewed automatically to the same period if none of the parties has shown the desire to terminate the contract.
11. Both the parties agree to accept the arbitration of the Director of Labour, Sultanate of Oman, in case of any dispute which may arise over the enforcement of the contract.
12. Three copies of this contract have been made, one for each of these Parties and one for the Director of Labour, Sultanate of Oman.
13. In the event of death, the Employee's body will be sent back to his/her country at the expense of the Employer.

☑ **Exit control measures:**

To ensure that workers leave only for legitimate jobs and to minimize illegal recruitment and trafficking

Great care should be exercised to ensure that they are not too restrictive, cumbersome or expensive because they could then have the opposite effect of pushing people into seeking illegal channels for migration and making them much more vulnerable to entrapment by traffickers. Women and girls are especially vulnerable when the exit controls are sex-selective.

of migrant workers, governments can adopt measures to control their exit. The most common types of exit control measures are:

- *Passport limitations:* These involve specific limitations contained in the passports issued to contract workers;
- *Emigration clearance:* Workers with approved and registered contracts are issued with exit documents, which they have to show to port authorities before they are allowed to leave the country;
- *Financial incentives:* States can encourage migrant workers to use legal channels for emigration by making it financially worthwhile to do so. Workers who register their employment contracts and seek approval may be granted special benefits, such as exemption from travel taxes on departure and remittance facilities while abroad, or entitlement to privileges on return such as tax-free importation of personal items;
- *Visa tied to contract:* Sending country governments may be able to secure the cooperation of receiving countries to only issue visas to those workers who can provide proof that they have employment contracts approved by their own governments;
- *Sex-selective exit regulations:* Some governments may attempt to “protect” women and girls from illegal recruiters or traffickers by banning or restricting their mobility. For example, they require a male family member to sign a woman’s application for a passport or they may not allow legal recruitment of women for overseas employment as domestic workers or entertainers or they may impose a ban on women below a certain age from working abroad.

Exit controls tend to be widely used, but great care should be exercised to ensure that they are not too restrictive, cumbersome or expensive because they could then have the opposite effect of pushing people into seeking illegal channels for migration and making them much more vulnerable to entrapment by traffickers. Women and girls are especially vulnerable when the exit controls are sex-selective. Restrictive policies may also have the unintended consequence of encouraging the activities of illegal recruiters and traffickers by presenting lucrative “business” opportunities to them to help migrants to avoid the exit controls.

Governments therefore need to ensure that the machinery for enforcing exit controls is efficient, simple and transparent. Over-restrictive procedures should be avoided, and migrant workers should not have to face bureaucratic harassment or worse yet, corruption, at the hands of petty functionaries responsible for implementing the controls.

☑ **Public employment services:**

For a sending country, an efficient and non-profit, public employment service facility

An efficient and non-profit, public employment service facility is in a sense the best instrument for minimizing abusive practices in recruitment, managing and regulating foreign employment of its nationals and safeguarding their rights, as well as ensuring that foreign employment of its nationals achieves policy objectives.

is in a sense the best instrument for minimizing abusive practices in recruitment, managing and regulating foreign employment of its nationals and safeguarding their rights, as well as ensuring that foreign employment of its nationals achieves policy objectives. Even without establishing itself as a recruitment monopoly, such a facility can influence the way private agencies operate by offering jobseekers a better alternative ³⁹ [👁️ **Box 3.9**].

In some countries, the public employment service is the only body permitted to recruit workers for employment abroad. However, many countries permit the operation of private recruitment services. Unfortunately, as indicated in **Section 3.3** above, public employment services tend to be less effective and efficient than private recruitment agencies in getting either potential migrant workers or employers to use their services.



In order to increase the efficiency of the public recruitment and placement system:

- The quality of services available to jobseekers and foreign employers needs to be improved and the cost of recruitment lowered;
- Services should be available in rural areas where many of the potential migrant workers come from;
- The staff should be well equipped to provide gender-sensitive information and counselling on job opportunities both within and outside the country;
- They especially need to be sensitive to the specific vulnerabilities of women migrant workers. The staff should be gender-sensitive and should be equipped to provide services to address the vulnerabilities of women migrant workers;
- They should link recruitment with other support services, such as pre-departure training, for migrant workers;
- Public employment services should, of course, be free from corruption and staff found guilty of corrupt practices or of harassing clients should be dealt with severely;
- Measures should be taken to promote greater cooperation between private agencies and the public employment services.

Box 3.9. Public recruitment services 👍

European Employment Services (EURES)

A number of European countries cited the European Employment Services (EURES) as the primary means of recruiting non-national workers and of coordinating regional recruitment policies. EURES is a European labour market network aimed at facilitating the mobility of workers in the European Economic Area (EEA). It brings together the European Commission and the Public Employment Services of the countries belonging to the EEA. EURES operates through more than 450 EURO advisers stationed throughout Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

The objectives of EURES are to provide information, counselling and assistance in relation to placement and recruitment to nationals of EEA countries. Potential migrants and interested employers are provided with information on living and working conditions, legislation, administrative formalities, advice on how to find a job and access to the public employment services of other EEA countries. EURES has established two databases, the first dealing with job vacancies for EEA nationals, and the second containing general information on living and working conditions in EEA countries. EURES also provides a service to ensure the comparability of qualifications within the EEA.

Source: ILO, *Migrant Workers* International Labour Conference, 87th Session 1999 (Geneva: ILO, 1999), p.63. Further information on EURES can be found at <http://europa.eu.int/eures/index.jsp>

Government Placement Department (GDP) of the Philippine Overseas Employment Administration (POEA)

The services on offer are bio-data, screening, skills verification and testing, contract and wage evaluation, complete medical examination through government-accredited medical facilities, a comprehensive orientation programme, travel documentation that includes assistance in securing passport and visa, management of workers' files and post-placement assistance to both employers and workers.

The POEA has developed a model employment contract and negotiates the following terms as part of the bilateral recruitment agreements with foreign government employers: 1) payment of stand-by pay for workers waiting for long period of departure; 2) contract cancellation pay for workers whose appointments are cancelled prior to departure for worksite; 3) workers' entitlement to automatic salary adjustment upon renewal of contracts; and 4) grievance procedure for settlement of disputes with participation of the POEA or its representatives.

☑ *National laws and regulations covering private recruitment:*

In order to prevent fraudulent or abusive malpractices on the part of private agencies, both sending and receiving countries should supervise the activities of private recruitment by means of appropriate laws or regulations and in consultation with representative organizations of employers and workers. These laws or regulations should provide adequate sanctions against abuses or malpractices such as:⁴⁰

- Advertising and soliciting applications for positions that, in reality, do not exist;
- Providing false information to the worker on the nature and terms and conditions of employment, and to the employer on the qualifications of the

- jobseekers;
- Using forged travel documents or misrepresenting the workers' personal details;
- Making a profit out of selling offers of employment or work visas to other recruitment agencies or to the jobseekers without actually performing any recruitment service;
- Forcing the migrant worker, upon arrival in the receiving country, to accept a contract of employment with conditions inferior to those contained in the contract which he or she signed prior to departure (contract substitution);
- Withholding or confiscating passports or travel documents, and
- Stipulating in the employment contract provisions that deny fundamental rights, in particular freedom of association.



In 1995, the Philippine Government enacted Republic Act 8042: Migrant Workers and Overseas Filipino Act, which has specific provisions dealing with "illegal recruitment". Provision II of the Act defines illegal recruitment, defines penalties for the crime of illegal recruitment, prohibits officials of the Department of Foreign Affairs, the Overseas Workers Welfare Administration and the Philippine Overseas Employment Administration from engaging in recruitment activities, provides regional trial courts as the venues for legal complaints against illegal recruiters, monetary claims and resolution of illegal recruitment cases, and provision of legal assistance to victims. These provisions have helped to prevent victimization through illegal recruitment. For gross illegal recruitment crimes, the maximum penalty is provided.⁴¹



The 2002 Immigration law in Italy introduced an explicit foreign policy priority in rewarding countries which "actively collaborate in the fight against undocumented migration" to Italy. "Cooperation in the fight against illegal migration" has become a condition for preferential quotas for nationalities.⁴²

☑ **Supervision and control of private recruitment:**

A number of ILO Conventions offer guidance for a legal framework to allow the operation of private recruitment agencies, while protecting the workers using their services against abuses and ensuring that these workers are entitled to their basic rights. The main ILO Conventions are [👁 **Section 1.4.3.1 in Booklet 1**]:

- *Migration for Employment Convention (Revised), 1949 (No.97) (Annex 1);*
- *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);*
- *Private Employment Agencies Convention, 1997 (No.181).*



Sending country governments can encourage the activities of legitimate private recruitment agencies while protecting migrant workers from potential abuse through:

- *Licensing private recruitment agents/agencies:* Governments can use licensing as an instrument of control of private recruitment agents/agencies. National legislation should determine the conditions for the granting of a licence, certificate or similar authorization to private agencies to engage in

international recruitment operations, as well as for its suspension, withdrawal or cancellation in the event of violation of relevant legislation. The aim of such licensing should be to screen out unscrupulous individuals and to ensure that those who engage in recruitment are able to meet certain standards. Licences are usually granted only after the applicant (an individual or a business) has supplied certain information relating to their persons and activities – such as having no police record, being solvent, having good morals or being “capable of carrying on the business in an irreproachable manner”.⁴³ By granting licences that are for a fixed period of time and that are then renewable, the government authority has the flexibility to keep out of the business those firms that fail to observe the guidelines or regulations set. On the other hand, such licences should not have a period of validity shorter than that granted to comparable commercial activities, so as to encourage private recruitment agencies to take a long-term view of their investments.

- *Performance guarantees:* A practice that has been widely adopted is to get private recruitment agencies to post financial guarantees that they will fulfil their obligations. In the Philippines, for example, foreign employers and promoters offering contracts to Filipino women and performing artists are required to deposit the equivalent of US\$20,000 with the competent authorities. In the Mauritius, the prescribed financial deposits can be paid either in cash, in the form of an insurance policy or as a bank guarantee.⁴⁴ An administrative authority that can confiscate the money posted as a guarantee of good behaviour stands a much better chance of making licensees follow the rules, as compared to the prosecution of violations through police action and the courts – which normally is complicated and takes a long time.
- *Limits on recruitment fees:* Under the *Private Employment Agencies Convention, 1997 (No.181)*, workers should not bear any of the costs associated with their recruitment. However, it is common practice for these agencies to charge for their services. The State can therefore regulate the amount that is charged. In a number of countries, the competent authority fixes the maximum amount of the fees that may be charged by the private agencies.
- *Labour inspections:* To ensure that private recruitment agencies comply with the laws and regulations, the government can provide for supervision. The most common means is through labour inspectorates:



In Jamaica, labour inspections of all private recruitment agencies take place on a quarterly basis.

- *Incentives:* In addition to regulatory or control measures and administrative sanctions against abusive recruitment practices, governments can also provide incentives to private agencies that meet the criteria for good performance. The kinds of incentives could include tax benefits.




In the Philippines, yearly awards for good performance are made by the Philippines Overseas Employment Administration to private recruitment

*agencies on the basis of criteria including the volume of placements abroad, the quality of those jobs and the absence of reports of contract violations. Awardees enjoy special services: contracts are processed speedily or approved automatically; the agencies are invited to participate in government-organized marketing missions; and they may be allocated shares of markets developed by the Government.*⁴⁵

☑ **Information for migrant workers:**

Two types of measures are needed in this regard:

- Measures to provide potential migrants and migrants themselves and their families with adequate and accurate information regarding migration for employment; and
- Measures to protect workers from “misleading information stemming from intermediaries who may have an interest in encouraging migration in any form to take place, regardless of the consequences for the workers involved. Unscrupulous agents who profit from migration flows may have an interest in disseminating erroneous information on the migration process, including exaggerated claims on living and working conditions in the host country, as well as on the chances of finding and maintaining work. Given migrants’ vulnerability to this form of abuse, it is essential that States take measures to combat such activities”.⁴⁶

The first type of measures to provide potential migrants and migrants themselves and their families with adequate and accurate information, including through preparatory courses and pre-departure orientation programmes was covered [ **Sections 2.4 and 2.5 in Booklet 2**]. Therefore, this Booklet deals with only the second set of measures, especially relating to information provided in the recruitment process.

Article 3 (1) of the *Migration for Employment Convention (Revised), 1949 (No.97)* provides that “Each Member [...] undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration”. “Misleading propaganda” is intended to apply to all national situations and all means of disseminating information. The Convention applies to both emigration and immigration countries. Governments have an obligation on the one hand to prevent false information being disseminated to nationals leaving the country, and on the other hand to combat false information regarding non-nationals arriving in the country. This Booklet deals with misleading information provided to those migrating for employment abroad.

To prevent misleading or false information in the recruitment process, governments can regulate that private recruitment agencies wishing to place advertisements in public media must first obtain clearance from the relevant authorities:⁴⁷



In Thailand, recruitment agencies and employers must apply for a permit to advertise overseas positions and only those demonstrating a record of sending

workers abroad may advertise for workers without having made prior arrangements with a foreign employer. Prior to publication, all advertisements are subject to screening by the local Employment Agency Registrar.



Hong Kong represses misleading propaganda by treating it as fraud. Employment agencies risk losing their licenses for misleading workers as to the terms and conditions of employment. Hong Kong also attempts to guarantee the quality of information given to migrants by demanding that persons or enterprises desirous of disseminating information to migrants for employment must first obtain a licence.

☑ **Support services:**

Governments can also assist their nationals in the recruitment process for employment abroad through not only protective measures but also supportive measures, including through lowering the cost of emigration and assistance with administrative formalities for the journey. Other supportive measures, such as information and counselling and the provision of social insurance for various contingencies are covered in **Booklet 2**.

In terms of lowering the cost of emigration, the government can provide assistance to those migrants, especially female migrants, who face problems covering the financial costs of employment abroad. Rather than leaving them to borrow from moneylenders in informal credit markets that charge very high rates of interest, the government can take measures to widen migrants' access to bank credit at the normal rates for personal loans. The government can do this through providing loan guarantees to the commercial banks that are lending to the migrants. The government could also encourage commercial banks to lend at reasonable rates to migrants by assuring them that they will be the main conduits for the remittances of the migrants. Some of the good practices have been:



The Sri Lankan Bureau of Foreign Employment (SLBFE) makes arrangements with airlines to obtain bulk discounts for migrants travelling to key destinations. It then passes on the discounts to the workers. These discounts can be very substantial on some competitive routes, particularly where the scheme is open to all airlines and not only to the national carrier.⁴⁸



The Sri Lanka Export Credit Insurance Corporation (SLECIC), a statutory body of the Ministry of Trade, carries out a Bank Guarantee Scheme to cover the cost of passage for Sri Lankans migrating for work. The scheme, started in 1992, has been revised periodically and the scope of the scheme is that SLECIC issues a bank guarantee to a financial institution to grant credit to prospective migrant workers for the cost of a ticket, SLBFE registration fees, and visa fees. To be eligible, applicants are required to furnish documentary proof of employment and pay an upfront premium based on the cost of the air ticket. There is also a requirement for co-guarantors, at least one of who must be a family member of the applicant and the other acceptable to the bank.⁴⁹

3.5.2. What can the social actors do

Although the government has the main responsibility for protecting its nationals against fraudulent and abusive recruitment practices, other social actors can also play important roles.



Employers and their organizations play an important role in the recruitment process, whose success depends on the symmetry of interest of all involved parties. The involvement of employers and their organisations in the design and implementation of bilateral agreements can contribute significantly to their efficiency. ⁵⁰



Slovakia is one of a few countries where employer organizations examine drafts of bilateral agreements.



In some sending countries, such as Hungary, Poland, Bulgaria, and Romania, companies have formed associations to protect their interests and provide information to companies and workers. Some of them have opened offices in the receiving country (mainly in Germany). They publish brochures with information about the receiving country, which is useful for potentially participating companies and workers. These organisations engage in on-going dialogue with the authorities and actively participate in the commissions that monitor the implementation of the bilateral agreements. This dialogue seems to be effective, since a number of simplifications and improvements have apparently been made in procedures due to the initiative of employer organisations.



In some receiving countries the employer organisations are involved in the entire process, from initiation to monitoring. In recent years employer organisations have started playing an important role in supporting and conducting training programs to prepare migrant workers for overseas employment. In Italy, employers have been involved in funding vocational training for specific industries in source countries. Trade associations also play a key role in organising training courses and facilitating the admission of groups of trained foreign workers.



Private recruitment agencies themselves can exercise self-regulation, in the form of adoption of non-binding codes of conduct or monitoring of the activities of private recruitment agents by their own members [👁 Boxes 3.10 and 3.11].

Box 3.10. Self-regulation by private recruitment agencies

Migrant sending as well as migrant receiving countries should encourage the self-regulation by private agents of their profession. Self-regulation should include the adoption by private agents of a code of practice to cover, inter alia, the following:

- a) Minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
- b) The full and unambiguous disclosure of all charges and terms of business to clients;
- c) The principle that private agents must obtain from the employer before advertising positions and in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages, salaries and other benefits, working conditions, travel and accommodation arrangements;
- d) The principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
- e) The principle that migrant workers are informed, as far as possible in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment;
- f) Refraining from bidding down wages of migrant workers; and
- g) Maintaining a register of all migrants recruited or placed through them, to be available for inspection by the competent authority, provided that information so obtained is limited to matters directly concerned with recruitment and that in all instances the privacy of the workers and their families is respected.

Source: ILO, *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, (Geneva, ILO, 1997), p.17.

Box 3.11. A private employment agency's efforts to protect women migrant workers

Under the Private Employment Agency Proclamation in Ethiopia, the Meskerem Employment Agency is the one duly registered and functioning agency licensed to process the employment of Ethiopians in Lebanon. Only those able to produce a letter stating that they have gone through the agency will be issued exit visas. (In the case of direct recruitment, the migrant has to produce a contract of employment authorised by the Ministry of Labour and Social Affairs). Officials of the Ministry went to Lebanon in 2001 to inspect the working conditions of migrant Ethiopian women recruited through the Meskerem Employment Agency and came back satisfied. Among the measures the agency has taken to better protect migrant women:

- It only recruits high school graduates, since it believes that the women need a certain level of education to be articulate enough to have their rights protected and they should be able to write home to their families. [However, returnees in a focus group interview were totally against this, they did not feel that women need to finish high school to work as housemaids and thought that the measure was discriminatory, and could, in fact, leave those who had not graduated from high school at the mercy of traffickers];
- Even if the migrants have not been recruited by the agency, it helps them to obtain exit visas and to check the reliability of their prospective employers through its representative in Lebanon. Once the conditions of employment have been confirmed, the agency provides these migrants with the same training and orientation it provides to its own clients;
- It provides its clients an ID written in Amharic (the Ethiopian official language) before the migrants leave for their destination. The migrants are supposed to keep the card hidden for emergencies. The card contains the name of the employee, their file number with the agency, the address/phone number of the agency in Ethiopia as well as the address/phone number of the representative in Lebanon. It also contains information that the agency in Lebanon provides service 24 hours a day and that they can contact it whenever they want to. Whenever a migrant worker is in trouble she needs only to call and mention her file name and the people at the agency will identify her address and go to her. The agency has a van with a driver that is available 24 hours a day;
- The agency keeps a record of employees and any concerned citizen can go to the office and look at the records to find out the whereabouts of the migrant workers sent through the agency. The record contains information on the file number of the migrant, their full name and telephone number, their passport number, their employer's full name and telephone number, their date of departure from their country and their date of return to the country.
- The agency calls each employee twice every month to check on the condition of the worker as well as to find out whether the employer is satisfied with the services of the migrant worker. The agency talks with employers to find out whether they have complaints. If either has complaints, the agency tries to reconcile differences.
- If it is impossible to reconcile the differences, the agency returns the migrant worker back to her country. If the employee has to be returned before her contract of employment expires, the agency pays the migrant US\$1,500. If a migrant has been abused, the agency immediately takes her out of the abusive situation, pays her salary if the employer refuses to do so and returns her back to her country, and once it has done that it takes the necessary legal action against the employer.

Source: E. Kebede, Ethiopia: *An Assessment of the International Labour Migration Situation The Case of Female Labour Migrants* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp.22-36.



Especially before leaving for employment abroad, migrant workers are not likely to be organized and have no representation or voice. Therefore, trade unions have a critical role to play – in mobilizing and organizing migrant workers, making representation to the authorities on behalf of migrant workers, and providing direct services to the migrant workers [👁️ Boxes 3.12 and 3.13]. An important strength that trade unions have is their networks: unions in sending and receiving countries can share and exchange information on recruitment and placement of migrant workers. The international trade union movement can play an advocacy role, drawing attention to the plight of migrant workers who have been the victims of illegal recruitment and trafficking.⁵¹ To protect migrant workers from fraudulent and abusive recruitment practices, trade unions can:⁵²

- Assist in offering accredited programmes for pre-departure orientation and training, including providing country-specific information about conditions of recruitment, employment, social security rights and relevant international labour standards. Unions are very well placed to provide realistic information to migrant workers on terms and conditions of employment and on the rights of all workers;
- Negotiate for internationally accepted standard employment contracts, to be signed by employers, migrants and employment agencies. Unions should have an interest in helping to ensure that the terms and conditions of employment offered to migrants are comparable to those received by locals – so that there is no undercutting and unfair competition:



In Slovakia, trade unions have been active in submitting proposals to the government to enter into bilateral employment agreements with receiving countries. Drafts of the agreements are considered by the trade unions.⁵³

- Ensure that departing migrants are provided with contact names and addresses of trade unions in receiving countries;
- Provide referral services, particularly for migrants who have suffered exploitation or abuse. Where unions have legal aid services, they could make such services available to migrant workers;
- In sending and receiving countries cooperate and use their networks to identify recruitment and employment agencies involved in providing fraudulent information to migrants, engaged in contract substitution or charging excessive fees. Unions can help to publicize lists of such recruiters and lobby governments and assist in ensuring that such agencies are prosecuted and their licences revoked;
- Cooperate in identifying agencies, employers and government officials involved in trafficking of migrants, and ensure that they are prosecuted according to the law;
- Cooperate with NGOs, other civil society organizations and migrant organizations in raising awareness of migrant rights and issues with the government, in organizing common advocacy activities, in mobilizing common action where needed, in exchanging and sharing information and providing services to migrants;

- Enlist the support of the media to draw attention to the issues of illegal recruitment and the protection of migrant workers.

Box 3.12. Trade union action against abusive recruitment

The initial steps in the organizing and unionisation of Indonesian migrant workers in Hong Kong started in 1996. Initially, three Indonesian women migrant workers, all victims of exploitation, sought the help of the Asian Migrant Centre (AMC). After winning their respective cases, they continued, with the guidance of AMC, to help other Indonesian migrants with problems and to join in the AMC reintegration (savings) programme. As the group's membership grew, they formalized themselves into the Indonesian Group (IGHK) and registered under the Society's Office in 1996. The process of empowerment and capacity building was a very difficult and slow one – not only because of the migrants' limited time (many had only a day off a month) but because they were afraid that the recruitment agencies would monitor their organizing activities. When the group saw that Filipino migrant workers had set up a union in 1998, the IGHK decided to learn more about unionisation. The IGHK met with the Filipino Migrant Workers Union and with migrant workers of other nationalities to exchange information and insights and jointly organize activities. Encouraged by its activities, the IGHK decided to transform itself into a union. The Indonesian Migrant Workers Union (IMWU) was officially launched in February 2000. Representatives from the Indonesian Consulate in Hong Kong attended the celebrations, providing a symbolic mark of recognition of the union. The IMWU bombarded the Consulate's representative on what the Indonesian Government had failed to do to improve the situation of Indonesian migrants.

The IMWU was at the centre of efforts to draw attention to the plight of Indonesian women migrant workers. For example in June 2000 in a two-part series entitled "On hire to the cruellest bidder", *the South China Morning Post*, a Hong Kong newspaper, highlighted the abuses committed against Indonesian migrant workers. After the publication of the article, the Indonesian Consulate General issued a memorandum admitting to the widespread abuses and telling the recruitment agencies to stop the violations. In October 2000, following a public dialogue with the IMWU, the Indonesian Labour and Manpower Department issued another memorandum declaring existing exploitative practices (excessive fees, passport retention, brokering underpaid migrants) as illegal. The memorandum also warned employers against underpaying migrants and that all costs in relation to hiring should be borne by employers. In a follow-up public dialogue in November between recruitment agencies, the Indonesian Consulate General, the Labour Department and the IMWU, the Indonesian Consulate General asserted that the memorandum was to be effective immediately. The IMWU is now monitoring the implementation of this memorandum.

Source: Asian Migrant Centre and Migrant Forum in Asia, "Breaking the Silence: Indonesian Migrant Workers Union" in *Asian Migrant Yearbook 2000 Migration Facts, Analysis and Issues in 1999* (Hong Kong, Asian Migrant Centre Ltd, 2000), pp.21-24.

Box 3.13. Organizing women migrant workers

The Nicaraguan Field Workers Association (ATC) is a confederation of field workers that is currently working with the ILO in a programme to send leaders from Nicaragua to Costa Rica to organise the migrant women in that country and provide talks on their labour rights. They have the support of related labour organisations in Costa Rica, and have held two encounters; the last one was in September 1999, with the participation of several labour organisations from Nicaragua, Honduras, and Costa Rica. During these encounters, they set as their priority to have an impact so that the migrant population achieves contractual status that will allow the Nicaraguan worker to enjoy his or her rights. One of the ATC's regular activities is to provide training for women on labour rights, environment, pesticides, negotiating techniques, the main benefits to be recuperated by women, labour organisation, international labour norms, and gender.

Source: Almachiara D'Angelo and Myra Pasos Marciacq, *Nicaragua: Protecting Female Labour Migrants from Exploitative Working Conditions and Trafficking* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.31.




NGOs are very active in protecting migrant workers, in particular vulnerable women, from fraudulent and abusive recruitment practices through:

- Ensuring that potential and actual migrant workers have ready and easily available access to adequate and realistic information about recruitment and employment abroad. (NGOs have developed and tested a very wide range of publications, radio and television programmes, posters, etc. aimed at steering migrant workers safely through the recruitment and journey process. **Boxes 3.14 and 3.15** offer examples of the kinds of direct, simplified information provided to migrant workers);
- Cooperating with trade unions and other civil society groups for bringing order and discipline to the recruitment process and for better protecting female migrant workers;
- Conducting special campaigns and advocacy against illegal recruitment:



The Ethiopian Women Lawyers Association (EWLA) has launched campaigns related to illegal recruitment practices. The exploitative situation of trafficked Ethiopian women in the Arab countries came to the attention of the EWLA through cases reported to its legal aid clinic around the end of 1996. EWLA uses the media as well as forums such as workshops to publicize cases of trafficking and to drive home the point that trafficking is a serious problem in Ethiopia. It also works closely with the police by referring cases involving trafficking for further investigation. In the case of a 20-year old Ethiopian migrant woman handed the death sentence for killing her employer, EWLA lobbied the government to provide legal assistance to the woman, making the case known to the public and mobilizing public support from concerned bodies both within and outside the country. At the initiative of the EWLA, a national committee was established to lobby and fundraise for the case. Together with the Women's Affairs Office at the Prime Minister's office, EWLA appealed to

*regional and international human rights organizations to lobby for a stay of execution and for further investigation of the case.*⁵⁴

- Helping to act as “watch-dog” against illegal recruiters and traffickers. NGOs with good grassroots networks and close relationships with out-migration communities can help the local people to be alert to illegal recruiters and traffickers, and to organize support groups to watch out for vulnerable women and children. NGOs in cooperation with trade unions and other civil society groups can also help to publicize lists of licensed recruitment agents/agencies with good records and also blacklisted agencies;
- Running special training courses and pre-departure orientation programmes for migrant workers [ **Section 2.5 in Booklet 2**];
- Providing special services for migrant workers to assist them in the recruitment process and to take action against illegal recruiters. Many NGOs provide practical assistance to potential migrants to process their applications for employment, fill forms and obtain all the documentation they need. Some NGOs also provide free legal services to victims of illegal migration.



*In Sri Lanka, the Migrant Service Centre, which is affiliated with the All Ceylon Federation of Free Trade Unions, provides information to prospective migrant workers to prepare them for migration and to raise their awareness of illegal practices and other hardships they may face. Among the information the Centre provides are health status, age requirements and medical certification needs, passport requirements, visas, tickets and registration with the Sri Lankan Bureau of Foreign Employment, including the benefits of registration, and remitting money home. The Migrant Service Centre also assists the migrants with preparing/filling in the various forms and documents they need. It also offers a counselling service which, among other things, stresses the importance of leaving the home in responsible hands when the woman leaves for employment abroad.*⁵⁵



*In Nicaragua, the Nicaraguan Association of Municipalities (AMUNIC) has been carrying out efforts aimed at establishing the basis for the development of Nicaragua’s border zones. They provide support for the local governments of the border areas between Nicaragua and Costa Rica, and recently formed the Confederation of trans-border municipalities from both countries, to strengthen the ties that exist among the municipalities that share the border and surrounding spaces in their daily interchanges. The Confederation is made up of the foundation for the peace and development of Costa Rica, the institution selected by SICA to work on border issues, and AMUNIC, from Nicaragua.*⁵⁶

Box 3.14. The Migrating Woman's Handbook

The Global Alliance against Traffic in Women (GAATW) in collaboration with a number of other organizations, including the Domestic Workers Association Canada, Caritas-Hong Kong, Asian Migrants Centre and Helpers for Domestic Helpers, has produced *The Migrating Woman's Handbook* which is addressed to those who have decided to go abroad for jobs or to get married "to help you make a safe journey and ensure you don't face problems abroad. The manual is based on the experiences of Asian countries, and would be useful for women who would go to work as: Factory workers/Construction workers; Domestic Workers; Entertainment Industry/Sex work; Women marrying foreigners abroad. The manual provides information on practical tips about arranging your travel documents, immigration and visa requirements, residency and work permits, your rights and wages, as well as how to protect your rights". The table of contents of the Handbook are:

1. You are Going Abroad!
 2. Travel Documents
 3. Work Permits and Residence Permits
 4. Detention and Deportation
 5. Checklist before Departure
 6. After Arriving in the Destination Country
 7. Contracts
 8. Know Your Rights!
 9. Are You Going Abroad to Work in a Factory or on a Construction Site?
 10. Are You Going Abroad to Work as a Domestic Worker or Housekeeper?
 11. Are You Going Abroad to Work in the Entertainment Industry?
 12. Are You Going Abroad to Work as a Sex Worker?
 13. Are You Getting Married to a Foreigner?
 14. Methods of Redress.
- Appendix of Organizations providing Assistance to Migrants

See: Global Alliance against Traffic in Women, *The Migrating Woman's Handbook* (Bangkok, GAATW, 1999). Website: <http://www.inet.co.th/org/gaatw>

Box 3.15. How to avoid illegal recruitment: information provided to women migrant workers by an NGO

What is illegal recruitment? What are recruitment violations? Illegal recruitment is any act of canvassing, procuring, promising, contracting or transporting workers for employment abroad by an unlicensed agency. You can file a case at the Philippine Overseas Employment Authority (POEA) if your recruiter has done any of these:

- Charging more than the set placement fee (P5,000 for domestic workers);
- Publication of false information about the overseas job;
- Misrepresentation to get a licence to recruit;
- Luring a person to resign from her present work to apply for the overseas job;
- Influencing another recruiter not to hire an applicant who did not choose one's agency;
- Recruitment or placement of workers in jobs harmful to the public health, morality or dignity of our country;
- Contract substitution or changing the terms of the contract without the approval of the POEA;
- Withholding of travel documents before the worker's departure;
- Failure to deploy the worker to the jobsite;
- Failure to refund recruitment fees to those unable to leave.

How to avoid illegal recruitment:

- Do not trust anybody offering you an overseas job. Be inquisitive (*makulit*) and vigilant (*mapagbantay*). Ask for the recruiter's identification and proof of licence to recruit. Get the full name of the agency and its owners and the licence status at the POEA. Recruiting without a licence is illegal and considered a crime;
- Never deal with an agency or its agents who cannot show proof of licence. Being deployed by a licensed recruitment agency does not assure protection from employer abuse, but gives you better chances to seek redress of grievance should you experience contractual and human rights violations;
- Put everything on paper:
 - ✓ keep a diary and a record of all your transactions with the recruiter until the day of your departure. Note dates, names of people you talked with, addresses and phone numbers, amounts paid and other expenses incurred. Entrust a copy with a family member for safekeeping before leaving. Bring a copy with you;
 - ✓ Make photocopies of *all* documents (passports, contracts, receipts, etc.). Keep one set in a safe place. You may need these in case the original is lost, stolen or seized;
- Never transact business alone with a recruiter. Always have somebody with you who can observe and witness transactions made. Bad intentions are foiled when there are witnesses;
- Avoid signing documents you cannot read or do not understand.

What to do if victimized:

- Report the case immediately to the POEA or local authorities;
- Seek the help of family members, relatives, church leaders, local leaders and/or elders in the community in tracking down and bringing to court the recruiters;
- Seek the help of legal representatives or NGOs that can assist in the filing of a legal case against the recruiter;
- Prepare all documents to serve as evidence that you were victimized by an illegal recruiter.

Source: Kanlungan Centre Foundation, Inc, *Destination: Middle East A handbook for Filipino women domestic workers* (Quezon City, Kanlungan Centre Foundation, Inc., 1997), pp.16-19.

3.5.3. What can women migrant workers themselves do

The better informed women migrant workers are, the better they will be able to protect themselves from fraudulent and abusive recruitment practices and to travel safely to the country of employment. If you are providing advice to a migrant woman, the followings are things to ask her to consider:



If you are a woman seeking to work abroad, make sure that you are legally recruited and that you migrate as a documented migrant worker:

- ☑ There are two statuses of migrant workers: documented and undocumented. You are a *documented migrant worker* if you have the proper clearance and legal documentation to leave your own country and to enter, stay and work in another country. You are an *undocumented migrant worker* if you do not have such authorization and documentation;
- ☑ Be aware that there is a big difference between migration, smuggling and trafficking. *Migration* is when you are recruited willingly and work in another country with the terms and conditions you were promised. *Trafficking* is when you are forced, tricked or coerced into doing something other than what you planned to do or what you consent to do. When you are illegally recruited, you can be a victim of trafficking, subject to serious exploitation and abuse – sometimes including sexual exploitation. *Smuggling* is when you knowingly pay someone to help you to illegally cross borders – when you put yourself in the hands of smugglers, not only do you expose yourself to a dangerous journey, you are also very likely to be subject to exploitation and abuse;
- ☑ If you are a documented migrant worker, you are entitled to be protected under labour law and to have access to social services, including health care from the government of the receiving country. On the other hand, if you are an undocumented migrant worker or you have been smuggled, you will be detained and deported because you violated the immigration or residency laws. You could fall into slavery-like work conditions or find it very difficult to receive government assistance, labour law protection or access to social services;
- ☑ Be aware that sex work or prostitution is illegal in most countries. Even in countries where prostitution is allowed for nationals, migrant women are not permitted to work in the sex industry unless you have a resident permit to stay in that country. The authorities may press charges against you if you migrate for sex work. Be aware that sex work is one of the most degrading and exploitative forms of work.



If you are a woman seeking employment abroad, avoid fraudulent and abusive recruitment: by making sure you get all the information you can about the recruitment agent/agency, your potential employer and the country you are going to:

- ☑ Possible sources of reliable information are: the Ministry of Labour, the Ministry of Foreign Affairs, trade unions and NGOs involved in migrant

worker and labour issues; the embassy or consulate of the destination country. Contact them to obtain information and assistance;

- ☑ There are both government and private employment agencies that can provide you with information about job vacancies. Your friends or relatives or migrants returning to your community may also provide you with information and contacts. Employers from other countries might place advertisements in newspapers or other media about job vacancies. Be aware that the information provided – the stories about the good earnings and the good life – might not be true. Do not trust just anybody offering you employment overseas;
- ☑ If you are seeking an overseas job through a recruitment agency, be sure that the agency is licensed. Ask for the recruiter's identification and proof of licence to recruit. Double check with the labour department and the embassy of the receiving country, ask about the specific recruitment agency – ask whether the agency is legal and whether it has a good performance record;
- ☑ Never deal with any agency or its agents who cannot show proof of licence;
- ☑ Try to get all the information possible about your potential employer. Contact the embassy of the country you are going to and ask whether they have any information about the employer and the agency that is placing you for employment;
- ☑ If the recruitment agency is charging you fees and paying for your trip, make sure that you know exactly (a) what the fees are for, (b) how much you owe in total, and (c) how long it will take you to pay the agency back. Find out how much you will be receiving in wages and compare it to the agent's fees to decide whether it is worth going to work abroad. Try to find out if you can get a loan with low interest from the government;
- ☑ Beware of falling into debt bondage – a situation where you are bonded to work for your recruiter/employer under exploitative conditions or no wages and are not able to change employer until such time as your debt is settled. Be extra careful that when the recruiter or employer advances money for your trip or other expenses; make sure you know the exact amount and nature of the debt.



If you are a woman going for employment abroad, make sure that you have a valid employment contract:

- ☑ Whatever the channel of recruitment you use (whether directly with the employer or through a recruitment agent/agency), make sure that the employment contract is in a written form in a language you understand well. Do not rely on verbal agreements;
- ☑ Check that the written employment contract includes: duties or what you are required to do; working hours and rest periods; annual leave or vacation; sick leave and maternity leave; wages (salary) and the method of payment (cash, cheque or bank account transfer); deductions from wages and what these are for; bonus and overtime for extra hours of work; medical/accident/life insurance benefits; procedures for leaving the job;

amount of debt, if any, that you have to pay back and how long it will take before you receive a wage;

- ☑ Read the contents carefully before signing any kind of contract or agreement. Ask for clarification if you cannot understand any part of your contract or agreement. Get translation assistance and legal assistance, if needed, from someone you trust. Do not rely solely on the recruiter's or employer's translation. Do not sign any contract you cannot fully read or understand;
- ☑ Make sure that you are satisfied with all the conditions in the contract or agreement. If not, ask for clarifications from the agency or employer and ensure that they make additions to the contract or delete some parts of the contract, before you sign it;
- ☑ Be aware that the contract should be signed by you and an employer. If the other person does not sign the contract, it will be incomplete and unenforceable. Keep a copy of the contract for yourself. If provided for in the regulations of your country, register a copy of your contract with the relevant authorities, such as the Ministry of Labour. Make a copy of your contract for your family or trusted friend to keep.



If you are going abroad for employment, you will need travel documents for your journey to the destination country. You will need money to pay for most of the documents and for your ticket:

- ☑ For your journey to the destination country, you will need a passport, visa and medical report. A passport is a document issued by your country of origin to its citizens. It identifies you as a citizen of your country of origin. Be aware that you cannot travel abroad without a passport. If you are getting your passport through an agency, check that the passport is valid and authentic. If the passport is fake, do not use it; otherwise you could face serious trouble;
- ☑ A visa is a special piece of paper or a stamp in a passport that allows you to enter a country. All countries have laws about who can enter, work and live in the country and who cannot. Types of visas include: tourist, student, work/non-resident, resident, entertainer, others. Be aware that you need a work visa to work legally and that it is illegal to work on a visitor's or tourist visa. A work permit is a legal approval by the Ministry of Labour or other relevant authority of the country of destination for you to work. A temporary residence permit allows you to stay in the country only for a specific period of time. Be aware that you have to leave the country after that period if your application for extension of your visa is not approved.



If you are a woman, be aware that a marriage is legal only with the consent of both partners. You can never be forced to marry someone against your will:

- ☑ Be aware that marriages can be arranged through agencies or marriage bureaus, individual marriage brokers who may approach your family, advertisements placed by potential grooms in newspapers, special

magazines, the internet. Sometimes, the arranged marriages may work out well. But there are also many cases where your husband's sole expectation is to have someone from a developing country to perform physical labour and sexual services. Do not be misled by the lure of having a "foreign husband". Many such arranged marriages end up in domestic violence, sexual and labour exploitation;

- ☑ Find out about the marriage laws and the rights of wives in the country of destination before you enter into an arranged/ mail-order bride marriage;
- ☑ Even after marriage, your husband cannot physically or mentally abuse you just because you are married to him. He cannot force you to have sex with him or with any other person/persons;
- ☑ Beware of fake marriages that are arranged for the purpose of trafficking you from one country to another. Fake marriages are arranged as it is easier for a woman to enter a country if you are married to a national of the country. But fake marriages are not legal. And even if you are married to a national of the country of destination, it does not automatically mean that you will get a permanent resident permit.

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Website: <http://www.mom.gov.sg>
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Villalba, M.A.M.C., *Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Jobs* (Geneva, ILO GENPROM Series on Women and Migration, 2002).

Women's Aid Organisation (WAO), *WAO's Response to the Abuse of Foreign Domestic Workers (FDWs) in Malaysia*. (Petaling Jaya Malaysia, WAO, August 2001). Website: www.wao.org.my

Useful Websites

Amnesty International

<http://www.web.amnesty.org>

Anti-Slavery International

<http://www.antislavery.org>

Asian Migrant Centre

<http://www.asian-migrants.org>

Asian Monitor Resource Centre

<http://www.amrc.org.hk/>

Asian Pacific Forum on Women, Law and Development

<http://www.apwld.org/lm.htm>

Asia-Pacific Migration Research Network

<http://www.unesco.org/most/apmrn.htm>

Asian Partnership on International Migration

<http://apim.apdip.net>

Asian Research Centre for Migration

<http://www.chula.ac.th/INSTITUTE/ARCM/main.htm>

Bangkok Declaration on Irregular Migration

<http://www.thaiembdc.org/info/bdim.html>

Coalition Against Trafficking in Women (CATW)

<http://www.catwinternational.org/>

Charter for the Rights of Migrant Domestic Workers in Europe

<http://www.philsol.nl/of/charter-domestics-oct99.htm>

Collection of resource and links on initiatives against trafficking in persons

http://www.hrlawgroup.org/initiatives/trafficking_persons/

Coordination of Action Research on AIDS and Mobility –Asia (CARAM Asia)

<http://www.caramasia.gn.apc.org>

Council of Europe

http://www.coe.int/T/E/Committee_of_Ministers/Home/

Domestic Workers

<http://www.asylumsupport.info/news/domesticworkers.htm>

Economic Commission for Europe (ECE)

<http://www.unece.org>

European Commission Justice and Home Affairs

http://europa.eu.int/comm/justice_home

European Monitoring Centre on Racism and Xenophobia

http://europa.eu.int/agencies/eumc/index_en.htm

European Strategy on Trafficking in Women

http://europa.eu.int/comm/justice_home/news/8mars_en.htm

European Union policy documents

http://europa.eu.int/index_fi.htm

Femmigration

<http://www.femmigration.net/>

Filipino laws and Overseas Employment

<http://www.chanrobles.com/republicactno8042.htm>

Global Alliance Against Trafficking in Women (GAATW)

<http://www.thai.net/gaatw>

Global Campaign for the Ratification of the Convention on the Rights of Migrants

<http://www.migrantsrights.org>

Global Programme against Trafficking in Human Beings, UN Office for Drug and Crime Control Prevention, Vienna

http://www.odccp.org/trafficking_human_beings.html

International Human Rights Law Group

<http://www.hrlawgroup.org/>

Human Rights Watch (HRW)

<http://www.hrw.org>

Information for Domestic Workers Arriving in UK – Government Website

<http://www.ind.homeoffice.gov.uk/>

International Confederation of Free Trade Unions (ICFTU)

<http://www.icftu.org/>

International Labour Office (ILO)

<http://www.ilo.org>

<http://www.ilo.org/public/english/standards/decl/>

<http://www.ilo.org/genprom>

<http://www.ilo.org/childlabour>

<http://www.ilo.org/asia/child/trafficking>

<http://ilolex.ilo.ch:1567>

<http://natlex.ilo.org>

International Movement Against Discrimination and Racism

<http://imadr.org>

International Organization for Migration (IOM)

<http://www.iom.int>

Kalayaan. Justice for Overseas Domestic Workers

<http://ourworld.compuserve.com/homepages/kalayaan/home.htm>

Kanlungan Centre Foundation Inc.

<http://www.kanlungan.ngo.ph>

Link to anti-trafficking websites

<http://stop-traffic.org/Countries.html>

Migration Forum in Asia (MFA)

<http://www.migrantnet.pair.com>

Migrant Rights International

<http://migrantwatch.org>

Mission for Filipino Migrant Workers (MFMW)

<http://www.migrants.net>

Network of Migrant Workers Organisations

<http://www.solidar.org>

Network Women's Program (La Strada Foundation)

http://www.soros.org/women/html/info_trafficking.htm

Office of the High Commissioner for Human Rights (OHCHR)

<http://www.unhchr.ch/women/focus-trafficking.html>

<http://www.unhchr.ch/html/menu2/7/b/mwom.htm>

Office of the UN High Commissioner for Refugees (OUNHCR)

<http://www.unhcr.ch>

Organization for Security and Cooperation in Europe (OSCE): Europe Against Trafficking in Persons

www.osce.org/europe-against-trafficking

Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)

<http://www.osce.org/odihr/democratization/trafficking>

Palermo Convention on Transnational Organized Crime and its Protocols

<http://www.unodc.org/palermo/convmain.html>

Promotion of the rights of migrants (December 18)

<http://www.December18.net/intro.htm>

Scalabrini Migration Center

<http://www.scalabrini.asn.au/philsmc.htm>

Singapore Ministry of Manpower

<http://www.mom.gov.sg>

STOP-TRAFFIC

<http://www.stop-traffic.org>

Stop traffic listserv and archives

<http://www.friends-partners.org/partners/stop-traffic/>

Trafficking Directory

http://www.yorku.ca/iwrp/trafficking_directory.htm

United Nations Crime Commission documents on the Trafficking Protocol

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/index.htm

United Nations Development Fund for Women (UNIFEM)

<http://www.unifem.org>

United Nations Division for the Advancement of Women (UNDAW)

<http://www.un.org/womenwatch/daw>

United Nations Interregional Crime Prevention Institute (UNICRI)

<http://www.unicri.it>

United Nations Secretariat

<http://www.un.org>

United Nations Treaty Collection

<http://www.un.org/Depts/Treaty/>

USA Government

<http://usinfo.state.gov/topical/global/traffic/>

<http://www.state.gov/g/tip>

<http://cia.gov/csi/monograph/women/trafficking>

US Anti-trafficking initiatives

<http://www.state.gov/documents/organization/21555.pdf>

<http://secretary.state.gov/www/picw/trafficking/region.htm>

UNICRI Global Programme Against Trafficking in Human Beings

http://www.unicri.it/trafficking_in_human_beings.htm

Women's Aid Organisation, Malaysia (WAO)

<http://wao.org.my>

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

<http://www.unhchr.ch/html/racism/>

World Wide Web Virtual Library (WWVWL)- Migration and Ethnic Relations

<http://www.ercomer.org/wwwvl/>

Endnotes

¹ It is worth noting, however, that the anti-immigration backlash in the wake of the terrorist attacks of September 11, 2001 in the United States has appeared to be more discriminatory for male than female migrants.

² See, for example, P. Boonpala and J. Kane, *Trafficking of children: the problem and responses worldwide* (Geneva, ILO, International Programme on the Elimination of Child Labour, 2001). Also ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002).

³ Some of the background materials used to develop the Guide came from case studies in sending and receiving countries of the situation of the women migrant workers within their families, workplaces, communities and societies. The case studies also looked at the initiatives, policies and programmes, “good” and “bad” practices implemented by government, private recruitment and employment agencies and a wide range of social actors to assist and protect women migrants against discrimination, exploitation and abuse and to assist those vulnerable to being trafficked. See ILO Gender Promotion Programme (GENPROM), *Working Paper Series on Women and Migration*.

⁴ ILO, *Migrant Workers Report III (Part IB)* International Labour Conference, 87th Session 1999 (Geneva, ILO, 1999), p.54.

⁵ See M. Abella, *Sending workers abroad* (Geneva, ILO, 1997), pp. 30-38 for a description of these different systems, pp. 8-9.

⁶ This regime is characteristic of high-income countries, such as the United Kingdom and Portugal, that still experience significant emigration.

⁷ India is an example of a country with such a system.

⁸ Asian labour sending countries, such as the Philippines, Sri Lanka and Indonesia have developed state-managed foreign employment policies.

⁹ An example is Vietnam.

¹⁰ Article 7 (2) of the ILO Convention on Migration for Employment (Revised), 1949 (No.97), Article 4 of Annex I and Article 4 (1) of Annex II.

¹¹ N. D. Vasquez, L.C. Tumbaga and M. Cruz-Soriano, *Tracer study on Filipino domestic workers abroad* (Geneva, International Organization for Migration, 1995), p.30.

¹² F. Eelens, Migration of Sri Lankan women to Western Asia. In United Nations, *International Migration Policies and the Status of Female Migrants* ST/ESA/SER. R/126 (New York, UN Department for Economic and Social Information and Policy Analysis, 1995), p.269.

¹³ L. L. Lim, “The processes generating the migration of women”, Paper presented at the Technical Symposium on International Migration and Development, The Hague, 29 June-3 July 1998.

¹⁴ M. I. Abella, *Sending Workers Abroad A Manual for Low- and Middle-Income Countries* (Geneva, ILO, 1997), p.33, Chart 3.4.

¹⁵ International Organization for Migration *World Migration 2003 Managing Migration: Challenges and Responses for People on the Move* (Geneva, IOM, 2003), p.16.

¹⁶ Ibid. p.224.

¹⁷ M. I. Abella, *Sending Workers Abroad A Manual for Low- and Middle-Income Countries* (Geneva, ILO, 1997), p.75.

¹⁸ ILO, *Migrant Workers Report III (Part IB) International Labour Conference, 87th Session 1999* (Geneva, ILO, 1999), p.241.

¹⁹ Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 1999 Migration Facts, Analysis and Issues in 1998* (Hong Kong, Asian Migrant Centre Ltd, 1999), p.121.

²⁰ See ILO, *Stopping Forced Labour Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, ILO, 2001), p.32.

²¹ For example, it was reported that a huge human smuggling operation in central Phnom Penh acted as a virtual "immigration office". A fake Cambodian passport costs US\$700, with extra pay for a corrupt local official if the client cannot speak Cambodian. A stolen Taiwanese passport costs US\$5,000 and US\$1,000 for a fake one. A stolen Japanese or American passport costs more than US\$10,000. See Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 1999 Migration Facts, Analysis and Issues in 1998* (Hong Kong, Asian Migrant Centre Ltd, 1999), p.96.

²² E. Kebede, *Ethiopia: An Assessment of the International Labour Migration Situation The Case of Female Labour Migrants* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp.6-7.

²³ ILO, *Migrant Workers Report III (Part IB) International Labour Conference, 87th Session 1999* (Geneva, ILO, 1999), p.57.

²⁴ For further analysis on the mail-order bride business, see for example, Langevin, L. and Belleau, M.-C., *Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides* (Ottawa, Status of Women Canada, 2001), pp. 79-115.

²⁵ Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2001 Migration Facts, Analysis and Issues in 2000* (Hong Kong, Asian Migrant Centre Ltd, 2001), p.68.

²⁶ C. Bencomo, "Making money off migrants: the Indonesian exodus to Malaysia" unpublished report. (New York: Human Rights Watch, 1998), p.36.

²⁷ OECD, *Bilateral Labour Agreements: Evaluation and Prospects - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003*, p.5.

²⁸ These items are listed in M.I. Abella, *Sending Workers Abroad* (Geneva, ILO, 1997) pp. 64-67.

²⁹ ILO, *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, Geneva 21-25 April 1997* (Geneva, ILO, 1997), p17.

³⁰ International Organization for Migration *World Migration 2003 Managing Migration: Challenges and Responses for People on the Move* (Geneva, IOM, 2003), p.17.

³¹ OECD, *Bilateral Labour Agreements: Evaluation and Prospects - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003*, p.18.

³² International Organization for Migration *World Migration 2003 Managing Migration: Challenges and Responses for People on the Move* (Geneva, IOM, 2003), Chapter 8.

³³ Ibid. p.260. Also see Chapter 14.


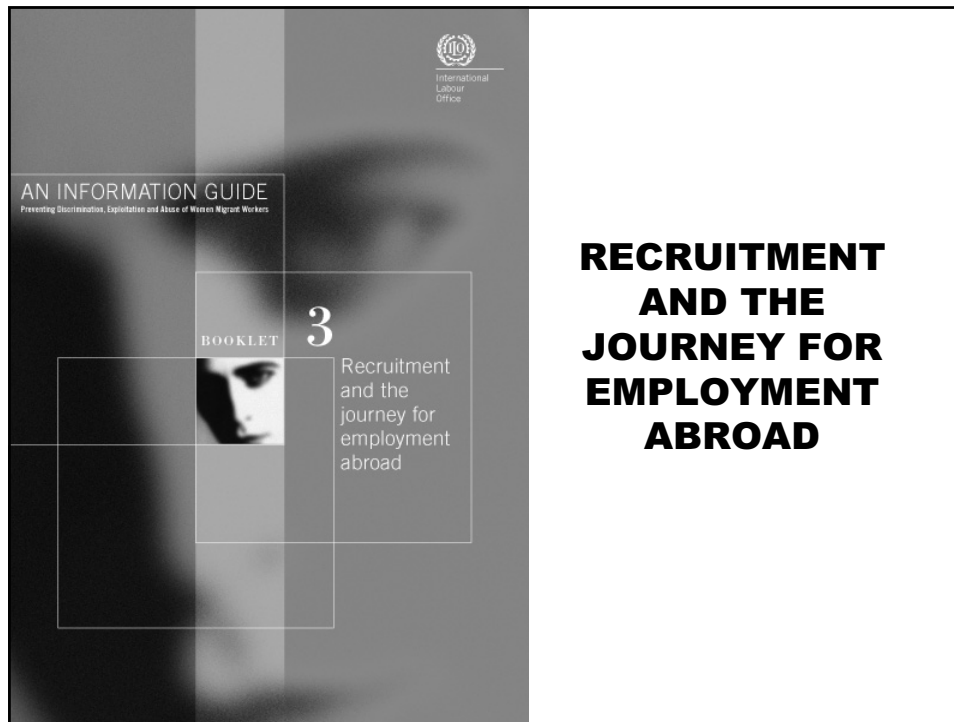
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- ³⁴ ILO, *Migrant Workers Report III (Part IB)* International Labour Conference, 87th Session 1999 (Geneva, ILO, 1999), p.55.
- ³⁵ Ibid, p.56.
- ³⁶ M.A.M.C. Villalba, *Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Jobs* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.21.
- ³⁷ M Dias and R. Jayasundere, *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.16.
- ³⁸ R. Sabban, *United Arab Emirates: Migrant Women in the United Arab Emirates* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.33.
- ³⁹ M. Abella, *Sending workers abroad* (Geneva, ILO, 1997), p.57.
- ⁴⁰ This list is taken from ILO, *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, Geneva 21-25 April 1997* (Geneva, ILO, 1997), pp.16-17.
- ⁴¹ M.A.M.C. Villalba, *Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Jobs* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.13.
- ⁴² OECD, *Bilateral Agreements on Labour Flows: Italy - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES)* (Montreux, OECD, 2003), pp.14-15.
- ⁴³ ILO, *Migrant Workers Report III (Part IB)* International Labour Conference, 87th Session 1999 (Geneva, ILO, 1999), p.69.
- ⁴⁴ Ibid, p.70.
- ⁴⁵ M. Abella, *Sending workers abroad* (Geneva, ILO, 1997), p.76.
- ⁴⁶ ILO, *Migrant Workers Report III (Part IB)* International Labour Conference, 87th Session 1999 (Geneva, ILO, 1999), p.81.
- ⁴⁷ Ibid, pp.82-85.
- ⁴⁸ M. Abella, *Sending workers abroad* (Geneva, ILO, 1997), pp.84-85.
- ⁴⁹ M Dias and R. Jayasundere, *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.17.
- ⁵⁰ OECD, *Bilateral Labour Agreements: Evaluation and Prospects - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES)*, Montreux, 2003. pp.6-7.
- ⁵¹ For example, the International Confederation of Free Trade Unions (ICFTU) No to Racism and Xenophobia Plan of Action calls on trade unions in sending and receiving countries to work jointly to protect and defend the rights of migrant workers See ICFTU Website, <http://www.icftu.org>.
- ⁵² See ILO, *Report and Conclusions ILO Asia Pacific Regional Trade Union Symposium on Migrant Workers 6-8 December 1999, Kuala Lumpur Malaysia* (Geneva, ILO ACTRAV, 2000), p.9-12.

⁵³ OECD, *Bilateral Labour Agreements: Evaluation and Prospects* - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 2003. p.9.

⁵⁴ E. Kebede, *Ethiopia: An Assessment of the International Labour Migration Situation The Case of Female Labour Migrants* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp.34-35.

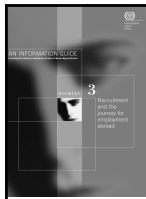
⁵⁵ M Dias and R. Jayasundere, *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.21.

⁵⁶ Almachiara D'Angelo and Myra Pasos Marciacq, *Nicaragua: Protecting Female Labour Migrants from Exploitative Working Conditions and Trafficking* (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.30.



AIMS OF BOOKLET 3

- To distinguish different modes of recruitment;
- To draw attention to the dangers and risks women face in the recruitment stage;
- To describe what governments, the social actors and migrants themselves can do to prevent abuses in the recruitment stage.



MEANING OF RECRUITMENT

ILO Convention on Migration for Employment (Revised), 1949 (No.97):

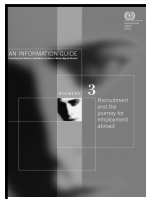
“Recruitment” covers:

- Direct engagement by the employer or his or her representative;
- Operations conducted by the intermediary, including public and private recruitment bodies.



THE MODES OF RECRUITMENT

- Through government-regulated/managed arrangements;
- Through private recruitment agents/agencies;
- Through informal networks/kin/family;
- Directly by employer.

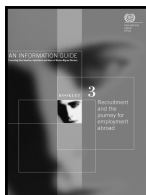


JOURNEY FOR EMPLOYMENT ABROAD

“Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment”

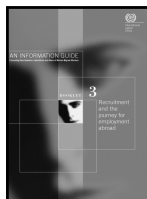
Article 4, Convention No. 97.

- The journey: how migrants are transported across international borders;**
- The means of transport;**
- En route;**
- Border crossing.**



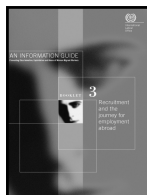
DANGERS AND RISKS RELATED TO RECRUITMENT

- Overcharging of fees;**
- Debt bondage;**
- Falsification of documents;**
- Deception with regard to nature of employment, including contract substitution and mail order bride trade;**
- Exploitation and abuse while waiting for job or to be sent abroad;**
- Lack of preparation for employment abroad;**
- Forced or coerced recruitment, including being kidnapped or sold;**
- Hazardous journey to country of destination.**



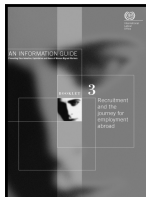
WHEN ARE THE DANGERS AND RISKS ESPECIALLY GREAT FOR WOMEN?

- When women fall victim to illegal recruiters or traffickers;
- When agents target women living in isolated or impoverished areas and lacking reliable information;
- When specific types of occupations are involved: domestic work, entertainment/sex industry;
- When the recruitment process is linked to indebtedness;
- When the recruitment process occurs without a contract or when contract is invalid.



WHY ARE WOMEN MORE LIKELY TO MAKE USE OF ILLEGAL RECRUITMENT?

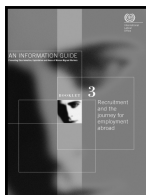
- Limited access to accurate and reliable information;
- Lack of time to search for legal channels;
- Legal migration procedures may be very restrictive, complicated, time-consuming or costly;
- Ill-informed, restrictive migration policies to “protect” women;
- Lack of financial resources to pay legal recruitment fees;
- Nature of work and forms of migration open to women;
- Illegal, unscrupulous recruiters may actively seek out women as being more gullible than men.



DANGEROUS JOURNEYS

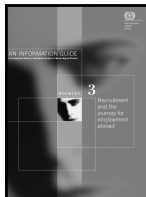
Especially when illegally recruited, the actual journey to the country of destination can also be very risky and dangerous because the women:

- Did not receive pre-departure training;**
- May be issued with false documents;**
- May be illegally transported, smuggled or trafficked under appalling conditions;**
- May be subject to sexual or physical violence from transporters, border guards, etc.;**
- End up in country of destination in situations of illegal entry, stay and employment.**



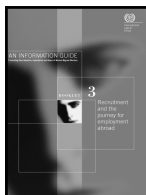
PROTECTING MIGRANTS IN THE RECRUITMENT PROCESS: WHAT CAN GOVERNMENTS DO?

- Cooperation between origin and destination countries, such as through bilateral or multilateral labour agreements, is key to ensuring that migrant workers are recruited under non-abusive and non-exploitative conditions;**
- Sending and receiving country governments can also individually adopt various policy measures and action.**



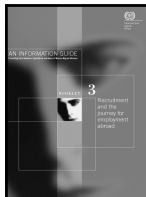
WHAT CAN ORIGIN COUNTRY GOVERNMENTS DO?

- Establish bilateral or multilateral labour agreements;
- Set minimum standards for recruitment of their nationals;
- Establish exit control measures – but ensure such measures do not inadvertently lead to trafficking;
- Provide public recruitment services;
- Develop national regulations covering private recruitment;
- License, supervise and control private recruitment;
- Provide information for migrants and their families;
- Provide support services for migrant workers.



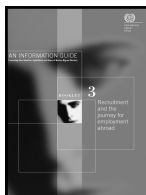
MODEL BILATERAL LABOUR AGREEMENT

- | | |
|-----------------------------------|---|
| Competent authority | Transport |
| Exchange of information | Employment contract |
| Irregular migrants | Terms and conditions of employment |
| Vacancy notification | Grievances and disputes settlement |
| List of candidates | Rights to organise and bargain |
| Pre-selection | Social security |
| Final selection | Remittances |
| Designation by employers | Accommodation |
| Medical examination | |
| Entry documents | |
| Residence and work permits | |



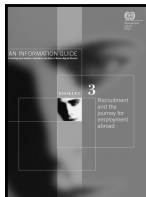
WHAT CAN EMPLOYERS' ORGANIZATIONS DO?

- Engage in dialogue with authorities, so as to have a say in bilateral/multilateral labour agreements;
- Engage in tripartite consultation to assess the demand for migrant workers;
- Monitor the implementation of labour agreements;
- Provide information about receiving country;
- Support and conduct training programmes to prepare migrant workers for overseas employment;
- Employers' organizations in receiving countries can help to fund vocational training for specific industries in source countries.



WHAT CAN PUBLIC EMPLOYMENT AGENCIES DO?

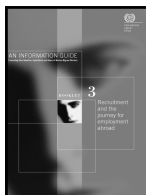
- Improve quality and lower cost of services;
- Equip staff so that they can provide gender-sensitive information and counselling on job opportunities at home and abroad;
- Ensure that staff are sensitive to the specific vulnerabilities of women migrant workers;
- Link recruitment with other support services, such as pre-departure training;
- Ensure that public employment agencies are free from corruption;
- Promote close cooperation with private agencies.



SUPERVISION AND CONTROL OF PRIVATE RECRUITMENT AGENCIES

Sending country governments can encourage the activities of legitimate recruitment agencies while protecting migrant workers from abuse through:

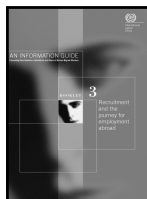
- Licensing private recruitment agents/agencies;**
- Requiring financial performance guarantees from agencies;**
- Specifying limits on recruitment fees that agencies can charge;**
- Providing for labour inspections;**
- Providing incentives for good performance.**



WHAT CAN PRIVATE RECRUITMENT AGENCIES DO?

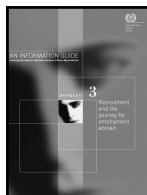
Practice self-regulation through the adoption of codes of practice covering:

- Minimum standards for professionalization of services;**
- Full and unambiguous disclosure of all charges and terms of business to clients;**
- Information from the employer of all details concerning the job, working conditions, etc.;**
- Not knowingly recruiting for jobs that involve undue hazards or risks;**
- Providing information to migrant workers in language they understand;**
- Not bidding down wages of migrant workers;**
- Maintaining register of all migrants recruited and placed.**



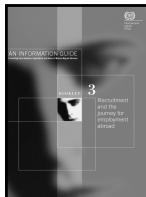
WHAT CAN TRADE UNIONS DO?

- Mobilize and organize migrant workers;
- Make representation to the authorities on behalf of migrant workers;
- Play advocacy role, highlighting plight of victims of illegal recruitment and trafficking;
- Provide direct services to migrant workers, such as negotiating for standard employment contracts, providing pre-departure programmes, referral and legal aid services, identifying unscrupulous agencies/employers, etc.;
- Share information on recruitment and placement of migrant workers between sending and receiving countries.



WHAT CAN NGOs DO?

- Ensure ready, easily accessible and realistic information about recruitment and employment abroad;
- Cooperate with trade unions and other civil society groups to bring order and discipline to recruitment process;
- Act as “watch dog” at grassroots level against illegal recruiters and traffickers;
- Conduct campaigns and advocacy against illegal recruitment;
- Run special training courses and pre-departure programmes;
- Provide special services, including assistance to process applications for employment or travel documents, legal aid, etc.



WHAT CAN MIGRANT WOMEN THEMSELVES DO?

- Make sure that you are legally recruited and migrate as a documented migrant worker;**
- Get all the information you can about the recruitment agency, employer, country of destination;**
- Make sure you have a valid employment contract: in a written form in language you understand, check all the contents carefully, be sure that it is signed by both you and the employer;**
- Make sure that you have all the necessary travel documents and that you know the total costs that you will have to pay;**
- Be aware that a marriage is legal only with the consent of both partners: you cannot be forced to marry someone.**